

# **Juvenile Justice System: The Role of Social Welfare Officers**

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## **INTRODUCTION**

Many of the circumstances leading to conflict with the law are of a social nature. Children who offend often live in families facing difficulties such as poverty, substance abuse or separation; they may be excluded from school or be without a job; they may be involved in risky behaviors such as drug use or prostitution. When these children enter into contact with the law, the main purpose of juvenile justice systems are to enable them not to reoffend. This is in line with the Article 40 of the Convention on the Rights of the Child, that every child in conflict with the law has the right to be treated in a manner that takes into account “the desirability of promoting [his/her] reintegration and assuming a constructive role in society.” Thus, tailored support for each child and his/her family should be provided throughout the process – including after release in the case of a custodial sentence – if the intervention of justice is to be meaningful United Nations International Children’s Emergency Fund [UNICEF], 2013).

However, in many countries Nigeria inclusive, justice systems are neither equipped nor mandated to fulfil this role alone, and need to work hand in hand with the social service sector towards this end. In the absence of such inter-sectoral cooperation, juvenile justice interventions would miss the opportunity of supporting a sustainable change in the child’s behaviour, circumstances and environment. The highlights of this article will show how social work has withdrawn or abandoned the debate on youth justice, outline the implication for social work and give some perspective on how social work can contribute to the debate on juvenile justice system both in theory and in practice.

## **Conceptual clarifications:**

### **Juvenile justice**

Juvenile justice refers to legislative, institutional, and procedural mechanisms that specifically deal with juvenile offenders or children in conflict with the law (Njungwe, 2008). It is also defined as a system of laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the law (Kaseke, 1993; United Nations Office on Drug and Crime, 2007). From these definitions, it can be understood that juvenile justice profoundly focuses on utilising laws or regulations to deal with the circumstances of young offenders, with the best interest of these offenders as a priority. It involves regulating the processing and treatment of non-adult offenders for violating the law and providing legal remedies that protect their interest in situations of conflict or neglect. In Nigeria, juvenile justice focuses on rehabilitating young offenders through established channels that seek to continue the provision of justice to all people, putting more emphasis on human protection. Consequently, juvenile justice takes into consideration the rights and welfare of the young offenders because of their vulnerability and at the same time protecting the broader society from the threat they may pose. Nigeria has in place policies and laws that govern juvenile justice, seeking to improve the lives of children in conflict with the law. As a country, Nigeria has also embedded juvenile justice in its general correctional services, intended to build and strengthen juveniles in conflict with the law in an attempt to empower them in taking responsibility for their actions.

### **Models of Juvenile Justice System around the World**

The conception of juvenile justice in Nigeria, like in other African countries, is linked to the country's colonial history and as a result; models of justice used in most African countries are products of western philosophical, social and criminological research (Vengesai, 2014). Models of juvenile justice provide a normative guide regarding the values that should influence juvenile justice. Nigeria embraced the widely accepted 'doliincapax' principle of criminal law that states that under a certain age, young people are incapable of coming up to commit a crime and should not be held fully responsible for their actions (Vengesai, 2014). The models of dealing with young offenders which are used in the justice system have evolved and are determined by how society views them and their criminal behaviour as well as the criminal offenses of that particular time (Lynch, 2010). These models are developed and re-modelled to new approaches to suit the

perceptions of society. Over the years, there has been a transition worldwide from punitive approaches where young offenders were being treated as objects with no rights at all to more child centred ones where the voice of young offenders and their families are supreme to correcting the offending behaviour. Although the punitive approaches to criminal justice have been dominant in the past, child rights-based approaches to juvenile justice which also encompass restorative justice principles are more acceptable in the contemporary world. There are three models of juvenile justice, which are the criminal justice model, the social welfare model and the restorative justice model.

### **Criminal justice model**

The criminal justice model does not take into account the 'doliincapax' rule as it emphasises the protection of society or the maintenance of stability rather than the protection of the individual rights in the society, let alone the rights of young people (Roach, 1999; Vengesai, 2014). Under this model, young people are considered to be mature, therefore they are expected to rationalise what they do as they are made accountable for what they have done. The principal goal of this model is to punish an individual for the crime(s) which he or she has committed. The model is retributive, reparative and concerned with the punishment of the offender than reformatory and rehabilitative. Hence young offenders are treated as adult offenders, tried in adult courts, convicted and punished. The age of young people is not considered at all as there would be no offer of exoneration.

