



Republic of Kenya

JUVENILE JUSTICE IN KENYA AND THE MANAGEMENT OF CHILDREN INVOLVED VIOLENT CRIMES:

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By Clement Okech, OGW.

***Deputy Director, Probation and Aftercare Service,
Kenya***

Session

- Understanding applicable terminologies and Delinquency
- Philosophies and models of juvenile/child justice systems
- The penal System and the child justice laws
- Responses to juvenile/child crime
- Strategies for reducing offending
- Challenges

Introduction

- Juvenile VS Child (justice): same coin different sides? / Lexical Semantics or Real difference?
- Developmental definition
- Legal Definition
- Jurisdictional perspective
- Child, Juvenile as contrasted with youth
- Implication for juvenile justice system

A Child in conflict with the law

- ***A child in conflict with the law is a child, who is in violation of the law as a suspect, accused or found guilty of having committed a criminal offence.***
- The question of age of criminal liability arises and is variedly applied.
- In Kenya, a child is criminally liable if the child commits an offence at the age of 12 years
- Children are investigated and indicted in the same way as adults

Juvenile justice system

- Juvenile justice system can be defined as the **formal responsive arrangement** by government to process and deal with a child in conflict with the law in accordance with the prescribed set of laws while taking cognizance of the child's rights and best interest
- It is a systematic structural procedure of government agencies that are dependent upon each other yet operating distinctly in the maintenance of law and order, and exercising social control through arrest, prosecution, trial and adjudication, and punishment or correctional rehabilitation

Juvenile Justice System- Cont'd

- **POLICE**=Arrest/apprehension (may grant Bail or Bond)=**Children officers involved**
- **PROSECUTION**=arraignment and adducing evidence
- **COURT**= Bail Decision-Making (may call for Bail information reports). Bond or Remand custody
- =Hearing/Adjudication
- =Disposal
- **CORRECTIONAL INSTITUTIONS**= training & rehabilitation
- **PROBATION**=Post release supervision and aftercare

Delinquency

- Delinquency is mostly understood from the perspective of law violation in which a child of criminal age commits a proscribed act.
- Delinquency is thus a **deviant behaviour** that may manifest any time before maturity and sometimes may extend into adulthood.
- The physiological and emotional difficulties or pressures may lead a child to engage disproportionately in anti-social conduct

Childhood, Delinquency and Risk Domains

- Children undergo myriad experiences during upbringing which may result in conflicts for the adolescent
- Development of delinquent tendencies can be apportioned to the (1) individual (capacities to cope) and his or her (2) interaction with the environment
- **Five Developmental Risk domains**
(1) individual, (2) family, (3) peer group, (4) school and (5) the community (**POVERTY Is but a predisposing factor Not a Cause**)
- However, data indicate a correlation between poverty/survival and delinquency

Philosophy and JJ models

- Research tells us that, for the majority of youth who commit offences, the behaviour will desist in late adolescence or early adulthood,
- Only about 8 to 10% of boys who are offenders as youth continue to offend increasingly into adulthood.
- Thus, findings of high risk during adolescence are weak predictors of long-range offending Farrington,(2007) and Loeber, R., et al. (2002)

Philosophical Principles

1. Diminished capacity/responsibility=extent to which a juvenile has the capacity to bear blameworthiness or culpability for the offence
2. Proportionality = despite capacity to make judgement, a child cannot be required to take full accountability and thus should not be subject to a punishment that would have been meted out to an adult in similar circumstance
3. Opportunity for reformation=adolescence and youth in general are at transitory stages in life that require safeguards and room to navigate through into adulthood. (Howell 2009)

1. *Parens Patriae Doctrine*

- Anchored on the doctrine of *parens patriae*- the state has the responsibility for the well being of the child
- Principal objective is to restore functioning of the child
- Sanctioning and punishment should play a little role
- Responses draw on medical, psych-social approaches

Models of Juvenile Justice system

- Juvenile Justice system in Kenya has both adversarial and inquisitorial components.
- Five broad models of juvenile justice have been identified by Corrado (1992) as being
 1. Welfare model,
 2. Corporatist model
 3. Justice model
 4. Modified Justice Model
 5. Crime Control model.

