



REPUBLIC OF KENYA

Ministry of Labour and Social Protection
Department of Children's Services

Assessment of Rehabilitation and Social Reintegration Programmes, Services and Practices for Children in Conflict with the Law in Kenya



JANUARY 2021

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Ministry of Labour and Social Protection,
Department of Children's Services
Bishops Road, Social Security House
P.O. Box 40326
00100 Nairobi Kenya

www.socialprotection.go.ke/children-services

Main author: Dr. Sarah Kinyanjui, Consultant, United Nations Office on Drugs and Crime
Design and Layout: UN Print Shop + Amina Darani/UNODC


Assessment undertaken with
the financial support of the
Government of Canada provided
through Global Affairs Canada.

 **UNODC**
United Nations Office on Drugs and Crime

This assessment was conducted with technical assistance from the United Nations Office on Drugs and Crime (UNODC) and with the financial support of the Government of Canada. Its contents are the sole responsibility of the Department of Children's Services and do not necessarily reflect the views of the Government of Canada.



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Foreword

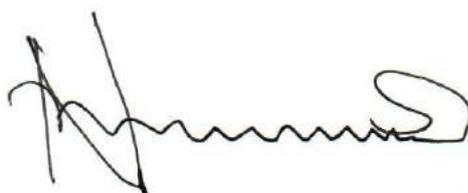
The child justice system in Kenya is evolving from retribution to restorative justice that focuses on children, not as criminals deserving punishment but as growing human beings with limited capacity to make informed decisions. Children in conflict with the law are therefore nurtured through rehabilitation programmes to become responsible citizens. This is in keeping with the United Nations Standard Minimum Rules for Administration of Juvenile Justice which sets out principles of promoting the welfare of children within the child justice system. Further, the Constitution of Kenya and the Children Act, 2001 domesticated these rules by setting out standards for treatment of children in conflict with the law in Kenya.

Any programme requires periodic assessment and review to gauge the extent to which it meets set objectives. Our rehabilitation programmes in the statutory institutions for children in conflict with the law are therefore not an exception.

This assessment report on the effectiveness of the rehabilitation programmes, services and practices in the statutory children's institutions in Kenya will therefore be useful in designing programmes that address the real needs of the children who find themselves in conflict with the law and especially those committed to statutory children's institutions. Thus, it will provide a sound basis for evidence-based programming.

I wish to express my gratitude to all those who participated in the consultations dedicated to this assessment, including the Department of Children's Services' staff, representatives from the child justice agencies in Kenya. In this vein, the Department of Children's Services remains cognisant of the need for a multi-agency approach in the rehabilitation of children in conflict with the law. I also extend appreciation to our development partners who have provided financial as well as technical support.

I urge all stakeholders in the child justice sector to consider and utilize the recommendations of this report towards improving management of children within the child justice system. The State Department for Social Protection remains committed to its mandate of providing leadership in child protection in Kenya through the Department of Children's Services.



Nelson Sospeter Marwa, CBS

Principal Secretary
State Department for Social Protection
Ministry of Labour and Social Protection

Acknowledgments

The Department of Children's Services appreciates the longstanding collaboration with the United Nations office on Drugs and Crime Regional Office for Eastern Africa (UNODC –ROEA) in the area of child justice in the country. In particular, UNODC has supported the government in implementing rehabilitation programmes within the statutory children's institutions. Profound gratitude to the UNODC Regional Office for engaging a consultant to carry out the assessment of existing programmes, practices and services and their effectiveness in rehabilitation of children in conflict with the law.

Immense appreciation is due to the children, and managers as well as other staff in statutory children's institutions, officers in the institutions division at the Department's Headquarters, particularly Mr. Justus David Muthoka, Mr. Peter Kabuagi, Ms. Caroline Towett, Ms. Jennifer Wangari, the late Ms. Lucy Njeru and Reverend Samwel Kirui for their valuable contribution in making this assessment a reality.

The Department acknowledges the excellent coordination efforts of Ms. Ruth Areri in mobilizing resources for the validation, launch, dissemination and implementation of this assessment report.

Without doubt, this endeavour would not have been successful without the generous financial support of the Government of Canada and their support is well appreciated. Special acknowledgement goes to the UNODC lead consultant, Dr. Sarah Kinyanjui, for designing and carrying out research as well as authoring this assessment report; and to UNODC's Ms. Rebecca Nyandiwa for her facilitation and supportive role throughout the entire process as well as UNODC's Mr. Thorbjorn Bjornsson for his technical review of the assessment.

To all that are not individually mentioned but contributed in one way or the other to this process, I say thank you.

I urge all stakeholders to adopt the recommendations made in this report so as to improve the existing rehabilitation programs, practices and services for children in conflict with the law in Kenya.



Noah M.O Sanganyi HSC

Director Children's Services
Ministry of Labour and Social Protection

Contents

Foreword.....	iv
Acknowledgments.....	v
Abbreviations and Acronyms.....	vii
Executive Summary.....	viii
1. Introduction.....	1
1.1 Research Methodology.....	2
1.2 Background – The Child Justice System in Kenya.....	3
2. Rehabilitation and Reintegration of Children in Conflict with the Law: International, Regional and Domestic Standards.....	6
2.1 Apprehension, Decision to Charge and Diversion.....	7
2.2 Confinement of Child Suspects in Police Cells.....	7
2.3 Trial Process and Final Orders.....	8
2.4 Confinement of Children in Conflict with the Law in Statutory Institutions.....	10
2.5 Non-custodial Measures.....	10
2.6 Cross-cutting Rehabilitation and Reintegration Standards.....	12
3. Research Findings.....	13
3.1 Pre-trial and Trial Stage.....	13
3.1.1 Apprehension, Decision to Charge and Diversion.....	13
3.1.2 Confinement of Child Suspects in Police Cells.....	14
3.1.3 Confinement of Child Suspects in Remand Homes.....	15
3.2 Trial Process and Final Orders.....	19
3.3 Committal to Institutions.....	20
3.3.1 Reception Centres.....	20
3.3.2 Rehabilitation Schools.....	21
3.3.3 Borstal Institutions and the Kamiti Youth Corrective and Training Centre.....	26
3.3.4 Probation Hostels.....	27
3.3.5 Further Cross Cutting Issues in Facilities Detaining Children.....	28
3.4 Non-Custodial Orders.....	29
3.5 Partner Involvement: Best Practices.....	29
3.6 Community Based Interventions and Community Involvement.....	29
4. Recommendations.....	32
4.1 Recommendations on Overarching Matters.....	32
4.1.1 Child Policy.....	32
4.1.2 Law Reform.....	32
4.1.3 Inter-agency Coordination.....	32
4.2 Cross-cutting Recommendations.....	33
4.3 Agency-specific Recommendations.....	34
4.3.1 Department of Children Services.....	34
4.3.2 Kenya Prisons Services.....	34
4.3.3 Probation and After Care Service.....	35
4.3.4 Judiciary.....	35
4.3.5 National Police Service.....	36
4.3.6 Office of the Director of Public Prosecutions.....	36
4.3.7 Ministry of Education.....	36
4.3.8 Treasury.....	36

Abbreviations and Acronyms

CCA	Collective Community Action
CEFA	European Committee for Training and Agriculture
CUC	Court Users' Committee
DCS	Department of Children's Services
KYCTC	Kamiti Youth Correction and Training Centre
KPS	Kenya Prisons Service
NCAJ	National Council on the Administration of Justice
NPS	National Police Service
ODPP	Office of the Director of Public Prosecutions
PACS	Probation and After Care Service
RODI	Resources Oriented Development Initiatives
UNODC	United Nations Office on Drugs and Crime



Executive Summary

The changing dynamics in child offending have necessitated a paradigm shift in Kenya's child justice system. With an increase in the number of children in conflict with the law and their involvement in not only petty but also serious offences, new approaches in rehabilitation of children are necessary.

Prior to the enactment of the Children Act in 2001, the child justice system was modelled on the overall criminal justice system which was largely punitive and did not adequately address the unique aspects of children's involvement in crime. Conversely, the Children Act espoused a rehabilitative approach to child offending. For instance, the Children Act facilitates parental involvement at all stages of the child justice process, not only for the protection of children in conflict with the law but is also geared towards addressing root causes of offending. Further, under the Children Act, courts have wide discretion to impose orders that are best suited for each individual child. While the Children Act provides a foundation for reforms in the child justice system in response to the changing dynamics, in practice, the aspirations in the Act are yet to be realised. Moreover, the current nature and scope of children's involvement in crime is not fully addressed by the Children Act. Further, there is need for institutional and strategic reforms within agencies in the child justice system to meet the demands of current child offending.

