

COMMUNITY APPROACHES THAT SUPPORT DESISTANCE: MEETING OF PURPOSE: THE CCPO AND THE SPECIAL TASKFORCE ON CHILDREN MATTERS – A KENYAN STORY

*Hon. Lady Justice Teresia Mumbua Matheka**

I. INTRODUCTION: THE GOOD LAW

...RECOGNIZING that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding,

RECOGNIZING that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security..., TAKING INTO CONSIDERATION the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child, CONSIDERING that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone...¹

The Kenyan Children Act² domesticates this Charter bringing home the requirement for legal protection while taking into consideration the unique and privileged position of the child. This calls for performance of duties by everyone to ensure the promotion and protection of the rights and welfare of the child. To achieve this the law requires that the best interests of the child shall be of primary consideration in all actions concerning the child undertaken by any person or authority.³

When it comes to the child in conflict with the law, the welfare of the child offender must be taken into consideration during trial and any detention must only be of the last recourse and for the shortest time.^{4,5} Further, Article 17(3)⁶ states that the essential aim of treatment of every child during trial and also if found guilty of infringing the penal law shall be his or her reformation, reintegration into his/her family and social rehabilitation.

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¹ Preamble, African Charter on the Rights and Welfare of the Child.

² Act no 8 of 2001.

³ Section 4 Children Act, Article 4 ACRWC.

⁴ S. 187 Children Act *Consideration of welfare (1) Every court in dealing with a child who is brought before it shall have regard to the best interests of the child and shall, in a proper case, take steps for removing him from undesirable surroundings and for securing that proper provision be made for his maintenance, education and training.*

⁵ Constitution of Kenya 2010, Article 53(1) Every child has the right: (f) not to be detained, except as a measure of last resort, and when detained, to be held— (i) for the shortest appropriate period of time; (2) A child's best interests are of paramount importance in every matter concerning the child.

⁶ ACRWC.

II. FACING THE REALITY: SEEKING HOME GROWN SOLUTIONS

Serving as a children Magistrate in the early years of the Children Act, the law and the reality on the ground were different. There was lack of awareness of its existence among the agencies that were required to implement it. This was because at that time the statute had to be printed at the Government Printer, purchased and distributed to the agencies. In addition, even when they became aware of the law, its implementation was a challenge. The law had created a complete paradigm shift in the manner in which children in contact or in conflict with the law were required to be treated.

There were challenges. Pre-trial detention was used as a form of punishment, cases were delaying in court, committal to rehabilitation school, and Borstal Institutions were first often choice despite there being a raft of non-custodial options. Children were still being held with adults in adult institutions, there was no collaboration among the agencies, inadequate referral systems, and reintegration programmes/post supervision and upon release from these institutions, there was no referral system, and use of social inquiry reports was limited. There was inadequate involvement of the family and community in follow-ups for child offenders in institutions. They carried a stigma which led to rejection upon release, and reoffending to enable return to their “safe” space. Some of these child offenders continued reoffending until they ended up in adult prison.

Under the new regime, cases were required to be finalized within 3 to 6 months and Social Inquiry Reports were required as a mandatory prerequisite to orders regarding the child. Institutionalization of child offenders was discouraged as first line of treatment, the consideration of the welfare and the best interests of the child offender at all stages of the criminal trial from arrest to post-trial supervision required the involvement of the family and the community, making the use of social inquiry reports inevitable. New forms of treatment like counselling required bringing on board new stakeholders.

To breathe life into this law, and to create the requisite visible, accessible juvenile justice system required the creating of awareness of the law and its new approach (knowledge), the procedure of its implementation and the how to (skills). There was also the important question of the “why” of the law to address the need for a complete attitude change towards child offenders. This required the understanding of who a child was under the new regime and why it was necessary to treat them differently.

This realization led me as the Children Magistrate in Nakuru at the time to create the Child Protection Team, a multi-agency team made up of the key stakeholders in the juvenile justice system. It consisted of the police, who held the tripartite roles of the arresting, investigating and prosecuting officers, the Departments of Children and Protection & After Care Services, the Prisons, because they ran remand homes (before the new law) and the Borstal Institutions, and were holding youthful serious offenders, the Rift Valley Law society, because they were providing pro bono legal services to child offenders, the Charitable Children Institutions to whom we sent child victims for shelter, care and protection.

The Child Protection Team became the focus group for creating awareness on the new law⁷, the why and how of its implementation. of sharing the status of the children in the system within the jurisdiction of the children court, statistics,⁸ how long cases took, the adherence to the standards set by the law in handling child offenders and the need to ensure that offenders were not kept together with adults, advocating for separate cells within police stations, for the child offenders who were arrested and had to spend time at the police station. The CPT met monthly, and the main goal was to collaborate so as to expedite the case to prevent the contamination by serious offenders held at the police stations, and even the remand homes, while at the same safeguarding their welfare through the use of Social Inquiry Reports to enable return to home or school or other placement, on for instance, some form of supervision.