Emergence of Penal System in Kenya

- The Modern Penal System was introduced by the British Government
- There existed good practices not oriented to punishment including **reconciliation, restitution, compensation** by the individual or community, **social exclusion** and **public ridicule, religious sanctions including curse**, etc (James S. Read, 1966 cited in Kercher 1981).

Emergence of Penal Institutions for Young Offenders

- English Penal legislation which was strong on institutionalization and perceived to:
 1. Reduce the likelihood of contamination in adult prisons
 2. Prevent the hardening of attitudes against society and authority
 3. Avoid labelling of the young offender
 4. Provide special programmes for resocialization

Emergence of Penal Institutions for Young Offenders: Penal Institutions

1. Remand Homes, (first established in 1960)
2. Approved Schools,(first established in 1937 & 1943)
3. Borstal Institutions (first established in 1963)
4. Youth Corrective Training Centre (established in 1962) for young offenders falling between 17 & 19 years.
5. 'Probation hostels' (first established in 1957)–
classified as correctional institution but are open facilities for probationers only

Juvenile Correctional Programmes

- Formal Education
- Vocational training- (Mainly Carpentry, & Tailoring & Masonry),
- Agriculture
- Case work, Counselling and other behavioural programmes
- Life skills training

Establishment of Borstal Institutions

- Borstal Institution was established as a penal facility for serious offenders managed by Kenya Prison Service
- First constructed in Kenya in 1963 to admit boys aged between 15 and 17
- Admission to Borstal Institution was and still is, up to three years
- Three BIs in Kenya, one for girls started in 2016

BI Offence Type

CATEGORY	OFFENCE	2013	%	2014	%	2015	%	Total
I	Offences against Order & administration of lawful authority	28	5.1%	24	5.0%	22	6.75%	74
III	Offences injurious to the public in general	34	6.2%	33	6.85%	53	16.26%	120
III	Offences against the person	88	16.1%	70	14.5%	27	8.28%	185
IV	Offences relating to property	382	69.7%	321	66.6%	212	65.03%	915
V	Forgery, conning, counterfeiting	1	0.18%	1	0.21%	2	0.61%	4
VI	Attempts and conspiracy to commit crimes	1	0.18%	1	0.21%	1	0.31%	3
VII	Offences under narcotic Acts	14	2.55%	30	6.22%	6	1.84%	50
VIII	Others	0	0	2	0.41%	3	0.92%	5
		548		482		326		1356

Youth Corrective Training Centre

- Youth Corrective Training Centre was established in 1962 for teenage offenders who were deemed to be unruly and needing 'short-sharp-shock' treatment
- Detached from the family as deterrent and a corrective measure.
- Youth admitted to the centre must be aged between 17-21 years for duration of four months
- YCTC deemed as Prison and inmates as prisoners
- Capacity of 100 inmates currently 55

YCTC Cont'd

- YCTC meant for first time offenders requiring close regimented supervision
- Committal is through the court and the advice of a probation officer.
- Due to the relative short time that they boys stay in this facility, there are no vocational training but little farming, rigorous outdoor chores.
- No post penal supervision

THE JUVENILE JUSTICE PROCESS

- Agencies involved include Police, Prosecution, Judiciary, Probation, Prison and Children's Dept
- Children are often arrested for committing offences and processed in near similar way as adult offenders
- The Police or any authorised officer may apprehend a child for due processing
- Police must separate boys from girls despite having only 14 Child protection units

Children Arrested 2013-2015

Regions		Number of Children Arrested			Total
		2013	2014	2015	
1	EASTERN REGION	301	288	309	898
2	CENTRAL REGION	183	269	250	702
3	WESTERN REGION	117	182	209	508
4	NAIROBI REGION	139	70	62	271
5	RIFT VALLEY REGION	334	346	427	1107
6	COAST REGION	170	221	167	558
7	NYANZA REGION	324	350	334	1008
8	NORTH EASTERN	22	26	47	95
	TOTAL	1,590	1,752	1,805	5,147