The criminal justice model is sub-divided into two, the conflict model and the consensus model. The conflict model puts more emphasis on offending not the offender, equality of sanctions rather than individual treatment and rehabilitation. The major setback of this model is its failure to look at the underlying causes of criminal behaviour (MacVie, 2011). This model does not deliver justice to the young offenders, since its focus is on establishing blame and guilt which is accompanied by punishment. The consensus model assumes that members of society also take an active part in controlling crime. The public and other agencies work together to come up with interventions that are well thought through and agreed upon by everyone (MacVie, 2011). This model takes a systems approach to juvenile justice. All components work together in a harmonious way to come up with fair sentencing of individual crimes.

## **Social welfare model**

This model was developed after society realised that young people are the product of their environment. The criminal behaviour of young people might be a result of undesirable upbringing and the environment. Research has shown extensively that exposure to violence and crime at a young age within the home, school and community environments, including acts of personal victimisation, is likely to significantly impact the individual's likelihood of engaging in anti-social or criminal behaviour at a later stage in life (Harvagovan, 2013). The social welfare model has its foundations on the philosophy of "parents patriae", an English Law doctrine that puts the responsibility of protecting the young offenders in courts to the state (Vengesai, 2014). The assumption is that children in general and particularly those in conflict with the law, are vulnerable. Therefore, they need special protection which can be guaranteed by the state by way of establishing a separate criminal justice system for them, which offers a different treatment from the one accorded to adults (Roach, 1999; Vengesai, 2014). Such protection among other things include; probation, supervision and institutionalisation in children's and foster homes. The court has to protect the vulnerable children, thereby shifting the focus of the courts from accountability and punishment to care and protection of the young offenders.

The welfare model led to the establishment of the juvenile courts in most countries, which is an attempt towards the realisation of juvenile justice (Kaseke, 1993). Unlike the justice model that attributes criminal behaviour to the individual, the welfare model takes into cognisance of the many factors that influence juvenile criminal behaviour. Therefore, in order to deal with juvenile offending behaviour in a just manner, it is imperative to consider the causes of that behaviour. Factors such as the socio-economic situation, parenting skills, societal norms and values are likely to contribute to young people's engagement in criminal behaviour. The welfare model emphasises more on care and protection rather than accountability and punishment and their needs rather than their deeds. The concept of the 'best interest of the child' as a primary consideration of decision-making involving children forms the basis of the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC as well as all other relevant international statutes that serve to promote the rights of children

## **Restorative justice model**

Restorative justice is a theoretical framework that views crime as a violation of people and relationships which in turn creates an obligation to make things right (Wilson, Olghere & Kimbrell, 2017). Central to restorative justice is the emphasis on repairing the harm caused by criminal behaviour which is best accomplished when the parties involved meet cooperatively on how to do this, leading to the transformation of people, relationships and communities. Ultimately, the goals of restorative justice programmes are to repair the harm caused by the offense, decrease the offender's risk of committing future offences, improving victims' willingness to forgive their offenders, and increase both victims' and offenders' satisfaction with, and perceived fairness of the justice system (Wong, Bouchard, Gravel, Bouchard & Morselli, 2016; Wilson, Olaghere & Kimbell, 2017). The focus is on healing as opposed to punishment. Hence, restorative justice is an approach for correcting the wrong doing that brings together those most affected by the wrong, the offender and the victim in a face-to-face well managed and facilitated the meeting. The purpose of the meeting is for the offender to acknowledge the harm that was done and consider redressing the damage in the best possible way, putting strategies in place to avoid the same mistake happening again.

In many countries including Nigeria, restorative justice may be perceived as a new and unfamiliar concept. However, in a number of traditional societies, restorative values such as healing, reconciliation and mutual respect have long served to resolve conflicts and strengthen community bonds (United Nations [UN], 2016). Nigeria's customary and traditional way of dealing with offenders, youths or adults, resembles the principles of restorative justice (Vengesai, 2014). This was seen in community courts where village chiefs or headmen apply different procedures in dealing with offenders (for example, Victim-Offender Mediation, Family Group Conferencing and sentencing circles: peace-making circles, restorative circles) (Wilson et al., 2016; United Nations, 2016). For instance, if a person commits a crime and is reported to the chief, the chief sends out a word to the headmen of the offender and the offended, to bring them to a community meeting (dare/enkundleni) on a stipulated date and time. The headman of the offender brings a goat or sheep to be slaughtered and some traditional beer for a shared meal after the meeting. The headmen do not only come with the offender and the offended but also with parents and other representatives of that village. This shows that crime is not only committed against an individual but the whole