Against this background, the Department of Children's Services (DCS) sought to assess rehabilitation and reintegration programmes for children in conflict with the law to inform its strategic planning. The assessment was conducted with technical assistance from the United Nations Office on Drugs and Crime (UNODC) funded by the Government of Canada. This report, therefore,

describes the child justice system in Kenya and examines the contribution of key agencies in the system. It also examines the interagency coordination and interrogates whether the child justice system in Kenya has collective objectives informing all the agencies. The rehabilitation and reintegration programmes are mapped out and the extent of their effectiveness is examined. Informed by the growing trend of female children's involvement in crime, a gender lens is adopted. In light of the current criminal trends, the assessment pays particular attention to violent extremism, sexual offending and offending related to drugs and substance abuse.

With respect to the pre-trial stage, the assessment revealed that there are cases which are suitable for diversion but which are tried in court. It was noted that there are instances where informal diversion is undertaken. However, the Diversion Policy (2019) of the Office of the Director of Public Prosecutions (ODPP) provides the impetus and framework for greater use of diversion as a suitable mechanism for children in conflict with the law. Various concerns related to the pre-trial stage were raised. These included subjecting children to inhumane conditions in the police and court cells, as well as mixing them with adult offenders. While remand homes provide a better environment for children than cells, the mixing of children in conflict with the law and children in need of care and protection was highlighted as a key concern. Further, while controlled, the interaction of girls and boys in conflict with the law raises concerns. The inadequate rehabilitation programmes in remand homes and the disruption of children's education was noted. It was also revealed that fingerprints of children are not expunged and may inadvertently form part of one's criminal records, thus inimical to the prohibition against labelling of children.



Equipping the Resource Center to fulfil the Children Rights to Education

A key concern is the lack of legal aid for children and inability of children to effectively participate in court proceedings. Further, in some cases where state lawyers were provided, contact with the children was inadequate and court attendance was inconsistent. While it was acknowledged that courts are increasingly hearing children's cases expeditiously, there are still cases inordinately delayed. It was also revealed that children's court attendance is often affected by logistical challenges. Of particular concern is where children are held in remand homes that are far flung from the court stations. The lack of repatriation procedures for children acquitted endangers children and in some cases the remand homes officers are uninformed. The optimal use of the wide range of orders in the Children Act¹, beyond

the typical orders, was highlighted as a way of responding to the needs of each child in conflict with the law.

Institutions for children in conflict with the law – namely rehabilitation schools, borstal institutions and probation homes – run a range of rehabilitation and reintegration programmes. However, these programmes are inadequate and there is need for redesigning as well as introduction of new, relevant programmes. The under-funding of these programmes is evident and the vocational training is, for instance, often ineffective owing to lack of training materials or trainers. Formal educational programmes operate below standard due to inadequate staffing and overall funding. The rehabilitation programmes are inadequate in

1 Section 191.



addressing violent extremism, sexual offending and offending related to drugs and substance abuse. There is need for specialised programmes to deal with these emerging crimes. The “short, sharp, shock” approach which informed the short-term incarceration at the Kamiti Youth Corrective and Training Centre requires re-thinking. It was pointed out that the short-term does not provide adequate engagement to foster rehabilitation and the “shock” treatment is incompatible with the paradigm shift in child justice.

Reintegration of children in conflict with the law is generally improperly done and there is need for redesigning and increasing funding for reintegration programmes. The extensive support of agencies in the child justice system by partners was acknowledged. Partnerships between child justice institutions and communities should be enhanced, as community involvement in reintegration is essential. To enhance partnership and to streamline operations, partnerships should be formalised as well as properly structured.

Institutional capacity is critical, especially with respect to staffing. The assessment revealed that training and sensitisation of officers on child justice procedures enhanced service delivery by child justice agencies. The possibility of specialisation of officers to deal with child matters should therefore be explored by the child justice agencies.

Effective rehabilitation and reintegration of children in conflict with the law requires strong interagency cooperation amongst the child justice agencies. To synchronise the services of agencies and to forge common objectives, a child justice policy to guide the entire child justice system is essential. The Throughcare and Aftercare Procedures for Children in Statutory Institutions in Kenya set out guidelines on interagency cooperation for the effective handling of children in conflict with the law. However, greater sensitisation of officers on these procedures is required.

The overall conclusion in this assessment is that for rehabilitation and reintegration of children in conflict with the law to be effectively undertaken, the paradigm shift towards a focus on rehabilitation should be embraced by all agencies in the child justice system. All agencies should then redesign programmes to resonate with this shift. Further the gains in the child justice system and proposals for reforms on child justice should inform the Children Bill. A utilitarian approach to rehabilitation and reintegration of children in conflict with the law is pertinent; funding of programmes should be guided by the overall impact of effectively rehabilitating children on the country.

1. Introduction

Children are increasingly involved in the commission of serious crimes, which is a shift from the conventional petty offending.² In the recent past, children in Kenya have, for instance, been linked to terrorism related offences, murder, robbery with violence and drug trafficking.³ Nevertheless, the majority of children in conflict with the law in the country are still involved in petty offences, more so property and status related offences.⁴ These include petty theft, burglary, handling stolen property, stealing by servant, and minor drugs and substance abuse related offences.

With children's increased involvement in serious offences, attention is drawn to the child justice system's responses to children's involvement in crime. The objectives of the child justice system and the modalities for the realization of these objectives are therefore in sharp focus. Mirroring the overall criminal justice system, the child justice system has traditionally served as an instrument of retributive justice. The enactment of the Children Act in 2001 envisaged a different approach in responding to children in conflict with the law. Primarily, the provisions of the Children Act are grounded in rehabilitation ideology with respect

to children in conflict with the law. For instance, the Act, by outlawing the use of the words 'sentence' and 'conviction' protects children from negative labelling, which is counterproductive to rehabilitation efforts.⁵ Further, the range of possible orders when dealing with children in conflict with the law set out in section 191 of the Act are all compatible with rehabilitation.⁶ In addition, subsidiary legislation to the Act, the Child Offender Rules, dictate the procedures to be undertaken when dealing with children.

However, whilst laying a basis for rehabilitation of children in conflict with the law, the Children Act still falls short of providing a robust framework which expressly sets out the rehabilitative objective with mechanisms to ensure its realisation. Nevertheless, subsequent to the enactment of the Children Act, there have been institutional efforts to enhance the rehabilitation of children in conflict with the law. Examples include the various rehabilitative programmes run in state and non-state institutions dealing with children in conflict with the law. However, some processes and practices within the child justice system, which are discussed in this report, remain inimical to rehabilitation of children.

2 Bloom, M., and Horgan, J., *The Rise of the Child Terrorist* (Foreign Affairs 2015); Hamilton, C. et al, *Children and Counter-Terrorism*, United Nations Interregional Crime and Justice Research Institute (UNICRI 2016); Penal Reform International, *Children and Violent Extremism: International Standards and Responses from Criminal Justice Systems* (PRI 2018).

3 Stella Cheron, 'Kenyan Security Forces Grapple with Changing Face of Terrorism' Daily Nation (Nairobi, 11 April 2018) available at <https://www.nation.co.ke/news/Kenyan-security-forces-grapple-with-changing-face-terrorism/1056-4381204-11dsh40z/index.html> accessed 1 November 2018; Ayalew Getachew, 'Radicalization of children and youth in Kenya: A new challenge to child protection' Horn of Africa Bulletin available at fe-peace.org/hab/radicalization-of-children-and-youth-in-kenya-a-new-challenge-to-child-protection/ accessed 2 November 2018; Cradle, *The Drug Menace at the Kenyan Coast* available at <http://www.thecradle.or.ke/wp-content/uploads/2016/04/DRUG-AND-THE-YOUTH-AT-THE-KENYAN-COAST.pdf> accessed 31 October 2018; National Council on the Administration of Justice, *Criminal Justice System in Kenya: An Audit* (NCAJ, LRF and RODI 2016) 168.

4 National Council on the Administration of Justice, *Criminal Justice System in Kenya: An Audit* (NCAJ, LRF and RODI 2016) 135.

5 Children Act 2002, s. 189.

6 Sentencing Policy Guidelines, para 20.11.



Failure to rehabilitate and effectively reintegrate children in conflict with the law predisposes them to criminality in adulthood and undermines the possibility of them leading productive lives. Research reveals that there are adult offenders in prisons in Kenya who began offending as children.⁷ From an economic perspective, it may be more prudent to invest in rehabilitating children as opposed to financing incarceration of adults with a history of child delinquency. Rehabilitating children in conflict with the law also impacts on the rates of criminality which has a direct correlation with the overall security in the country. Thus, as security promotes investment, rehabilitating offenders presents economic gains.

