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Juvenile Justice in Zimbabwe: The Need for Reform

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ABSTRACT

This paper attempts to highlight the weaknesses of the juvenile justice system in Zimbabwe and makes a case for law reform. It is the author's contention that whilst juvenile justice entails balancing two important considerations, namely the need to protect society against criminal behaviour and the need to pay special attention to the personal circumstances of the offender with a view to promoting his wellbeing, the disposal however is heavily weighed in favour of protecting society and thus emphasising retribution and reparation. There is therefore very little in the criminal justice system in Zimbabwe that seeks to promote the wellbeing of the juvenile offender in any meaningful way.

Introduction

Like many other countries, Zimbabwe has developed laws that regulate human interaction and thus serve to safeguard individual human rights and to protect society generally. These laws are therefore instruments for enforcing societal norms which Hoghughi (1983:19) defines as "a set of behavioral expectations, rules or guides shared by an identifiable social group". In cases of deviant behaviour societal laws tend to emphasise more the protection of society or the maintenance of order or stability in society than protecting the rights and welfare of individuals who have violated societal norms. This is critical for young offenders whose vulnerability makes them deserve special protection from society. There are two main legal instruments which deal with young offenders in Zimbabwe, namely the Children's Protection and Adoption Act (Chapter 33) and the Criminal Procedure and Evidence Act (Chapter 57). Consequently, there are

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two main institutions that deal with juvenile offenders, namely the juvenile courts and the magistrate's courts which administer the Children's Protection and Adoption Act and the Criminal Procedure and Evidence Act respectively. When a juvenile is alleged to have committed an offence the law requires that the matter be referred to a probation officer, who then prepares a social inquiry report highlighting the socio-economic circumstances of the juvenile. These special circumstances of the juvenile are supposed to be taken into consideration in the disposal process in an effort to achieve juvenile justice.

The Weaknesses of the Juvenile Justice System in Zimbabwe

According to the United Nations (1986:3), "Juvenile justice shall be conceived as an integral part of the national development process of each country within a comprehensive framework of social justice for all juveniles, thus at the same time, contributing to the protection of the young and maintenance of a peaceful order in society". The United Nations therefore identifies two major objectives of juvenile justice, namely to safeguard the welfare of the juvenile as well as to ensure that disposal maintains a balance between the seriousness of the offence committed and the personal circumstances of the offender. This is also aptly expressed by Houghugh (1983:85) who postulates that "the task of the juvenile justice system is to set down and implement a framework of uniformly just responses to wrongdoing taking into account individual circumstances".

The creation of the juvenile court in Zimbabwe must be seen as a serious attempt towards the realisation of juvenile justice. Unfortunately, Zimbabwe's juvenile justice system seems unable to make the 'uniformly just responses' that Houghugh refers to. Although probation officers prepare social inquiry reports highlighting personal circumstances of juvenile offenders, these reports are often prepared on the assumption that these juveniles are guilty and this seriously undermines the philosophy of juvenile justice.

Midgley (1975) notes that the juvenile court suffers from an 'identity crisis' for it was established as a semi legal and semi welfare institution designed to promote juvenile justice. Unfortunately, criminal justice and welfare objectives are often contradictory in that criminal justice focuses on retribution or reparation whereas welfare objectives focus on rehabilitation or reform. The pursuit of criminal justice is therefore incompatible with the pursuit of welfare objectives. This conflict is exacerbated by the fact that the criminal code is moulded on the liberal-classical theory of crime which according to Midgley (1975) views criminal behaviour as emanating from rational decisions and sees punishment as the only effective deterrent to crime. This view contrasts sharply with the welfare ideal

which is based on the premise that a human being is not a 'finished product' but one who is in a continuous process of transformation in order to maintain balance between his needs and the demands of his environment so that he functions as a fully integrated individual. Thus, juvenile justice cannot be fully realised unless this identity crisis is resolved.