This worked very well in my jurisdiction, and a juvenile justice system began to emerge that was based on the best interests of the child and welfare of the child offender.

It was while doing this that I was selected to join the Country Focused Delinquent Treatment Systems training at UNAFEI.

Prior to this I had attended local workshops that tried to address the gaps in knowledge, skills and attitude in the implementation of the new law.

The training at UNAFEI was mounted by the Government of Kenya in collaboration Government of Japan through JICA and UNAFEI. Teams of officers from the five key Juvenile Justice Agencies (JJAs)⁹ attended the one-month training and were expected to implement what they learned when they returned.

In 2009 the idea was born that there was need to bring this training home so as to include more officers and hence increase the impact.

Professors from UNAFEI conducted Training Needs Assessment, from the five JJAs, from whom a team was selected to come up with a curriculum and training manuals. The Child Care and Protection Officers Capacity (CCPO) Building Curriculum was developed and launched. A team of Training of Trainers (TOTs) was trained, and a National Implementation Team was put in place. There were five thematic areas:

- Procedures in juvenile justice;
- Case management;
- Rehabilitation/treatment;
- Support networking;
- Ethics, self-care, responsibility and quality assurance.

⁷ For instance, because of lack of availability of the Act to Police Stations, we made copies of the relevant Rules and distributed them to the officers in charge of the stations. It made it easier to hold them to account if they violated the same. Eg the requirement to release the parent child on police bond instead of detaining the child.

⁸ E.g. how many children were in the Remand home, how long they had been there, how many cases for review of bond terms, how many child offenders in transit to rehabilitation schools and Borstal Institutions, how many children in adult prisons? (And it was important to find solutions.)

⁹ Judiciary, Police, Department of Children Services, Probation and After Care Services, Prison Services.

The training required that Magistrates, Police, Children, Probation and Prison Officers sit in the same class and learn from the same curriculum. It was four pronged: theory, the drawing of work plans, followed by the practicum in teams and supervision.

Impact of training

- ✓ Broke down the bureaucratic barriers
- ✓ Made all officers realize that at any one stage they were dealing with the same child, and there was need to have same standards.
- ✓ Enhanced knowledge, skills, and attitude change towards child offenders
- ✓ Use of Social/Reports involvement of family and community
- ✓ Development and use of treatment plans, exit strategies for institutions
- ✓ Expeditious disposal of cases
- ✓ Enhanced collaboration through the CPTs and development of support networks
- ✓ Development and strengthening of referral systems
- ✓ Post-institutional supervision,
- ✓ The development of Through Care Guidelines
- ✓ Overall better service delivery for children

III. CHALLENGES AND MORE HOME-GROWN RESOLUTIONS

The pilot training took place in 2010. In 2015 the CCPO project came to an end due to funding problems. There was also the need to review the curriculum after the 2010 Constitution. The new Constitution brought changes to the Children Act. The rights of the child were now protected in the Constitution.¹⁰ There were new institutions as well. One of them was the National Council on the Administration of Justice¹¹ chaired by the Hon, the Chief Justice.

One of the mandates of the NCAJ was to ensure the establishment of Court User Committees in all the courts across the country. For clarity, these CUCs are modelled on the CPT where the specific users of that court come together to deal with issues related to that court; hence, they are not intended for children courts only but for the whole court, The Magistrates Courts, the High Court at various stations in the country. Now we have court user committees for even the specialized courts: Family, Criminal and Commercial Divisions at the High Court at Nairobi, Environment and Land, Employment and Labour courts.

At the same time the number of new officers entering the system from all the JJAs had increased. The police set up changed. There was now the Directorate of Public Prosecutions, and the Directorate of Criminal Investigations. The juvenile justice system had changed. There was need to regroup and retrain as things were falling back to the bad old days.

The Judiciary saw the need to take stock. In 2016, the then Chief Justice the Hon. Justice Willy Mutunga as the Chairperson of the (NCAJ) appointed the *Special Task Force on*

¹⁰ Article 53.

¹¹ The National Council on the Administration of Justice (NCAJ) is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a high-level policymaking, implementation and oversight coordinating mechanism as reflected in its membership comprising State and Non-State Actors from the justice sector.