community. The meeting facilitates the mediation between the two affected communities and coming up with ways of restoring what was lost is taken into consideration, taking into account the time frame to pay for reparations, determined and agreed upon by both communities. After the mediation, both parties shake hands and share a meal as a sign to show that the grudge that would have been created has been amicably resolved and the offender will pay the reparations to the offended. In order to ensure that the reparations are paid, it was done through the chief. If there would be any delays, the chief would be informed in time so that he or she in turn informs the headman of the victim's family. If the agreement is breached, the case will be reported to the police and criminal justice takes place. Our indigenous restorative justice can be said to be an old practice that is now being advocated by modern theorists to be adapted to the criminal justice law that is recognised by the state, a process resulting in a paradigm shift from retributive models of justice.

Restorative justice for juveniles promotes their rehabilitation and reintegration. In the context of the criminal justice system, juvenile-sensitivity can be introduced at any stage of the process, from the moment of the child's time of arrest or apprehension to reintegration and follow up (United Nations, 2016). Juvenile restorative justice programmes target a variety of young offenders, including low-risk youths, youths who were diverted from the formal system processing, and youths who have committed first offenses. The programmes can take place within or outside the juvenile justice system. Normally, restorative justice programmes include the offender and the victim. Nonetheless, it is significant to note that the community can also be considered as the 'victim' of the offense. The police and the juvenile justice court personnel can use restorative justice practices as a diversion strategy or as alternative sentencing and in doing so they keep youths out of the system, but still hold them accountable for the harm they caused and give the victims a voice in the process (Wilson et al., 2017).

### **Scope and competencies of social work in relation to the juvenile system**

According to the International Federation of Social Workers (IFSW, 2018), the following are core competencies of social work in relation to the juvenile system:

- **promoting social change**, on the basis of its findings regarding the needs and the avoidable causes of problems confronted by individuals and groups seeking or requiring assistance;
- **problem-solving in human relationships**, whether interpersonal, intrafamilial, within the wider community or vis-à-vis the authorities and their agents;

- **empowering people to enhance their own well-being**, as opposed to creating ongoing dependency and thus maintaining inherent vulnerability.

Furthermore, the IFSW emphasizes that social work is based on the values of social justice and human rights and that it utilizes theories of human development, social theory, and social systems to support organizational, social, cultural, and individual transformations. It is evident that the social work profession can positively influence the juvenile justice system both directly and indirectly, and that it can do so in three main ways that roughly align with the three levels of the preventive framework (Makinde, 2007) given the wide range of potential areas of intervention and the bases and approaches that guide its action.

- 1) **Working alongside, but independently from, the juvenile justice system:** This has to do with aspects of secondary prevention as well as the primary preventive role of social work. Social services should be available to individuals and families encountering challenges at the primary level through self-referral, in order to provide appropriate support. Furthermore, social workers assist secondary school administrators in proactively identifying and assisting families with children who may be at risk by empowering them to address the underlying reasons of "presenting problems" such domestic abuse, neglect, and misbehavior.
- 2) **Interfacing with the justice system:** When a parent or kid interacts with the legal system, additional aspects of secondary prevention may fall under the purview of the social work profession. Therefore, social workers ought to be consulted when police interrogate or detain a child who is too young to be prosecuted or who has not broken any laws but is obviously in danger (homeless, unaccompanied immigrant, etc.). Social workers ought to be permitted to see jailed parents in order to verify and assure the welfare of their offspring.
- 3) **Working within the justice system:** In the context of the legal system, the social work profession may be assigned a wide variety of tasks, from the time of the child's apprehension or arrest to disposal and, when necessary, follow-up.  
Essential to note is that there is every benefit to inviting the social work profession, in accordance with its potential mandate, to participate in the creation of pertinent policies, laws, and programs based on the needs and issues it discovers while conducting casework

at all three of the aforementioned levels and functioning. This could involve discoveries that stimulate and educate policymakers about a variety of issues, such as modifying social security eligibility requirements or decriminalizing homelessness.

Clearly a cornerstone of the social work agenda, primary prevention can make a big difference in a lot of areas, including delinquency. It is not covered in more detail in this note, though, as it does not involve anyone connected to the legal system—unless in very rare circumstances. For that reason, the second and third items in the aforementioned listing are the focus of this evaluation.