It must also be pointed out that the use of social work in the disposition of juvenile delinquency cases has been viewed primarily within the context of social control. It is therefore not surprising that a probation officer's intervention has been designed to assist the juvenile offenders to adjust to their environment. The assumption therefore has always been that there is nothing wrong with the environment. Consequently, there has been little attention paid to the social, political and economic factors that work against the welfare of young persons. Whilst there are instances where probation officers should be used as instruments of social control, it should be pointed out that most of the circumstances in which juveniles find themselves in require the use of probation officers as instruments of social change. The need for social change is based upon the realisation that certain structures in society militate against the realisation of human potential, hence the need to restructure them in a manner that makes them more responsive to human needs.

The options before the court are limited and include the following: caution/reprimand, suspended sentence, postponed sentence, supervision and committal to an institution. Corporal punishment, although discontinued soon after independence, is now being reintroduced. This is a retrogressive option which has no place in the juvenile justice system. It is disturbing to note that juveniles are remanded several times before their cases are finally heard. It is quite common for juvenile criminal cases to take several months before they are finally disposed by the courts. Such a practice only serves to undermine the freedom of the juvenile and is thus a violation of his rights. Committal to institutions is a common form of disposal yet institutions are not equipped to make individualised responses to the problems of juvenile offenders. Furthermore, the time that juveniles remain in institutions is generally uniform (usually three years) and bears little relevance to the nature and gravity of the offence and the needs of the juvenile. In fact in this respect adult offenders enjoy better justice in that the prison term is generally determined on the basis of the gravity of the offence. Because of pressure of work, probation officers have tended to recommend those options which require little paper work. Whilst the juvenile court in Zimbabwe represents an attempt to embrace the welfare objective, the readiness with which probation officers recommend custodial sentences is astonishing.

Zimbabwe needs to introduce new disposition measures particularly as al-

ternatives to custodial sentences. A disposition measure which has gained wider acceptance in Europe is the use of community service orders. This entails ordering offenders to perform socially useful duties in the community under the supervision of a clearly designated authority. This form of disposition has advantages over custodial sentences in that it is less costly and it allows the offender to remain within his family and community. Another disposition measure which the United Nations (1986) recommends is the use of intermediate treatment. Intermediate treatment entails engaging in therapeutic intervention designed to react to an individual's behavioral problems. Thus the juvenile is accorded the opportunity to benefit from professional help. One of the most disheartening weaknesses in the juvenile justice system is the apparent lack of appreciation of the contribution of probation officers in the disposition process. In many instances juvenile cases are disposed of without reference to social inquiry reports. Furthermore, social inquiry reports are rarely taken seriously by judicial officers thus turning the whole exercise of preparing social inquiry reports into a ritual. The courts therefore need to demonstrate that social inquiry reports are useful and this would also serve to motivate probation officers to be thorough in their social inquiry. The juvenile court tends to be seen primarily as a legal institution and consequently the welfare objectives are relegated to the periphery.

The Need for Reform

There is need for reform in order to transform the juvenile court from a retributive institution to a reformative one. Although social work has been given a role in the disposition process it does so within parameters defined for it by the criminal law and consequently it is handicapped in its ability to promote the wellbeing of the offender.

The starting point in the realisation of welfare objectives is a redefinition of what constitutes criminal behaviour. It must be pointed out that in Zimbabwe there has been a wholesale transference of definitions of criminal behaviour from Western institutions. Consequently such definitions have very little relevance to the cultural, political and economic realities of Zimbabwe. It is in this context that Houghugi (1983) calls for decriminalisation of acts currently defined as criminal or illegal in order to divert juveniles away from criminal courts. Deviant behaviour of children within a defined age group should be seen as a manifestation of behavioural problems and such children need to be helped to work themselves out of their behavioural problems.

The determination of the age of criminal responsibility needs to be examined to ensure that it is in harmony with the cultural, social and economic

circumstances. In certain cultures, children mature more quickly than children in other cultures. West (1967:180) observes that "the development of moral ideology is not an exclusively individual phenomenon, it may be speeded or retarded according to the attitudes of the culture in which the child lives, the social class he belongs to and the disciplinary techniques to which he may be subjected". Given the circumstances of Zimbabwe and a history of deprivation for the majority of its people, it is advisable to put the age of criminal responsibility at no lower than 15 years and thus ensure that the child has matured enough to be held responsible for his actions. The United Nations (1986:5) notes that "in general there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities". It is therefore necessary to ensure that the age of criminal responsibility is commensurate with the age at which major social rights are conferred to individuals in society.