This report sets out the context in which the child justice system operates in Kenya and interrogates the extent to which the system facilitates the rehabilitation of children in conflict with the law. It maps out the existing rehabilitation programmes, services and practices. The community-based interventions and diversion practices at various levels are also identified. Appreciating the role played by the entire child justice system, the research assesses the contribution of the different agencies in rehabilitating children in conflict with the law and identifies the gaps that undermine their efforts. The research further maps out the mechanisms in place and the institutions involved in the reintegration of children in conflict with the law back to the community. In view of the unique needs presented by children involved in violent extremism and drugs related offences, the report assesses the capacity of the programmes available in the child justice institutions. Aware of the dynamics involved when dealing with girls in conflict with the law, the survey employs a gender lens as well. This is particularly important

in cognisance of the fact that criminal justice institutions were historically designed to cater for male offenders hence inadequately meeting the needs of girls in conflict with the law.⁸

Informed by international principles against labelling and stigmatisation of children in conflict with the law the phrase ‘child justice system’ is used in place of ‘juvenile justice system’ as the latter has historically been associated with a punitive philosophy.⁹

1.1 Research Methodology

In line with the objectives of this report, desk and field research were undertaken between May 2018 and October 2018. Field research was carried out in the following locations: Kakamega, Kericho, Kirinyaga, Nairobi, Nakuru, Mombasa and Othaya. In the selected stations, respondents from the following government institutions were interviewed: Department of Children’s Services (DCS), Judiciary, Probation and After Care Service (PACS), National Police Service (NPS) and the Kenya Prisons Service (KPS). Non-state partners supporting the government institutions were also sampled and interviewed.

The geographical scope of the research was determined by the location of statutory institutions for children. Thus, the location of the rehabilitation schools and borstal institutions dictated the counties selected. The approach taken was to first identify the institutions dealing with children in conflict with the law and the other institutions earmarked for research in those locations were automatically included.

7 Sarah Kinyanjui, ‘A Genealogical Analysis of the Criminal Justice System in Kenya: Rebirth of Restorative Justice for Juveniles?’ (DPhil thesis, University of Leicester 2008) 12.

8 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), preamble.

9 Committee on the Rights of the Child General Comment No. 24 (2019), para 8.

The sampling of the institutions dealing with children in conflict with the law took into account various factors. First, the prominence and the capacity of institutions. For instance, borstal institutions cater for children who have committed relatively serious offences and are therefore critical in this respect. They are only three and were thus all earmarked for the research. In terms of capacity, the selection targeted both institutions with large population and those with small population of offenders. Second, the sampling sought to take into account unique positive attributes of the institutions with a view to identifying local best practices that may inform reform. Third, in view of the research focus on girls in conflict with the law, institutions catering girls, which are few, were all included as research sites.

In line with the criteria and research priorities the following rehabilitation schools and reception centres were selected: Likoni Rehabilitation School, Kabete Rehabilitation School, Dagoretti Rehabilitation School, Getathuru Reception Centre, Kirigiti Reception Centre, Kakamega Rehabilitation School, Wamumu Rehabilitation School, Kericho Rehabilitation School and Othaya Rehabilitation School. The remand homes situated in the same localities as the rehabilitation schools were also visited; that is, Kericho Remand Home, Nairobi Remand Home, Kakamega Children's Remand Home, Likoni Remand Home and Nakuru Children's Remand Home. The Nairobi and Nakuru Probation Hostels were visited as well. There are three borstal institutions in Kenya that is, Shikusa Borstal, Shimo La Tewa Borstal and Kamae Girls Borstal, which were all visited. The Kamiti Youth Corrective and Training Centre was also visited.

All respondents interviewed as part of the research were informed of its purpose, assured of anonymity and consented to being interviewed. A total of 75 children were interviewed individually

and 13 focus group discussions were held with children in all of the institutions visited. In addition, 6 field children's officers, 30 officers in institutions in which children are detained, 5 magistrates and 1 judge, 10 probation officers, 13 police officers, 4 individuals representing non-state partners and 1 county executive were interviewed. County officials had originally not been included as respondents in the planning of research but the county executive interviewed was named by other respondents for contributing towards rehabilitation and reintegration of children in conflict with the law.

To achieve the objectives of the research, an in depth understanding of how the child justice system operates in practice as well as an appreciation of the underlying values informing the system were pertinent. Thus, a qualitative approach, which provided an interaction with the players in the system, was employed.

1.2 Background – The Child Justice System in Kenya

The key state institutions operating in the child justice system in Kenya are the National Police Service (NPS), Office of the Director of Public Prosecutions (ODPP), the Judiciary, Department of Children's Services (DCS), Probation and After Care Service (PACS) and Kenya Prisons Service (KPS). Other institutions such as the county governments and local authorities are in some cases involved in the provision of certain services or information upon request.

Police officers serving in NPS are mandated to apprehend children in conflict with the law and where apprehension is conducted by other persons such as a Chiefs, the children are handed over to the police officers.¹⁰ Upon apprehension,

10 Criminal Procedure Code, ss. 21, 34 & 35; Children Act, s. 4.

officers are mandated to either release the suspects on bond or to detain them but to present them before the court within 24 hours.¹¹

The mandate of the Judiciary is to conduct trials, determine the culpability of the suspects charged and render orders in response to the wrongdoing in accordance with the law. Under the Children Act criminal trials for children are to be conducted by Children’s Courts except where a child is charged with murder or is jointly charged with adults.¹² While informed by practical concerns, this requirement undermines the best interests of children as the child friendly services enhanced by the Children’s Court environment are compromised.

Bearing the overall mandate to promote and protect the welfare of children, DCS engages children’s officers and runs rehabilitation schools, reception centres as well as remand homes. There are nine rehabilitation schools: Kabete, Dagoretti, Wamumu, Othaya, Likoni, Kericho, Kakamega,

Kisumu and Kirigiti. Getathuru and Kirigiti are the two reception centres which cater for boys and girls respectively. There are fourteen remand homes: Nairobi, Likoni, Malindi, Eldoret, Kakamega, Kiambu, Murang’a, Nyeri, Manga, Nakuru, Kisumu, Meru, Machakos and Kericho. The DCS also regulates charitable children’s institutions which play a role in the prevention of child offending and in the rehabilitation of children in conflict with the law. Children’s officers play a central role in the child justice system right from apprehension to reintegration of children in the community. The officers are required to ensure that the welfare of the children is protected throughout the process. Children’s officers also run rehabilitation schools and remand homes. Remand homes are established to cater for children in confinement during trial. Rehabilitation schools cater for children between the ages of 12 and 15 years.¹³ These schools are categorised on the basis of gender and offender risk. Table 1 below sets out the rehabilitation schools in Kenya and the category in which they fall.

Table 1: Rehabilitation Schools in Kenya

S/No	Rehabilitation School	Offenders Served	Risk Category
1	Kabete	Male	Medium risk
2	Dagoretti	Female	Low and medium risk
3	Wamumu	Male	High risk
4	Othaya	Male	Low risk
5	Likoni	Male	Medium risk
6	Kericho	Male	Low risk
7	Kakamega	Male	Medium risk
8	Kisumu	Male	Low and medium risk
9	Kirigiti	Female	High risk
Reception Centres			
1	Kirigiti	Female	All categories
2	Getathuru	Male	All categories

11 Constitution of Kenya, art. 49(1) (f); Children Act, ss. 4 & 5; Criminal Procedure Code, ss. 36 & 36A. The Children Act and the Criminal Procedure Code have not yet been reviewed to reflect the constitutional guarantee of the right to bail in all cases.

12 S. 184; see also Guidelines for Action on Children in the Criminal Justice System, para 14(d).

13 Children Act, s. 191(1) (e).

The ODPP institutes and undertakes criminal proceedings.¹⁴ With respect to children in conflict with the law, the decision to charge or not to charge is critical as the rehabilitation of some children is best done through diversion from the formal justice system.¹⁵

In addition to supervising non-custodial sentences, PACS officers furnish the courts with social enquiry reports relating to suspects and those found guilty. Supervision of children in conflict with the law by probation officers is also one of the orders recognised by the Children Act.¹⁶ Probation officers also supervise children released on licence from the borstal institutions.¹⁷

KPS runs the borstal institutions which cater for children between the ages of fifteen and eighteen.¹⁸ There are three borstal institutions: Shikusa, Shimo La Tewa and Kamae. Shikusa and Shimo La Tewa cater for boys while Kamae caters

for girls. KPS also runs the Kamiti Youth Correction and Training Centre (KYCTC).

Non-state agencies are also involved in the child justice system in various capacities. Some operate as partners to the different state agencies. Their support ranges from technical to financial. For instance, remand homes, rehabilitation schools and borstal institutions receive support from partners for their rehabilitation programmes. Non-state agencies, such as charitable children's institutions, also cater for children, some of whom may have criminal tendencies but who require care and protection. The Children Act recognises placement in a charitable children's institutions as one of the orders that can be imposed by a court upon being satisfied of a child's guilt.¹⁹ Non-state agencies are also involved in supporting children in conflict with the law in various ways, such as through financial support or facilitating reintegration processes.