Juvenile Justice in Kenya

- While the Kenya Criminal Justice System is adversarial, the Juvenile justice system is not strictly adversarial.
- It appears to be a mix of the models that embracing various juvenile justice models.
- The underlying principle is the *best interests* of the child nevertheless
- Procedures in court, and with all the other agencies in the criminal justice system are conducted in an informal manner and child friendly environment
- Magistrates presiding over a children's court are *gazetted* by the Chief Justice.

Constitutional Provisions Relating To Children

- **Bill of Rights** in the Constitution (2010) incorporates child rights and child justice issues as special category
- right to freedom from torture and cruel, inhumane or degrading punishment or treatment
- Freedom from slavery or servitude, -no forced labour,
- the **right to a fair trial**,
- Right not to be deprived of freedom and security, **not to be subjected to corporal punishment** or to be treated in cruel degrading manner

Child Rights (Art. 53(1&2))

- Right to free and compulsory basic education,
 - Basic nutrition, shelter & health care,
 - Protection from abuse, neglect, violence,
 - Inhumane treatment or punishment,
 - Not to be detained, except as a measure of last resort and when detained, to be held for the shortest appropriate period of time and, separate from adults in conditions that take account of the child's sex and age.
- (i) Article 53 (2), states that a **child's best interests are of paramount importance in every matter concerning the child.**

Children's Act No. 29 of 20122

- The Children Act is the embodiment of child rights, protection and welfare legislation.
- The Act entrusts various bodies powers to secure children right and for provision of welfare needs and rehabilitation services.
- **Part XV** of the Act specifically deals with processing of children in court and the roles of various actors including probation officers with regard to provision of various social inquiry assessment reports for decision-making
- Children's Court may try a child for any offence except the offence of **murder**

Criminal liability of a Child

- **Section 221(1)** A person under the age of twelve years shall not be criminally responsible for any act or omission.
- (2) A child who commits an offence while under the age of fourteen years shall be presumed not to be capable of differentiating between right and wrong, unless the Court is satisfied on evidence to the contrary.
- (3) The provisions of this Part shall apply to a person who reaches the age of eighteen years before proceedings instituted against them have been concluded.

Diversion

- **Section 226:** Diversion is available as an alternative methods of holding children accountable
- Intended to promote the rehabilitation and re-integration of the child
- promote reconciliation between the child and the person or community affected by the harmful conduct of the child and
- Helps to minimize stigmatization of the child, and prevent a consequences of criminal justice process.
- **DIVERSION NOT AVAILABLE IN MURDER CASES**

Restriction on punishment

- **Section 238:** A child offender cannot:-
 - a) Be ordered to imprisonment
Notwithstanding the nature of any offence
 - b) Be ordered to suffer death penalty
 - c) Be committed to rehabilitation school if below 12 years of age.
- A child may be ordered to serve community service

Methods of dealing with children in conflict with the law.

- **Section 239.**
- (a) **discharge** the child under section 35(1) of the Penal Code;
- (b) discharge the child on his or her **entering into a recognisance**, with or without sureties;
- (c) make a **probation** order against the offender
- (d) commit the offender to the **care of a fit person**,
- (e) if the child is between twelve years and fifteen years of age, order that the child be sent to a **rehabilitation institution**

Methods of dealing with children in conflict with the law Cont'd.....

- f) order the child to pay a **fine, compensation or costs**, (liability on child's parents or guardian)
- (g) in the case of a child who has attained the age of sixteen years, **commit to a Borstal Institutions;**
- (h) place the child under the care of a qualified **counsellor or psychologist;**
- (i) order that the child be placed in an **educational institution or vocational training programme;**

Methods of dealing with children in conflict with the law Cont'd.....