It is also the contention of this writer that the welfare of the child cannot be safeguarded by a system that does not allow for legal representation. Thus, juvenile justice cannot be realised unless the juvenile has an inalienable right to legal representation in court. The State must provide free legal services to those juveniles whose parents or guardians lack the means to engage the services of a lawyer. Such a measure would ensure that juvenile offenders from poor families are not unduly disadvantaged.

It has been suggested that one way of avoiding the negative impact of a court appearance is to use the diversionary technique which allows for the diversion of juveniles away from crime and the criminal courts (Hoghughfi 1983). Hoghughfi views this as a form of community participation in the control and treatment of deviant behaviour. The United Nations (1986:7) putting a case for diversion pointed out that it "serves to hinder the negative effects of subsequent proceedings in juvenile justice administration, for example the stigma of conviction and sentence". Midgley (1975) also argues that there is a stigma associated with a court appearance and suggests that young offenders should be dealt with extra judiciary. It is therefore important to provide remedial and preventive services in the community.

The diversionary technique entails access to a wide range of programmes such as community recreational facilities, youth clubs, income generating projects, educational services and job placement. The police are also an important part in the diversionary process and they should be able to handle minor offences through the use of caution and reprimand as deterrents. The use of the detached-worker technique provides useful parameters for understanding and helping children with behavioural problems and provides scope for general positive influence on the children. As West (1967:250) observes "no change is to be expected in morals or

behaviour until a close and special contact is built up with some responsible worker who can bridge the gap between disgruntled youth and uncomprehending authority”.

The supervision option should be given priority and probation officers should work towards strengthening families so that they are able to exercise adequate care and supervision to their children. This is necessary because generally parents have the will to provide adequate care and supervision to their children but the problems of poverty, ignorance and powerlessness can curtail their ability to do so. Apart from counselling, families must be assisted to achieve adequate levels of social functioning.

It would be naive to assume that institutional care will be done away with completely. Although there is no significant statistical evidence that points to the effectiveness of institutions as reformative agents, institutional care will however remain an inseparable part of the disposition process. However, efforts must be made to ensure that meaningful care programmes are developed. It is therefore important to ensure the effectiveness of institutions as reformative agents. Young offenders in institutions must be provided with marketable skills as part of the rehabilitation process. As the United Nations (1986:13) notes, “the objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skill with a view to assisting them to assume socially constructive and productive roles in society”. This objective is not realised because institutions are generally under-resourced by Government and consequently these institutions only respond to basic needs such as shelter, food and clothing. Government has an obligation to fund probation and training institutions adequately in order to enhance their capacities for effecting meaningful rehabilitation. Serious attempts must be made to integrate young offenders into the community in order to avoid isolating them from the rest of the society.

It is sad that policy-makers tend to be preoccupied with the maintenance of order and stability and that they react swiftly to anything perceived as threatening the system. The preoccupation with social control presupposes that there is nothing wrong with society hence the expectation that offenders should adjust to their environment. The juvenile justice system must be social change oriented in that it must seek to eliminate or modify the circumstances that lead to crime.

The disposal of juvenile delinquency cases tend to assume that rehabilitation or treatment goals can be achieved by focusing on the juveniles. There appears to be little recognition of the fact that some parents or guardians lack adequate parenting skills and therefore contribute towards the delinquent behaviour of their children. Even if the primary focus is on the juvenile, the parents must be effective participants in the rehabilitation or treatment process to ensure complementarity of

action between social workers and parents. Parents must be empowered to take personal responsibility for the welfare of their children and must be assisted to develop and consolidate good parenting skills. One way of ensuring effective participation of parents is to establish community centres which are resource centres where parents and children converge and are helped to deal with a variety of social problems. These community centres are preferable to custodial institutions as they are cheap to run and they also reduce the problem of stigmatisation and isolation associated with institutional care.

Conclusion

This paper has shown that juvenile justice in Zimbabwe will remain an elusive goal unless appropriate changes are made on the legal instruments. The areas that require changes include the definition of criminal behaviour, age of criminal responsibility, legal representation of juveniles and the role of the probation officer in the disposal process. It is also important to widen the disposal options to include community service and behavioural treatment outside institutional care.

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