14 Constitution of Kenya, art. 157.

15 Committee on the Rights of the Child General Comment No. 10 (2007), paras 26-27 and 68.

16 Children Act, s. 191(1) (c).

17 Borstal Institutions Act, s. 26(1).

18 Borstal Institutions Act, s. 2 and s. 5.

19 Children Act, s. 191(1) (d).



2. Rehabilitation and Reintegration of Children in Conflict with the Law: International, Regional and Domestic Standards

Treaties and conventions ratified by Kenya and general rules of international law form part of the laws of Kenya.²⁰ A robust body of laws and policies governing the child justice system is therefore in place. In particular, there are international, regional and domestic legal instruments that set minimum standards for the treatment of children in conflict with the law.

With respect to the domestic framework, the following key statutes and policy documents are instructive: the Constitution of Kenya, Children Act, Criminal Procedure Code, Borstal Institutions Act, Probation of Offenders Act, Persons Deprived of Liberty Act, Sentencing Policy Guidelines, Bail and Bond Policy Guidelines, Throughcare and Aftercare Procedures for Children in Statutory Institutions in Kenya, National Standards and Regulation for Statutory Children's Institutions, PACS National Standards Manual, Criminal Procedure Bench Book, Office of the Director of Public Prosecutions Diversion Policy, Office of the Director of Public Prosecutions Diversion Guidelines and Explanatory Notes, Standard Operating Procedures for Implementing Alternative Family and Community Based Care for Children in Kenya, Guidelines for the Alternative Family Care of Children in Kenya and Case Management for Reintegration into Family and Community Based Care for Children.

At the international level the relevant legal instruments include the Convention on the Rights of the Child, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations Rules for the Protection of Juveniles Deprived of their Liberty, United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), United Nations Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), Guidelines for Action on Children in the Criminal Justice System, Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Basic Principles on the Role of Lawyers and Guidelines on the Role of Prosecutors.

²⁰ Constitution of Kenya, art 2(5) & (6).

The regional legal instruments of relevance include the African Charter on the Rights and Welfare of the Child, African Charter on Human and Peoples' Rights (Banjul Charter) and African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

At the international, regional and domestic levels, rehabilitation and reintegration of children are identified as overarching objectives in the treatment of children in conflict with the law.²¹ Rehabilitation and reintegration are sometimes conceptualised and implemented by child justice agencies as processes to be undertaken subsequent to the trial process as objectives of the orders imposed by the court. However, the rehabilitation and reintegration processes operate in a continuum and are supported or undermined by the entire child justice process right from apprehension. This section therefore highlights the minimum standards related to rehabilitation and reintegration that are to be met at each stage of the child justice system.

2.1 Apprehension, Decision to Charge and Diversion

Upon apprehension, police officers are required to contact the parents or guardians or children's officers as soon as possible.²² When children are being interviewed by police officers, their parents or guardians or advocates should be present.²³

Where they are not present, children's officers or an authorised officer ought to be present.²⁴ Apart from ensuring that the rights of the children are upheld, the presence of parents or guardians or children's officers plays a rehabilitative function and is also geared towards maintaining ties which are critical for reintegration.²⁵ The involvement of parents or guardians or children's officers in the process facilitates the determination of the most suitable response to the child's wrongdoing.

Where possible, diversion of the child, by resorting to possible alternatives to the formal child justice system should be considered.²⁶ Pursuant to the ODPP Diversion Policy, police officers should submit a request for diversion to the ODPP in suitable cases.²⁷

Specific police officers should be designated to handle children. These designated officers should receive requisite training on the treatment of children in need of care and protection as well as those in conflict with the law.²⁸

2.2 Confinement of Child Suspects in Police Cells

The Constitution guarantees the right of accused persons to be presented before the court within twenty four hours of apprehension.²⁹ This provision does not require charges to be laid against accused persons within twenty fours.

21 African Charter on the Rights and Welfare of the Child, art. 17(3); Sentencing Policy Guidelines, para 20.10; Convention on the Rights of the Child, art. 40 (1); Committee on the Rights of the Child General Comment No. 10 (2019), para 8.

22 African Charter on the Rights and Welfare of the Child, art. 19(4); Child Offender Rules, r. 4(2); United Nations Standard Minimum Rules for the Administration of Juvenile Justice, para 10.1.

23 Ibid.

24 Child Offender Rules, r. 4(4).

25 Committee on the Rights of the Child General Comment No. 10 (2007), paras 53-54.

26 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r. 11; Guidelines for Action on Children in the Criminal Justice System, para. 15; ODPP Diversion Guidelines 2019, clause 35.

27 ODDP Diversion Policy 2019, clause 37(d).

28 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r.12.

29 Article 49(1) (f).

Rather it requires that upon request, accused persons are presented to the courts either to answer to charges or for approval to be sought for further confinement before the charges are laid.³⁰ These requirements are reiterated with specific reference to children by the Child Offender Rules.³¹ This “twenty four hour rule” is premised upon the presumption of innocence.

With respect to children, emphasis is laid upon minimising their contact with the child justice system. The objective is to avoid exposing children unduly to the system which may harden them through unnecessary interaction with offenders or as a result of the harsh treatment given by the system.³² When held in custody, children must be treated with utmost care and protection.³³ Children must also be kept separately from adult offenders.³⁴ The best interests of children further demand separation in terms of gender within the children institutions. This is especially so within the Kenyan context where a remand home may hold boys as old as seventeen in the same institution as girls as young as eight years.

Bail and bond must be considered at the earliest opportunity and should only be denied where there are compelling reasons for not releasing the child.³⁵ As much as possible, bail should be

granted and instead of placing a child in remand, the court ought to consider other alternatives to secure the attendance of the child.³⁶

2.3 Trial Process and Final Orders

The treatment of children throughout the child justice system impacts on the rehabilitation and reintegration of children. Treatment that enhances a sense of dignity and responsibility contributes towards the effectiveness of subsequent rehabilitative efforts. Further, involvement of parents or guardians in the trial process contributes toward the identification of the most suitable orders for children and eventually facilitates the reintegration process.

Legal representation for children is critical and must be guaranteed for two primary reasons.³⁷ First, trials are in their nature technical and children may thus neither fully understand the intricacies therein nor represent themselves well. Second, the legal representative is required to ensure the best interests of the child are served, which include an appropriate order that will lead to rehabilitation, if the child is found guilty. The Children Act requires that legal representatives are availed to unrepresented children.³⁸

30 Ibid; Criminal Procedure Code, s. 36A (1) & (2); Judiciary, Criminal Procedure Bench Book, (2018) p. 25.

31 Rule 4(1).

32 United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

33 United Nations Standard Minimum Rules for the Administration of Juvenile Justice r. 10.3, r. 13.

34 S. 12, Persons Deprived of Liberty Act, African Charter on the Rights and Welfare of the Child, art. 17(2) (b); Convention on the Rights of the Child, art. 37(c); United Nations Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), r.11 (d).

35 Constitution of Kenya, art. 49(1) (h); United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r.10.2.

36 Child Offender Rules, r.10 (6), Bail and bond Policy Guidelines, para 4.28, UN Standards on the Minimum Standards on the Administration of Juvenile Justice (Beijing Rules), ; United Nations Standard Minimum Rules For Non-custodial Measures (Tokyo Rules); rule. 6.1. - 6.3.

37 African Charter on the Rights and Welfare of the Child, art 17(2) (c) (iii); Convention on the Rights of the Child, art. 37(d); United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r. 15.1; Children Act, s. 186; Guidelines for Action on Children in the Criminal Justice System, para 16.

38 S. 77.

The Children Act, in keeping with international standards requires the Children's Court to have a friendly environment.³⁹ Children are likely to engage better with the court in such an environment. The active involvement of children in the trial process is necessary for the determination of the most suitable orders towards the rehabilitation and the reintegration of children.

To enhance participation, courts should use child-friendly language and ensure that interpreters are provided where needed.⁴⁰

Due attention should be paid to children with special needs and those with disabilities. Courts should, at a minimum, reasonably accommodate these children.⁴¹

When dealing with child suspects, courts are especially required to ensure that cases are concluded without unreasonable delay as required by the Constitution.⁴² The Committee on the Rights of the Child calls upon state parties to set time frames for the processing of children cases right from investigation to the final orders.⁴³ Informed by the necessity to conclude children's cases expeditiously, the Child Offender Rules provided that capital cases⁴⁴, involving children suspects must be concluded within six months and all the other cases within three

months.⁴⁵ While the Court of Appeal in *Kazungu Kasiwa Mkunzo & another v R*⁴⁶ declared this provision setting timelines unconstitutional, the Constitution's requirement that trials ought to be concluded without unreasonable delay is clear.

The sentencing process is critical, as the rehabilitation process is as good as the suitability of the rehabilitation option selected. Thus, the court must be well guided and furnished with all the relevant information to identify the most suitable order. This echoes the need for well-prepared social enquiry reports.⁴⁷ Courts are also required to ensure, as much as possible, the participation of parents or guardians in view of their critical role in the rehabilitation and reintegration process of children.⁴⁸ Parents and guardians are also envisaged to provide emotional and psychological support.⁴⁹ The need for imposing of orders on a case by case basis to meet the unique needs of the child informs section 191 of the Children Act which provides a range of orders that the court can make. It further gives the court the discretion to impose any other lawful orders that it deems fit.⁵⁰ The spirit of section 191 of the Children Act is evident in the Sentencing Policy Guidelines which set out the overriding objectives as being reformation, social integration, rehabilitation and restorative justice when dealing with children in conflict with the law.⁵¹

39 S. 188; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r. 14.2.

40 (Constitution of Kenya, art. 50(2)(m); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), r.14(2); African Charter on the Rights and Welfare of the Child; art 17(2)(c)(ii).