- (j) order that the child be placed in a **probation hostel**
- (k) make a **community service order**;
- (l) make a **restorative justice order**;
- (m) make a **supervision order**
- n) make a **diversion order**
- (o) deal with the child in **any other lawful manner**

Assessment of Risk factors

- Juvenile delinquency is an integral part of preventing a young person from involvement in inappropriate, harmful and illegal conduct.
- Four **primary risk factors** can identify young people inclined to delinquent activities:
 - (1) **individual**,
 - (2) **family**,
 - (3) **Mental health** and
 - (4) **Drug & substance abuse** (including Cannabis).

Classification of child offenders

Child offenders are classified according to

1. the severity of the offences committed & the frequency of offending
2. Misdemeanour offender-infrequent law violation
3. **Criminal or violent offenders**
 - Although offence typology are important in classification of child offenders, the most ideal is through **ASSESSMENT OF RISK FACTORS**

RESPONDING TO VIOLENT SERIOUS CRIME

- There is no different set of risk factors associated with serious violent offending. Similarities with other problem behaviour in various risk domains exist for child offenders, (Lipsey and Derzon ,1998, Esbesen et al 2010)
- As such there is no specific treatment programmes that can directly be linked to addressing violent behaviours different from those for non-violent child offenders
- In Kenya, both institutional and community based approaches are applied

Responding to General /violent Crimes

1. Institutional responses:

- Rehabilitation schools,
- Borstal Institution,
- Youth Corrective training centres (first time offenders)

2. Community

- Probation
- Community Service
- Other forms of supervision

Responding to sexual violence

- Sexual offences Act 2006 (revised) did not envisage child sexual offences
- Sexual offences between children are less punished as both are deemed in needs of care and protection
- Child sexual offenders are accorded both institutional and community supervision (probation)
- A majority are committed to Borstal Institution where they are provided with rehabilitation and training not different from other categories of offenders
- Probation officers are involved in their reintegration

Responding to Violent Extremist

- Multi disciplinary Approach coordinated by the National counter-terrorism Centre
- Both Probation and Aftercare service and children Services have developed training manuals for officers dealing with Violent Extremism
- Delivery of education programmes that build young people's resilience to violent extremist messaging and fostering a positive sense of identity and belonging
- Coordinated supervision and reintegration efforts for returnees and those exiting penal facilities

We now know that:

- Successful rehabilitation and reintegration for violent youths are important because even if they are committed to custody, they will return to their communities at some point
- Once incarcerated, the likelihood of a young offender re-offending increases.
- The most promising rehabilitation takes place in the community and in the home.
- No one programme will be appropriate for all delinquent youth

Strategies for reducing offending

- 1. Community Reintegration:** Involve the community to assist with rehabilitation / reabsorption. A sense of belonging with positive engagement (CPVs)
- 2. Decrease punitive sanctions:** Studies have shown that detention and punishment does not reduce crime nor assist with rehabilitation of a child/young person.
- 3. Develop Alternative pathways to institutionalization:** Building skills and increasing capabilities, including critical thinking and access to education to make informed decisions and build social capital

Strategies for reducing offending

4. Safety: Building protective factors around the child/young person. This includes access to employment, family, friends, education and pro-social cognitive development

5. Access to healthcare: Mental health support by professionals trained in drugs and substance management, trauma, resilience building and prevention/coping strategies

6. Provision of needs Basic needs are met including housing, food, water and living conditions

Challenges

1. Information sharing and Silo Culture
2. Crime complexities
3. Old child holding facilities
4. Rehabilitation and reintegration weaknesses
5. Slow uptake of Evidence based Assessment
6. Old statutes other than the new Children Act No. 29 of 2022
7. Data management
8. Resource gaps

Conclusion

- Designing a child justice system that accommodates best interest of the child is an ideal many jurisdictions are grappling with.
- Whereas incarceration of young violent offenders is good for public protect, it is desirable that this is used as a last resort and for the shortest time possible.
- Holding child offenders accountable and addressing their offending behaviour very much depend of ability to identify the risk factors and addressing them in a multi-modelled approach

- Arigato Gozaimas
 - Asante Sana