### **The interface of social work with the justice system**

Typically, children and young people come into touch with the criminal justice system through the police, who serve as its front-line actors. The cops might not have any more direct involvement following this initial encounter, though. There are three principal scenarios at play. Under the first, minors who are suspected of committing crimes but who are younger than the legal age to face charges are taken into custody or seized. People generally agree that in such cases, while police action is by definition no longer needed or suitable, ignoring the incident and leaving the child unmonitored is neither desirable nor productive. In the best interests of these children, extra protective measures may be implemented, according to the Committee for the Rights of the Child (CRC, 2007). In order to, if needed, anticipate the right kinds and amounts of support and assistance for the child in question and, at the very least, prevent future behavior that is in violation of the law, it is imperative that the nature of the alleged act and the circumstances surrounding it be clearly understood.

Social workers ought to be responsible for looking into the child's circumstances and offering any help that could be required. To ensure that this is an accepted and systematically applied procedure, the best solution is to draw up a protocol between the police and social services, whereby responsibility for children below the minimum age of criminal responsibility is transferred immediately and effectively by the police to the social services. It is worth pointing out in this respect that, since minimum age for prosecution in CEE/CIS countries is higher than average (Trygged & Eriksson, 2009) the potential roles and responsibilities of social work professionals in such countries are particularly heavy and crucial in regard to 'underage' children.



The second scenario is typified by scenarios in which young people—who are not accused of committing a crime per se—are addressed by the police because of their behavior or surroundings, raising concerns. For instance, this often holds true for children who are homeless or vagrant. Again, if the police are still concerned after speaking with the kids, established protocols must be in place before they may get in touch with social services or trained street workers. After arresting a minor who is under the legal age of consent, the police may choose to implement a diversionary measure rather than file charges with the court. In these cases, the third scenario comes into action. The best diversionary strategy could be to send someone to a social worker right away. However, they are now uncommon in the CEE/CIS region, where diversion typically takes place at the prosecutor's office. Children whose caregiver(s) have been arrested or detained by the police represent a very different but equally significant component of the police-social service nexus. One of the first things that should be asked of someone who has been arrested or detained is about their family situation, specifically whether their arrest or incarceration prohibits them from fulfilling the essential caring role for a kid or children. If this is the case, protocols need to be in place to ensure that social workers are involved so that they can monitor the children's circumstances and assure their well-being.

### **Social work within the justice system**

Children dealt with by the justice system in the former Soviet Union and several other countries in the region typically faced sentences (or suspended sentences) involving deprivation of liberty in some form, frequently for several years, though with the leitmotiv of "rehabilitation" rather than pure punishment. According to Brogden (2010), social workers occupy a vulnerable position within the system to the extent that this legacy endures to varying degrees. That being said, there are an increasing number of initiatives currently underway to tackle this problem, suggesting “a chain of social treatment - from the time the youngsters were caught by the police, through the trial and during sanctions, like serving sentence in a youth colony or being put on probation to new start in the society.” (Brogden, 2010). The links in such a chain are many, with the following being among the ‘key’ actions to be carried out by social workers in the justice system:

**Assisting the child from the moment of arrest.** In certain nations, if the parents are unable to accompany the child during police interrogation (and occasionally even if they are), a social worker is required to be present. The social worker will offer the child emotional support as well

as potential paralegal assistance and other services. In any event, a social worker can stay in touch with the kid during the pretrial phase to offer support and guidance as needed. In addition, the social worker might be able to suggest pretrial options other than remand in custody that will be acceptable to all parties.

**Preparing social enquiry reports on the child's circumstances and characteristics.** These reports are typically prepared to give the court background information on the child, with a focus on all aspects of the family situation, health and educational status, and any unique issues or strengths, to aid in deciding the best course of action for that specific child in response to the offense. Simultaneously, such reports may also be utilized more frequently in pretrial diversion systems, particularly in "borderline" instances where the competent body is unclear if diversion is appropriate.

**Organizing diversion.** If pretrial diversion is mandated, the social worker might be in charge of helping the kid successfully complete the diversionary measure and choosing the best program or environment. The diversion program's goal is to give juvenile offenders alternatives to correctional commitment while supporting their growth and rehabilitation through organized training courses and intervention procedures.

**Supervising young offenders in the community.** It is obvious that the court can assign social workers—who are frequently specialized—to supervise probation officers. This entails collaborating not only with the child in question but also with his or her family, the school, and community organizations as needed. Likewise, social workers might be sent to make sure that requirements like community service are fulfilled correctly.