41 Convention on the Rights of Persons with Disabilities, art. 7(1) and art.13(1).

42 Constitution of Kenya, art. 50(2) (e).

43 Committee on the Rights of the Child General Comment No. 10 (2007), para 52.

44 In Kenya, murder, robbery with violence and treason are the offences which attract the death penalty.

45 Rule 10(4).

46 Court of Appeal at Mombasa Criminal Appeal 239 of 2004; [2006] e-Kenya Law Review.

47 United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules); rule 7.1.

48 Sentencing Policy Guidelines, para 20.14.

49 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r. 15.2.

50 Children Act, s. 191(1) (l).

51 Paragraph 20.10.



Informed by these objectives, the Sentencing Policy Guidelines implore courts to reserve custodial orders only for those cases where non-custodial orders cannot work.⁵² Children in conflict with the law should only be held in custody as a last resort and the confinement should be for the minimum appropriate term.⁵³ This is in tandem with the principle of proportionality which requires that orders are proportionate to the offending and circumstances of the child.⁵⁴

2.4 Confinement of Children in Conflict with the Law in Statutory Institutions

Children committed to institutions must be held separately from adults.⁵⁵ During confinement, children's contact with parents, guardians or significant others should be facilitated. This continued contact aids in rehabilitation and in the eventual reintegration back to the community.

The aim of confinement being to rehabilitate the child, the institutions must provide the necessary support to obtain this objective, especially in terms of education or vocational training and psychosocial support.⁵⁶

Resonating with the rehabilitation objective and cognisant that a considerable number of children

are indigent, where possible, children should be given opportunities to engage in activities that generate individual income. The accumulated resources would be of benefit to the children and their families upon release.⁵⁷

Upon arrival at the holding facility, children must be taken through proper orientation of the facility, be advised on where to seek help and be well briefed of the rules and regulations.⁵⁸ Good orientation inspires confidence and reduces the urge to escape from the institution. Medical inspection should also be carried out to establish any existing medical needs.⁵⁹

With respect to girls in conflict with the law, whether on remand or serving a custodial order, sanitary pads and facilities for personal hygiene ought to be availed.⁶⁰

Informed by the good life rehabilitation model, children confined in institutions must be provided basic provisions including food, clothing, bedding and recreational facilities.⁶¹

2.5 Non-custodial Measures

With respect to children in conflict with the law, courts should consider non-custodial orders in the first instance.⁶² Committal to institutions should

52 Paragraph 20.11; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r. 17.1(c).

53 Constitution of Kenya, art. 53(1) (f); Convention on the Rights of the Child, art. 37(b); United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), r. 65.

54 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, rule 5.1.

55 African Charter on the Rights and Welfare of the Child, art. 17(2)(b); Convention on the Rights of the Child, art.37(c).

56 United Nations Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), r. 4.

57 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, r.45.

58 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), r. 2(1).

59 Committee on the Rights of the Child General Comment No. 10 (2007), para 89.

60 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) r. 5.

61 United Nations Rules for Protection of Juvenile Deprived of their Liberty art. 31-37.

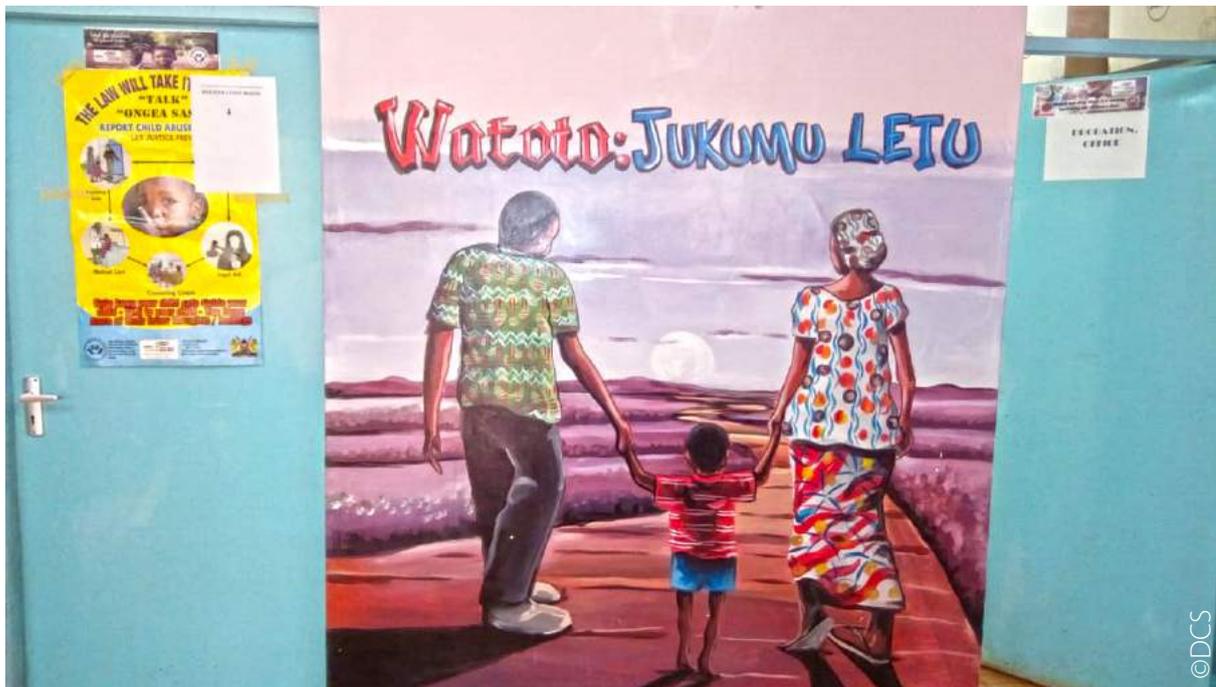
62 Constitution of Kenya, art.53(1)(f); United Nations Standard Minimum Rules for the Administration

be imposed as a last resort for instances in which non-custodial orders would be inappropriate and ineffective.⁶³ The court should also be satisfied that the committal is in the child's best interests.⁶⁴

A decision to impose a non-custodial order must be well informed and therefore necessitates comprehensive pre-sentence reports.⁶⁵ In this regard, the Probation of Offenders Act requires the court to request for a probation report before imposing a probation order.⁶⁶

During supervision of a probation order, the best interests of the child must inform all decisions.⁶⁷ Thus supervision schedules, for instance, should not interfere with a child's education. The supervision and treatment should be tailor-made for each child.⁶⁸

Pursuant to section 191(1)(k), the court may impose a community service order on a child. However, the best interests of the child require should inform the nature of the work.⁶⁹ The work allocated must not be harmful or hazardous and should not disrupt a child's education.⁷⁰



Child friendly court, Ngong

of Juvenile Justice (Beijing Rules), rule.19.1.

63 Sentencing Policy Guidelines, para 20.11.

64 Sentencing Policy Guidelines, para 7.19(3).

65 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), rule 7.1; Sentencing Policy Guidelines, para 20.1; Children Act, Child Offender Rules, r.11 (1).

66 Probation of Offenders Act, s.4(6).

67 Constitution of Kenya, art. 53 (2); Children Act, s.4(2); Convention on the Rights of the Child; art. 3(1).

68 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), rule 10.3;

69 Constitution of Kenya, art. 53 (2); Children Act, s.4(2); Convention on the Rights of the Child; art. 3(1).

70 Convention on the Rights of the Child, art. 31(1); Children Act s.10(1); Employment Act, s.2 and 53(1).

2.6 Cross-cutting Rehabilitation and Reintegration Standards

At each stage, when dealing with children, their best interests must remain the paramount consideration.⁷¹

Throughout the justice system, children must be treated humanely and their dignity respected.⁷²

To ensure that all players in the child justice system contribute at every stage towards the realization of the overall objectives of rehabilitation and reintegration of children, they ought to be all trained in child rights, minimum standards in the treatment of children in conflict with the law, general laws relating to children in conflict with the law and on the procedural requirements when dealing with children.⁷³

Community based services and programmes offer long term support for individuals hence contributing towards rehabilitation and reintegration of offenders as well as prevention

of crime.⁷⁴ The institutions dealing with children in conflict with the law should therefore seek to develop partnerships with the community to provide opportunities for the children to benefit from the services and programmes. In this regard, there is also need for a structured screening process of partners, programmes and individuals supporting the institutions.

