

COMMUNITY-BASED TREATMENT OF JUVENILE OFFENDERS IN KENYA: A CASE STUDY OF KIKUYU SUB-COUNTY IN KIAMBU COUNTY

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I. INTRODUCTION

A. Summary of Community-Based Treatment of Juvenile Offenders in Kenya

The probation office plays a major role in management of juvenile delinquents. The two categories of offenders handled include those put on probation by the Children's Court and persons released from a juvenile institution on or before completion of their term.¹ The Children's Act provides that a child is any person less than 18 years of age and safeguards the best interests of the child. Agencies involved in the juvenile justice system include the Police, Medical services, Registration of Persons, Social Workers and Non-Governmental Organizations.² This method of treatment, also known as the "closer-to-home principle", has been championed by experts as being cost effective whose results are tenable.³ It has been practised in the country since the onset of modern criminal justice system though on a lower scale compared to institutional-based interventions, namely incarceration, that led to congestion in the available facilities.⁴

II. LEGAL FRAMEWORK SUPPORTING COMMUNITY-BASED TREATMENT OF JUVENILE OFFENDERS

A. International Legal Instruments

Kenya has adopted the international legally binding tools, among them the United Nations Convention on the Rights of the Child, the Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty and the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The government has facilitated the adoption of these mechanisms in the local laws.

B. Local Laws

1. The Constitution

The Constitution of Kenya 2010 has enshrined a Bill of Rights in Chapter four that is rated as being among the most comprehensive in the world. These principles are cognizant of the international legal instruments safeguarding human rights including child rights.

2. Local Acts

Subsequently parliament has enacted relevant laws to give effect to the principles enshrined in the constitution. Other laws have been amended to address changing of the society including: the Criminal Procedure Code, Penal Code, Borstal Institutions Act, Probation of Offenders Act, Community Service Orders Act, Children's Act, Sexual Offences Act, National Police Service Act, Prohibition of Female Genital Mutilation Act and Basic Education Act.

III. CURRENT SITUATION

The rate of crimes involving juveniles indicates an increase in the number of reported cases in the recent past, meaning that the number of offenders subjected to the justice system is increasing. Common crimes include assault, stealing, theft, property damage, drug and substance abuse, violence, sexual offences and

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¹ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

² Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.

³ Robert, Hoge, et al. (ed.) *Treating the Juvenile Offender* (New York: Guilford Press, 2008), p. 108.

⁴ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

organized crime.⁵ The age of committing first crime is also decreasing.

A suspected juvenile is handled separately from adult offenders and has his/her rights upheld. Milimani Children's Court is one of the institutions that handles children's matters.⁶ After release they return to the community hardened, a situation that negates the aspirations of institutional-based correctional services namely, reforming offenders with consideration of the best interests of the child, and most reoffend while others abscond.⁷ Juveniles whose prison terms go beyond their 18th birthday are removed from Borstal institutions and taken back to their parents/guardians only if the environment is conducive and they continue with treatment. Those who fail to comply with requirements have a warrant of arrest issued against them.⁸

IV. EFFECTIVE TREATMENT AND EVALUATION

Juveniles are taken through courses of their choice geared towards whole personal development to become responsible adults, thus enhancing their welfare. They are offered formal and informal education to enhance literacy and acquire trade skills, respectively. Thereafter they sit for examinations, are graded and are awarded certificates that do not reflect they were offenders.⁹ This is to avoid discrimination against the child that may lead to stigmatization. Diversion is applied where offenders are subjected to Community Service Orders to perform duties aimed at promoting well-being of the society.¹⁰ The Probation Office facilitates sessions for reconciliation with aggrieved parties. Offenders are free to apologize or compensate victims who may voluntarily forgive them. They are also verbally sanctioned by reprimand or warning.¹¹

Kamiti Youth Training Centre provides vocational training in plumbing and carpentry to males. Kamae Girls' Correctional Centre (the only girls' facility in the country) offers dressmaking, hairdressing, beauty therapy and food and beverage production examinable courses that are graded accordingly. Good nutrition, medical and counselling services are offered.¹²

Minors are referred to the institution by probation offices through the court. There is also temporary accommodation in probation hostels for low-risk offenders and needy cases in transit to the community. Parents/guardians visit them through the remote parenting programme that was initiated to establish and maintain bonds between parents and their offspring.¹³

V. THE SOCIAL ENVIRONMENT

Social Disorganization theorists argue that factors in the neighbourhood, such as insecurity, single parenthood and poverty among others, influences behaviour of children through their ability to promote or impede social institutions such as family and other social groups which serve to preserve social order.¹⁴ Peer influence contributes to the well-being of children and young adults.