**Support during custodial sentences.** For youngsters incarcerated, the availability of a social worker can have a significant impact on their wellbeing and, consequently, their prognosis upon sentence completion. A social worker can recommend and organize additional services—education, non-governmental organizations, etc.—in certain situations to improve the detention measure. It will usually be advantageous in addition if the social worker in question maintains contact with the family; this should never take the place of family visits or other interactions between the kid and family, of course.

**Preparation for release.** The social worker's direct and indirect duties are especially important in this situation because it is uncommon to find any system where someone else performs this essential function—NGOs, at most, though not always. Preparing for release entails working with the family in order to make the home environment as favorable as possible for the child's return, in addition to working with the child to try and ensure that his or her prospects upon release are as positive as possible (continued education, vocational training, employment).

**Post-release support (aftercare).** Having the support and guidance of a social worker during this phase can be crucial in helping a child avoid reoffending, regardless of whether formal conditions (like a probationary period, close supervision, or being released "on licence") are attached to the child's release from a custodial sentence and are overseen by a social worker (Brogden, 2010). Since the child's entire environment—his or her family, friends, community, material circumstances, opportunities—has probably not changed much while they have been in custody, the child may require ad hoc or ongoing support to avoid recidivism to the extent that these factors contributed to the original offending behavior.

### **Enhancing the role of social workers in the justice sphere**

It is frequently asserted that the expansive "international" perspective on social work is fundamentally a Western-based framework. That broad scope that was reviewed above is certainly true in general, but it is especially relevant in this context because it outlines the potential range of roles that the social work profession as a whole can play, from advocacy to casework, and the contexts in which those roles may be required. In this case, the objective is to improve responses to children who are in conflict with the law while maintaining harmony with the legal system. This makes it possible to evaluate the desirability, necessity, and appropriateness (feasibility) of each function in specific national contexts.

Likewise, the field has changed dramatically over time in response to acknowledged requirements, shifting paradigms (from an aid-focused approach to one that emphasizes facilitation and enabling), an enormous growth in the amount of research, and increasingly methodical assessments of outcomes and efficacy. As such, social work ought to be viewed as an area of practice that adapts to changing social conditions, not as a fixed collection of procedures and methods. Street workers, educators, residential care providers, family support providers, probation officers, and others who operate in a range of environments from "the street" to the courtroom may

now be included. It suffices to say, therefore, that the goal must unquestionably be for each nation to assess the degree to which each potential social work role could support and defend children's rights in the legal system, and where the assessment yields a favorable outcome, to plan and execute the progressive implementation of the role or roles in question.

Ultimately, mutual trust and respect between all parties concerned are crucial for the social work profession to fulfill its full potential both outside and inside the court system. Even in countries where social work is a long-standing and well recognized profession, there are examples of lack of such trust and respect between social workers and the police, prosecutors and judges. At least five preconditions from the social work side must be met if such problems are to be avoided:

- The social work profession and its roles must be fully and officially recognized.
- Social workers must receive adequate professional training to fulfil – and to be seen to fulfil – those roles effectively.
- Social work must be given adequate resources (human and material) that enable it to offer valid responses.
- Roles and responsibilities of social work vis-à-vis other actors in the justice system must be clearly defined and agreed by all concerned.
- Multi professional fora must be foreseen at all levels where actors can discuss any difficulties encountered in their cooperation and propose solutions, strategies and targets to improve their combined efforts.

#### Recommendations

- (1) Harmonization of different legal framework: For there to be effective juvenile justice administration various conflicting provisions on the rights of the child should be streamlined for protection of the child.
- (2) Training and Research: Adequate training and research should be given to the various personnel that work in juvenile justice administration for instance the police, the Court and Correctional institutions, .This include collection and analysing of data for intervention of Government.
- (3) Review of Laws: The 1999 Constitution should be reviewed particularly the chapter should be made enforceable for effective juvenile justice administration

- (4) Implementation of laws: The Government should set up machineries serious monitoring and implementation of our juvenile justice system.
- (5) Establishment of Specialized Police Unit: For maximum efficiency, the Government should establish police unit in every police unit for protection of children that come in contact with the system.
- (6) Establishment of Family Court is necessary for effective juvenile justice administration in Nigeria.
- (7) Diversion Programme: The Court should not sanction children but divert them to probation, community services, financial penalties and compensation

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