The Throughcare and Aftercare Procedures for Children in Statutory Institutions in Kenya require that children are escorted to institutions with seven days of committal. The Procedures further set out the requisite documents that must accompany a child when being transferred from one institution to another.⁷⁵ According to the Procedures, female children must be escorted by female officers.⁷⁶

At all stages, child justice agencies should pay due attention to children with special needs and those with disabilities. Measures should be taken to support them and to reasonably accommodate them.⁷⁷

71 Constitution of Kenya, art. 53(2); Convention on the Rights of the Child, art. 3(1); African Charter on the Rights and Welfare of the Child, art. 4;

72 Constitution of Kenya, art. 28, art. 29(f) and art.53(1)(d); Convention of the Rights of the Child, art.37; African Charter on the Rights and Welfare of the Child, art. 17(2)(a).

73 Guidelines for Action on Children in the Criminal Justice System, para 24; United Nations Guidelines for the Prevention of Juvenile Delinquency, para 58.

74 United Nations Guidelines for the Prevention of Juvenile Delinquency, para 32.

75 Page 5.

76 Page 5.

77 Children Act, s.12; Convention on the Rights of Persons with Disabilities, art. 7(1) and art.13(1); African Charter on the Rights and Welfare of the Child, art. 13.

3. Research Findings

Rehabilitation and reintegration of children in conflict with the law is a process and the treatment of children at all levels determines whether these objectives are effectively met. This section highlights practices and issues that impact on these objectives right from apprehension to reintegration back to the community. The robust legal and policy framework provides adequate guidance, as highlighted in the section above. This section further examines the extent to which the laws and policies are adhered to in practice.

3.1 Pre-trial and Trial Stage

3.1.1 Apprehension, Decision to Charge and Diversion

Most children interviewed revealed that none of the prescribed individuals, that is parents or guardians or children's officers, were present when they were being interrogated by police officers. It was however noted by police officers and children's officers interviewed that in stations with good interagency coordination, police officers would immediately inform the children's officers as soon as a child was apprehended.

As noted, all police stations should have officers designated to deal with children in conflict with the law. In some stations sampled like Nakuru and Makadara, there were specialized officers who deal with children in conflict with the law who were well versed with laws relating to children and best practices on the treatment of children. In other stations sampled, officers designated to deal with children are involved in all matters

relating to children, save for criminal matters. Thus child suspects are handled by general officers.

The research revealed that upon apprehension, two options are explored. First, a child suspected of having committed an offence may be charged and held in custody. As noted in part 2.2 above, confinement should however be the last resort. Second, in some cases, where victims are agreeable, an informal diversion process may be undertaken with the matter being resolved at the police station.

It was noted during the research, which was carried out prior to the launching of the ODPP Diversion Policy, diversion was in practice undertaken with respect to cases involving minor offences and with the consent of victims. For instance, in petty theft cases parents may compensate the victims, in which case the children are not charged. The police officers in such cases also guided children in conflict with the law and issued a warning against future offending.⁷⁸ In this respect, most officers recommended that police officers dealing with children are equipped with basic counselling skills.

Whilst diversion is practiced with respect to the petty offences involving children, many officers interviewed registered a reluctance to spearhead diversion owing to the likely negative perceptions by the public who are keen to see suspects charged. It was noted that diversion was marred with perceptions of corruption in favour of children in conflict with the law. However, with the launching of the ODPP Diversion Policy, subsequent to the field research, police officers

78 ANNPCAN, Handbook on Child Rights and Child Protection for Police Officers in Kenya (ANNPCAN, 2006) 25.

can now recommend to the ODPP cases that are suitable for diversion.⁷⁹

The rehabilitative objectives of the child justice system require that children in conflict with the law are not labelled as criminals.⁸⁰ It however emerged that fingerprints of accused children are taken, and whilst they are not intended to be used as a criminal record, they are often not expunged. Thus one's criminal conduct as a child may inadvertently form part of their criminal record.

3.1.2 Confinement of Child Suspects in Police Cells

Typically, when the decision to charge is made, child suspects are held in the police cells prior to being taken to court to take plea. They may also be released on bond. The research revealed that, generally, there is compliance with the requirement to present apprehended children before the court within twenty four hours of apprehension.⁸¹ However, some children interviewed disclosed that they had been detained for more than twenty four hours.

Of utmost concern is the confinement of children in general police cells. While some of the stations visited do have child protection units at the police station, the facilities are not used for confinement of children in conflict with the law. Officers interviewed explained that the units are used for children in need of care and protection. In stations such as Kakamega, the units are incomplete and lack the requisite facilities to cater for child suspects. In stations with remand homes near the court, child suspects are typically transferred to the homes right after the first court appearance. In stations where the remand home is located far from the court, such in Kirinyaga, child suspects spend more time in the police cell

as arrangements for transfer are made. Similarly, when attending court mentions or hearings, the child suspects would be transferred from the remand home to the police cell and would be detained in the cells for several days owing to logistical challenges.

The holding of children in the general police cells is problematic for various reasons. First, many children interviewed indicated that they were detained together with adult offenders. It was however noted that in all the stations visited adult male and female offenders are detained separately.

In some stations where child suspects are held together with adult suspects, both male and female child suspects are detained together with female adult suspects. In other stations, female child suspects are detained together with female adult suspects and male child suspects are detained together with male adult suspects. Detaining children with adults, irrespective of whether they are of the same sex, is problematic. Children interviewed revealed that they experienced different forms of bullying from adults. This included beatings, having their food or blankets taken away from them and being made to empty the human waste buckets. Of equal concern which undermines rehabilitative efforts is the exposure to criminal conduct by the adult offenders. Children in conflict with the law interviewed indicated that glamorizing of criminal conduct by adult offenders had a negative impact on them. Some narrated use of marijuana in the cells under duress to deter them from reporting the illegal activities to the authorities. Others admitted to being forced by the adult suspects to act as conduits for contraband as child suspects enjoyed less scrutiny from the authorities.

79 ODPP Diversion Policy, clause 37(d).

80 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), rule 8.

81 Constitution of Kenya, art. 49(1) (f); Criminal Procedure Code, s. 36A (1); Child Offender Rules, r. 4(1).

The second concern on confinement of child suspects in the general police cells relates to the conditions of the cells which undermine rehabilitative efforts. Even where children were kept in separate cells in the police station, the cells were in the same block as the adult cells hence exposed to the same conditions as adult offenders. A critical component of rehabilitation is restoring dignity and self-worth. Inhumane conditions perpetuate a sense of indignity and low self-worth. The conditions in the police cells remain wanting and below the required standards.⁸² The cells visited do not have in built washroom facilities thus requiring the use of buckets as makeshift washrooms. Thus, not only do the cells emit foul smell but also expose the suspects to unhygienic conditions thus predisposing them to infections. The police cells are poorly lit and suspects sleep on the concrete floors. Except for three children interviewed who were offered mattresses in isolated stations, the other children experience these harsh conditions and some of them contracted diseases while in the cells.

Female children in conflict with the law interviewed disclosed the challenges they faced during menstruation. They were neither provided with sanitary towels and had no facilities to bathe. Some children also claimed to have been sexually harassed by officers who would remove them from the cell in the guise of being given duties.

3.1.3 Confinement of Child Suspects in Remand Homes

Remand homes are statutory institutions designated to detain children suspected of having committed offences.⁸³

As the name suggests, remand homes are established as holding facilities catering for child suspects awaiting conclusion of their trials. One of the key objectives of the constitutional requirement for expeditious trials is to limit the remand period. Nevertheless, in practice children are detained for longer periods than envisaged as was the case in the stations visited. As at the time of the field research, the longest periods of confinement of children in the remand homes sampled were as follows:

Table 2: Longest Terms Served in Remand Homes⁸⁴

Institution	Longest term
Kericho Remand Home	3 years
Nakuru Remand Home	1 year, 6 months
Nairobi Remand Home	1 year
Likoni Remand Home	1 year, 3 months

82 IPOA, Performance Report January - June 2016 (IPOA 2016) 24; National Council on the Administration of Justice, Criminal Justice System in Kenya: An Audit (NCAJ, LRF and RODI 2016) 64; United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 6; United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), part d; United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 4(1) and rules 9 – 14.

83 Children Act, s. 2.

84 Data collected from the institutions during the field research.



The disconnect between the statutory maximum terms and practice contributes to the inadequacy of the rehabilitative services offered. Informed by the notion that remand homes serve as holding facilities and that the intended terms to be served are short, the rehabilitative services offered therein are not only inadequate but ill designed. At a policy level, their rehabilitative programmes are not planned for and consequently there is inadequate funding for remand homes to deliver rehabilitative services. Thus, the programmes and activities carried out in remand homes, which are inadequate, to a large extent depend on the managers' initiatives and heavily rely on partners for financial support as well as human resources. The lack of well-designed and adequate rehabilitation programmes in the remand homes is particularly concerning in view of the criminal background of a considerable number of children in the remand homes. The long terms served in the remand homes demand a clear strategy on and the implementation of programmes that will ensure rehabilitation of children in conflict with the law.