Children Matters (the TF) headed by the Hon Lady Justice Martha Koome, judge of the Court of Appeal. The TF had 16 Terms of Reference which included:

- ✓ Review of the status of the child in the administration of justice
- ✓ Review the laws, policies etc. on administration of juvenile justice
- ✓ Development of training policy and review of the curriculum for persons who handle children in the justice system.

The Task Force completed most of its work by 20 November 2019 and launched in its report¹² on its findings and recommendations to reform the Juvenile Justice System. The Task Force did not just make recommendations.

1. Entrenched and strengthened Children Court Users Committees which are styled on the model of the Child Protection Team. These CCCUCs were the focus for the research on the status of the child in the administration of justice within the Jurisdiction of the Children Courts where the TF visited.
2. The CCCUCs were also trained on the rights of the child in an effort to address the knowledge skills and attitude gap in the implementation of the Children Act.
3. The CCCUCs were the drivers for the reduction of case backlog of children cases through the Service Weeks¹³ established by the TF. During Service Weeks there is training of the stakeholders, counselling of the children in contact /conflict with the law, discussions with the community on the rights of the child, and the emphasis on prevention of juvenile delinquency, public *barazas* with members of the public, their local leaders, and members of the TF of service delivery for children in the justice system within the jurisdiction being visited. In view of the vast diversity of cultures, traditions, social, economic situations and challenges in the implementation of the Children Act across the country, local solutions to issues are sought for ease of implementation by the local CCUC. There is emphasis on the use of non-custodial measures and rehabilitation, the reintegration of child offenders back into the community.
4. Visited Children Institutions and caused immediate changes in those that were not abiding by the new law
5. Reviewed the Children Bill 2020 and together with other stakeholders pushed for its legislation. It was passed by the cabinet on 25 February 2021 and forwarded to Parliament. The new law seeks to establish the juvenile/child justice system, raises the age of criminal liability from 8 to 12 years, entrenches the multi-agency framework (the CCCUs), and non-custodial modes of dealing with children- diversion, plea bargaining and ADR among others.
6. Developed a policy on training. Adopted and reviewed with the help of UNAFEI and JICA the CCPO training curriculum and launched it on 17 February 2021. This is key because the CCPO programme found a home under the NCAJ ensuring that it will be implemented by the JJAs.

¹² <<https://ncaj.go.ke/wp-content/uploads/2019/11/NCAJ-Report-Digital-Version.pdf>>.

¹³ Service Weeks are weeks set aside in the court calendar when the courts and the stakeholders concentrate on children's cases.

7. Developed guidelines for Children Courts
8. Developed guidelines for JJAs during the Covid-19 pandemic to ensure access to justice for children
9. Sourced laptops and internet connectivity for the remand homes so as to ensure that cases for children in custody could still be heard during the pandemic.

IV. WHAT DOES ALL THIS HAVE TO WITH COMMUNITY APPROACHES THAT SUPPORT DESITANCE?

1. It takes a village to raise a child,¹⁴ and *asiyefunzwa na mamaye hufunzwa na ulimwengu*.¹⁵ We also say that it is the sapling stage of a tree that is flexible otherwise it breaks. The CCCUCs are one way of bringing the village into the juvenile justice system to re-create the social support system that came with the village and has been taken away by both urbanization and the formal legal system.
2. The involvement of the family and the community is at the centre of prevention against both the offending and reoffending by children. Through the CCCUC there is emphasis on the responsibilities of the authorized officers: the chiefs, the children and police officers; the collaboration of teachers and community leaders.
3. The membership of that CCCUC must have the requisite knowledge, skills and attitude to be able to raise the children who come through the system; there must be standards and levels of accountability, hence the need for training.
4. The CCCUs form a safety net for the child who comes into the system, and for the one who is outside it to protect them from entry into the system where possible. This is through the referral systems, collaboration and networking.
5. The CCPOs are a core team of well-trained officers who are found within and across the JJAs. Among them are TOTs. They provide necessary guidance, training and support where necessary. They are members of the TF, CCCUs across the country. They occupy various positions in government as judges, magistrates, police, prison and probation officers. They are a network among themselves and take every opportunity to provide input on the improvement of the juvenile justice system. They will definitely be playing a major role in the new changes from our various positions.
6. So the future is here for the Kenyan child. With the above in place, the recommendations of the TF, and the implementation of the same, the New Children Act on the way, the new training policy and CCPO curriculum, we should find ourselves with few or no reoffending cases.
7. Thank you UNAFEI for this opportunity to share a bit of the Kenyan story on how networking and collaboration can change things for child offenders.

¹⁴ African Proverb.

¹⁵ The Swahili Proverb, *He who is not raised/ trained/ taught by the mother will be taught by the rest of the world*, is used for those persons who either refuse parental training or do not get it and end up in trouble.