Negative peer pressure aggravates behaviour of deviant juveniles.¹⁵ Minors have great respect for peer groups; hence they are easily influenced by negative conduct.¹⁶ This has the profound effect of abnormal

⁵ Oral Interview with Julius Kaimenyi, a Police Officer based at Gender and Child Protection Office, Kikuyu Police Station on 04/11/2016.

⁶ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

⁷ Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.

⁸ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

⁹ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

¹⁰ Examples: Building and construction, cleaning and environmental conservation.

¹¹ Oral Interview with Obonyo, a civil servant based at the probation office, Kikuyu Sub County on 06/01/2017.

¹² Oral interview with FairBay, Superintendent in Charge, Kamae Girls Training Centre (Formerly In-Charge Youth Training Centre) at Kamiti Maximum Security Prison on 05/05/2016.

¹³ Oral interview with FairBay, Superintendent in Charge, Kamae Girls Training Centre (Formerly In-Charge Youth Training Centre) at Kamiti Maximum Security Prison on 05/05/2016.

¹⁴ Tama, Leventhal and Jeanne, Brooks-Gunn, "The Neighborhoods They Live in: The Effects of Neighborhood Residence on Child and Adolescent Outcomes", *Psychological Bulletin*, Vol.126, No.2, 2000, pp.309-310. Accessed: http://www.gxe2010.org/Speakers/pubs/Brooks-Gunn_2000a.pdf on 06/11/2016.

¹⁵ Kenneth, Dodge (et. al), *Deviant Peer Influences in Programs for Youth: Problems and Solutions* (New York: Guildford Press, 2006), p. 3.

adulthood. The school environment has intense influence over child growth and development. School community, programmes, rules and regulations interact with the child and shape personality development.¹⁷ Both desirable and undesirable attributes are acquired, and the child may engage in delinquency as a learned response to negative stimuli such as bullying.¹⁸

VI. COOPERATION BETWEEN INSTITUTIONAL AND COMMUNITY-BASED TREATMENT

Researchers attest that though treatment done to juvenile offenders while incarcerated was successful, cases of recidivism were reported after being released. Therefore, treatment programmes must be continued after they go back to the community. Hence there must be cooperation between institutional and community-based treatment to enhance sustainability.¹⁹ Among cases handled in the probation office, a majority of juveniles are reformed and resume law abiding lives, but there were cases of those who exhibited recidivism. They were re-arrested and subjected again to the juvenile justice system. If there was a suspended sentence it is enjoined later in the proceedings. The community-based approach is employed to enhance treatment of those serving sentences while still integrated in the community and also the ones released from prison.²⁰ Therefore, a two-pronged approach is applied to maximize achievement of objectives.

The broader community is brought on board directly through regular public forums commonly known as *barazas*, such as chiefs' forums, Community-Based Policing or indirectly through their leaders. During these interactive sessions, they are sensitized on the need to collectively enhance public safety and security by identifying suspected offenders and reporting to the authorities. They are also informed how the criminal/juvenile justice system functions to eradicate ignorance. This breeds community ownership of programmes and other initiatives.

A. Challenges of Community-Based Treatment

1. Resource Constraints

Inadequate resources, among them, insufficient financial allocation hampers expenditure during service delivery. There is lack of enough qualified personnel to adequately handle the workload; hence, available staff are overstretched. Professional staffing is insufficient to deal with specialist cases such as guidance and counselling, a situation aggravated by the high attrition²¹ rate of qualified staff. This leaves available staff overburdened by job demands.²²

2. Weak Family Units

These are occasioned by poor parenting. Most cases were attributed to parents who absconded from their responsibilities leaving out roles to be performed by house help, teachers and other external parties. Consequently, children become strangers to their parents, leading to poor mentorship and criminality.²³ Child offenders who have been disturbed psychologically, mentally and physically are predisposed to suffer from mental illness.²⁴ This negatively affects the treatment process in the wake of insufficient specialist staff.

3. Safety and Security

A section of staff members and witnesses receive death threats when they handle sensitive cases. This demoralizes them and affects the quality of service delivery, leaving them hopeless and unable to discharge their mandate effectively. Witnesses are also threatened with dire consequences if they support prosecution

¹⁶ Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.