Typically, in the remand homes visited, in addition to routine activities such as cleaning and cooking duties, the children engage in recreational activities such as watching television and sporting activities. Whilst recreational activities are a critical component in child development and can be a tool of rehabilitation,⁸⁵ their planning must be deliberate for them to achieve rehabilitative objectives. In the remand homes visited, the television programmes watched are random and may not necessarily contribute towards rehabilitation. Similarly, the immense potential in sporting activities as rehabilitative programmes is not harnessed as the activities are not well planned and executed. Further, the remand homes are not well equipped in terms of sporting equipment. The Likoni Remand Home football

programme however emerged as an exemplar. Facilitated and funded by a partner, Gladshouse, it is consistent, well organised and has a positive impact on the boys.

Some of the remand homes visited, such as the Kakamega and Nairobi Remand Homes have partners who run rehabilitative programmes in the homes. These range from motivational talks, religious forums and skills training such as beading. Children interviewed lauded these programmes and acknowledge the impact they have on their lives. The shortcoming of these programmes, as revealed during the field research is that they are ad hoc and rely on the donors' availability and resource allocation.

While in the remand homes, children are offered basic counselling services in the form of group counselling and individual counselling. In the case of group counselling, the children are divided into groups and allocated to an individual member of staff who is tasked to routinely discuss issues with the children. The topics of discussion revolve around behavioural issues such as drug abuse, sexual misconduct and self-esteem. Individual counselling is done on a need basis which is ascertained during staff and children interactions or upon request. Children interviewed in all the remand homes confirmed the usefulness of the counselling sessions and indicated that they impact them positively. However, in the remand homes visited, it was noted that not all staff had basic counselling qualifications and none of the staff had advanced counselling qualifications. Where staff had no counselling qualifications, they relied on their own personal skills to carry out the group and individual "counselling" sessions. In the absence of counsellors with advanced qualifications, the homes have no capacity to deal with more serious cases which require such advanced expertise. In such cases, they

85 Alison J. Link and D J Williams, 'Leisure Functioning and Offender Rehabilitation: A Correlational Exploration into Factors Affecting Successful Re-entry' *International Journal of Offender Therapy and Comparative Criminology*.

sometimes engage external counsellors with the support of partners. It was also noted that staff allocation of groups of children to guide was not limited to welfare officers. In some remand homes, all staff including service staff such as cooks were allocated groups owing to inadequate staff complement.

The research further revealed that remand homes lack capacity to adequately respond to the rehabilitative needs of children linked to terrorism and drug related offences. Officers interviewed in the remand homes indicated that they had not received any training on how to deal with such children with a view to rehabilitating them. Further there were no programmes initiated by partners to address this gap. The treatment of such child suspects was therefore guided by the individual officers' personal skills. Topics related to terrorism and drug and substance abuse were however incorporated in the group discussions. Apart from the lack of expertise, security concerns when dealing with child suspects linked to terrorism were raised. In one of the remand homes, there was an attempted break in to enable terrorism related suspects to escape. The remand homes visited are not designed to cater for such high risk children. During the research it was revealed that as a remedial measure, child suspects linked to terrorism are typically held in child remand sections in prisons such as in Kamiti Maximum Prison.

It was also noted that owing to the rehabilitation programmes being ill designed, they were not gendered. They therefore do not approach rehabilitation from a gendered perspective. The inadequacy of the rehabilitation programmes in remand homes in terms of quality, quantity and consistency compounds the possibility of further exposure to criminal conduct. The

research revealed that many of the children are charged with minor offences.⁸⁶ In the absence of adequate rehabilitative programmes, the children have unstructured free time which provides opportunities for interactions which may not be constructive. For instance, children who have only been involved in petty offences are likely to be hardened and exposed to more serious offences by children who are more experienced in crime. In the remand homes visited it was observed that children spent long periods of time idling and interacting with each other.

In addition to facilitating the right to education, academic programmes play a critical role in the rehabilitation process.⁸⁷ However, academic programmes are not offered in the remand homes visited. The rationale for the failure to incorporate academic programmes in the remand homes was that the confinement period in the homes was ideally short and that there was a high turnover. This seems to be the approach at the policy level and therefore no resources are provided for academic programmes in the homes. As noted, in practice, children spend longer periods in the homes and would thus benefit from academic programmes. This would provide a level of continuity in terms of education hence facilitating the reintegration process back to the community and/or transition to the institution where they may be committed upon the conclusion of the trial. Respondents in the education sector advised that academic programmes can be tailor made to cater for the remand homes which have children at different levels of education. It was however noted that academic books were provided in the libraries.

An issue of particular concern is the holding of children in need of care and protection in the remand homes alongside children suspected

86 See Table 2, page 23.

87 Cormac Behan, 'Learning To Escape: Prison Education, Rehabilitation and the Potential for Transformation' (2014) 1(1) JPER 20, 21.

Table 3: Profile of Children in Need of Care and Protection and Child Suspects in Remand Homes

Station	Children in Need of Care and Protection	Children Charged with Offences
Kakamega	45	3
Nairobi	67	3
Likoni	40	11

of having committed offences. The table above shows the number of children in need of care and protection vis a vis the number of child suspects in sampled remand homes visited.

The children in need of care and protection held in remand homes range from child victims, especially of sexual offences, destitute children, those found begging or receiving alms, truant children or those falling in bad associations to those using or trafficking drugs. While the definition of children in need of care and protection as set out in section 119 of the Children Act includes some categories of children with criminal tendencies, this group of children is misplaced in remand homes. The Children Act expressly distinguishes children in need of care and protection from children in conflict with the law and requires that they are held separately.⁸⁸ Holding children in need of care and protection in the remand homes exposes them to interactions with child suspects and may impact on their future conduct. This therefore undermines efforts to prevent children from engaging in criminal conduct.

The eventual reintegration process of children in conflict with the law demands that the child maintains contact with parents or guardians and or the community throughout their interaction with the child justice system. All the remand homes visited have in place mechanisms to facilitate communication and interactions

between the child and the significant others.⁸⁹ Upon request, children are facilitated to make telephone calls to their parents or guardians and the latter are encouraged to visit the children. The officers interviewed indicated that where the relationships between children and their parents or guardians are strained, they reach out to the latter upon the children's requests. Through this initiative, there are cases where good relations have been restored hence facilitating the children's rehabilitation. Nevertheless, the research revealed that in many cases, the remand homes are unable to obtain the contact details for the parents or guardians. In such cases, the children remain out of touch with their families during the trial process. Officers in remand homes also carry out tracing exercises in a bid to establish contact with the parents or guardians and to understand the home circumstances of the children. This information is critical in determining the most suitable treatment plan for the children. However, both the tracing activities and communication with parents or guardians are not well funded hence not effectively carried out.

A concern was raised over remand homes located within rehabilitation schools. This is particularly concerning with respect to female child suspects placed in a remand home located within a boys' rehabilitation school. During the field visits, the Kericho Remand Home which is located within the Kericho Rehabilitation School had one female

⁸⁸ Cf. S. 119(2).

⁸⁹ National Standards and Regulation for Statutory Children's Institutions, page 5, para 55.

suspect amongst boys. It was explained that the other girls had been released and that she had been left by herself. In an attempt to limit her interaction with the boys, she was left by herself and did not participate in the activities that the boys were engaging in.

3.2 Trial Process and Final Orders

Most of the children interviewed did not have legal representation and admitted that they did not understand the court proceedings. Where lawyers were assigned to them by the state, some children expressed concern over not having opportunities to discuss the cases with their lawyers. Others claimed that the appointment of lawyers alienated them from the court. Some claimed that when they sought to address the court, they were dismissed and asked to converse with their lawyers. This practice is inimical to the children's right to be heard. The Committee on the Rights of the Child clarified that the right to be heard is not limited to legal representatives speaking on behalf of children but also includes the right to be heard directly.⁹⁰ Further, many of them found the courtroom set up intimidating and were therefore unable to actively participate in the trial process. However, some acknowledged having been served by friendly courts which encouraged them to participate and which had a good ambience. For instance, the Children's Court in Kirinyaga, which was sampled in this research, has a different set up from a typical court room with child-friendly murals making it less intimidating.

As indicated in the section on remand homes, concern was raised with regards to the length of time taken for cases to be concluded. As noted

in part 3.1.3 above, the research revealed that children may be in remand for as long as three years.⁹¹ Of particular concern are cases where children are charged alongside adults hence not before the Children's Court, as required by the Children Act, which tend to delay.⁹² In the absence of an amendment of the Children Act in this regard, courts ought to prioritise these cases and ensure that the constitutional requirement for expeditious trials is adhered to.