¹⁷ Arthur, Reynolds, et al, "Long-term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest", *American Medical Association*, Vol. 285, No. 18, pp. 2339-2341. Accessed: http://www.precaution.org/lib/effects_of_early_intervention.010509.pdf on 04/11/2016.

¹⁸ Gayre, Christie, et al, "Reducing and Preventing Violence in Schools" *Seminar Paper*, 1999, pp. 1-6. Accessed: <https://www.peacebuilders.com/media/pdfs/research/QueenslandUniversity.pdf> on 05/11/2016.

¹⁹ David, Tate, et al, "Violent Juvenile Delinquents: Treatment Effectiveness and Implications for Future Action", *American Psychological Association*, Vol. 50, No. 9, 1995, pp. 779-780. Accessed: www.researchgate.net on 06/11/2016.

²⁰ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

²¹ These includes resignation, dismissal and retirement, among others.

²² Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.

²³ Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.

²⁴ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

of powerful and influential accused persons.²⁵

4. Drug and Substance Abuse

There is rampant abuse of drugs among children and young offenders due to availability of the contraband namely *cannabis sativa* (bhang), cocaine and hashish. They also abuse drugs meant to treat mental illness. When high, children's thought processes are compromised and they easily commit crime.²⁶ The effects of drug use inhibit their moral reasoning, and they engage in crime and violence without feeling guilt.

5. Lack of Information

Lack of information about the juvenile justice system impairs proper understanding of its operations and procedures. This knowledge gap in the community breeds prejudice based on ignorance which erodes public trust and confidence. When a juvenile suspect was out on bond pending hearing and determination of the case in court, the public perceived that corruption took place and the offender secured freedom. Ex-convicts are stigmatized by society which makes reintegration difficult and predisposes them to recidivism.²⁷

6. Weak Legal Framework

The laws governing administration of juvenile justice were found to have gaps that weaken the process. There is no separate provision for juveniles; hence they are subjected to the same laws as adult offenders though these contain provisions for subjecting juveniles to the justice system.²⁸ In this scenario, the best interests of the child are not adequately catered for.

B. The Way Forward

There is need to allocate more resources to key agencies involved in the administration of juvenile justice. This will enable efficient implementation of relevant policies, programmes and laws. Family is key for shaping an individual to become a socially fit adult. Hence there is need to empower parents to enable them to mentor children from early life.

Mental health is key to being a productive human being in the society, and is closely related to drug and substance abuse. Therefore, there is need to revamp the mental healthcare system for the sake of juveniles and young offenders in an effort to assist them to reform and lead productive lives. Safety and security of personnel working in the administration of juvenile justice, be they members of staff, victims or witnesses, need to be enhanced.

There is need to enhance the dissemination of information to ensure citizens are empowered with knowledge, and hence bridge gaps that cause ignorance, prejudice and misinformation. Trainings, workshops, seminars and related programmes should be reinvigorated. The existing legal framework that includes but is not limited to the Children's Act and Probation Act among others should be reviewed to address emerging issues in the administration of juvenile justice.

Research and development is key to enrich the existing wealth of knowledge. Towards this endeavour, experts in relevant fields should be brought on board and be given an opportunity to improve the juvenile justice system. There is also need for exchange programmes and benchmarking visits to and among countries with best practices. Lessons learned and experiences acquired should then be adopted and domesticated to improve local standards.

Moreover, continuous monitoring and evaluation of policies, programmes and other initiatives is vital to ensure maximum positive impact is generated and sustained in the juvenile justice system. This will ensure emerging gaps occasioned by dynamic needs of the society are addressed and enhance sustainability of the results achieved.

²⁵ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

²⁶ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

²⁷ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

²⁸ Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

VII. CONCLUSION

Community-based treatment is considered better than institution-based therapy because those confined to institutions are “programmed” in their daily lives; hence, they become mechanical.²⁹ Thus, the former needs to be revitalized to accommodate more juvenile offenders, and incarceration should be a last option. Treatment programmes, monitoring and evaluation enhance achievement of desired results and are closely connected with factors in the social environment which impact on personality development. When players in the administration of the criminal justice system cooperate, they create synergy; thus, achievement of the set goals is maximized. The programmes put in place focus on adopting the international and local instruments for safeguarding interests and promoting well-being of juveniles to grow and develop to become productive adults.

VIII. APPENDIX

A. References

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²⁹ Oral interview with Harriet, Children’s Officer, Kikuyu Sub County on 05/11/2016.

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Oral Interview with Julius Kaimenyi, a Police Officer based at Gender and Child Protection Office, Kikuyu Police Station on 04/11/2016.

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