With respect to sentencing, the research revealed that custodial orders were imposed in some cases which were otherwise best suited for non-custodial orders. For instance, children who have committed offences for the first time and have been charged for petty offences such as petty theft, creating disturbance, charged with petty theft, creating disturbance, loitering, and truancy, amongst others, may not be best suited for custodial sentences. The failure to identify the most suitable order undermines the rehabilitation process and some children interviewed in rehabilitation schools admitted to having been hardened by serving a custodial order as well as being exposed to other forms of criminal conduct. Respondents indicated that section 191(1) of the Children Act provides discretion on the orders imposed and there was need for courts to optimally utilise this wide range of orders available.

It also emerged that many judicial officers have not been adequately sensitized on the nature of and the programmes in the institutions that children are committed to. This information is necessary for them to be able to assess the suitability and appropriateness of the recommendations made by the children's officers and probation officers. The research revealed that there are instances

90 Committee on the Rights of the Child General Comment No. 10 (2007), para 44.

91 National Council on the Administration of Justice, Criminal Justice System in Kenya: An Audit (NCAJ, LRF and RODI 2016) 139.

92 Section 184(1) (a).



where orders are made placing children in institutions that cannot cater for them, for instance where they are older than the maximum age admitted in a particular institution. This points to the need for more sensitization for judicial officers on the institutions dealing with children serving custodial orders.

3.3 Committal to Institutions

When a decision is made for a child to serve a term in a rehabilitation school, the court places the child in a reception centre first. The research revealed that often children are not escorted to the reception centre by police officers within seven days from the court order as stipulated in the Throughcare and Aftercare Procedures.⁹³ Respondents disclosed that this exercise is not well funded and delays were occasioned as resources were mobilised. For instance, one of the children interviewed disclosed that he stayed in a police cell for one month awaiting to be transferred to Getathuru. Another issue of concern raised was that female children in conflict with the law are in some instances escorted by male police officers to the reception centre in violation of the Throughcare and Aftercare Procedures.⁹⁴ The respondents also indicated that often the children are escorted to the reception centre without the requisite documents set out in the Throughcare and Aftercare Procedures, especially the birth certificate.⁹⁵

3.3.1 Reception Centres

There are two reception centres; Kirigiti, which serves girls, and Getathuru, which serves boys. Kirigiti has both a reception centre and a rehabilitation school.

At the reception centre, a determination is made as to the most suitable rehabilitation school for a child. The determination is done using a risk and needs assessment tool. This decision is critical as placement in an unsuitable institution may not foster rehabilitation of a child. For instance, placing a low risk child in a high risk rehabilitation school may actually be counterproductive. Similarly, a high risk child would not benefit much from a low risk rehabilitation school.

Children are held at the reception centres for an average of three to four months. The rationale is to enable the officers to assess the conduct of the children and to carry out a risk and needs assessment to enable them to place them in the most suitable reception centre. The officers at the centre also assess the documentation on individual children and ensure that it is all in order. Issues of concern raised during the research include incomplete documentation on the children submitted by the committing institutions. It was also noted that documentation submitted is sometimes inaccurate. For instance the process of late registration of births is misused and erroneous dates of birth recorded to enable young adults to get placement in institutions catering for children.

The rehabilitative programmes at the reception centres are designed with the short terms in mind. These programmes are basic and geared towards instilling a sense of discipline and positive attitude that will enable them to benefit from the long term programmes undertaken in the rehabilitation schools. The basic rehabilitative programmes include group and individual counselling. Counselling is carried out by staff who have basic counselling skills and respondents highlighted the lack of staff with advanced

93 Page 5.

94 Ibid.

95 Page 4.

counselling qualifications as a major gap. It was however noted that occasionally partners provide professional counsellors. Religious programmes run by partners complement the rehabilitative programmes in the reception centres. Other programmes include life skills such as crop husbandry, beading and creative arts. Though not designed to be intensive, these programmes are grossly underfunded and the centres rely heavily on partners for financial and technical support.

To identify the academic level of the children which is used for placement in the rehabilitation schools, an academic assessment is carried out at the reception centres. The rehabilitation schools however raised a concern over the academic assessment at reception centres and indicated that they often had to place children in classes different from what the centres had proposed.

With a long term goal of facilitating a smooth and effective reintegration process, reception centres strive to connect with the parents or guardians of the children in their institutions. Accordingly, once a child is admitted its parents or guardians are contacted at the earliest opportunity. The centres encourage parents or guardians to visit the children and to begin addressing underlying issues that may have led the children to commit crimes. Where needed, officers in the centres hold conferences with individual children and their parents. It was however noted that the process of connecting children with their parents and guardians is sometimes hampered by incomplete documentation. Where contact details of the parents and guardians are omitted in the documentation placing the children in the centres and where the children are not able to provide the contact details, the centres are at loss and no contact is made. It was also noted that in some instances parents or guardians are uncooperative

and unwilling to engage. The failure of parents or guardians to engage undermines the eventual rehabilitation and reintegration process.

It was noted that the reception centers lack a focused approach to rehabilitating children linked to drug abuse and terrorism. While in many instances children are placed in the institutions on the basis of being in need of care and protection, their reports may indicate involvement in these crimes. Reception centres being the first point of contact for the children after trial, it is important to commence the targeted rehabilitation process for children linked to these crimes.

3.3.2 Rehabilitation Schools

Rehabilitation schools are run by the DCS. They are established to cater for both children in conflict with the law and children in need of care and protection.⁹⁶ The law requires the rehabilitation schools to have separate sections catering for each of the two categories.⁹⁷ During the field research it was observed that this requirement is not adhered to in any of the institutions visited.

As set out in part 1.2 rehabilitation schools are classified into low risk, medium risk or high risk. The high risk institutions provide higher levels of interventions tailored for children with higher rehabilitative needs. In the rehabilitation schools sampled, it emerged that rehabilitation process for children in conflict with the law is grounded in three main approaches. First, through behavioural change stimulated by discipline. The rehabilitation schools have structured daily schedules that are adhered to. Officers explained that, in their view, criminal tendencies thrive where there is indiscipline and by subjecting the children to a strict regime, a sense of self control is nurtured. Second, the schools seek to empower children

96 Children Act, s. 47(1).

97 Children Act, s. 48.

with skills that would enable them to earn a living upon release. The rationale is that many children are found guilty of property and status related offences and are indigent. Table 4 below illustrates this observation on the prevalence of property and status offences committed by children held in sampled institutions.

Financial stability is therefore critical for the cycle of poverty and hence criminality to be broken. Third, there are programmes designed to provide psycho-social support for the children. From the officers' and children's interview conducted during the field research it was evident that a considerable number of children had deep

Table 4: Profile of Offences Committed by Children

S/N	Charge	Kamiti Youth Training and Corrective Centre	Getathuru Reception Centre	Nakuru Probation Hostel
		No. of Children	No. of Children	No. of Children
	Murder	2	10	
	Manslaughter			3
	Attempted suicide			8
	Robbery with violence	18	-	
	Gang rape	4	1	
	Defilement	12	35	
	Unnatural offence	1	-	
	Incest	-	1	
	Trafficking of narcotic drugs	8	-	
	Possession of narcotic drugs	8	7	5
	House/store breaking and stealing	8	2	5
	Stealing by servant	-	-	23
	Loitering	-	2	
	Logging			1
	Theft	26	10	
	Recruitee in illegal sect	-	1	
	Escape from lawful custody	-	1	
	Careless driving	-	1	
	Preparation to commit a felony	7	-	
	Being in possession of cannabis sativa	3	-	
	Creating disturbance in a manner likely to cause breach of peace	1	-	
	Arson	1	-	2
	Possession of illegal alcoholic drinks	1	-	
	Assault	7	-	
	Subjecting a child to torture			1
	Affray	0	-	
	Grievous harm	2	-	
	Malicious damage to property	2	-	1
	Child in need of care and protection	1	163	-
	Concealing birth	-	-	5

seated emotional, psychological or emotional issues which trigger criminal tendencies. There are, therefore, programmes in the rehabilitation homes that provide psychosocial support. Fourth, provision of necessities such as adequate food, clothing, health and other forms of general care is intended to develop a sense of belonging and ultimately a sense of self-worth which is important in the rehabilitation process. Fifth, programmes are also designed to develop responsible individual conduct, respect for others and teamwork. The programmes in the schools complement each other towards meeting the overall goals.

From a rehabilitative perspective, discipline is linked to hygiene and good order. In addition, hygiene enhances a sense of dignity and high self-esteem. The rehabilitation schools therefore espouse this rehabilitative strategy through various ways. Consistent waking up and sleeping hours are set and the children are made solely responsible for their personal hygiene as well as the cleanliness in their environment.⁹⁸ In a sampled station, Othaya Rehabilitation School, high standards of hygiene were evident. The boys were noticeably neat and the dormitories, though communal, were tidy, clean and well aired. The School's manager reiterated the rehabilitative effects of hygiene and good order as well as the health benefits. However, some institutions face resource challenges which undermine efforts to maintain high standards of hygiene. One of the schools visited had challenges with the water supply owing to the disconnection of electricity. In other schools sampled, supplies necessary for personal hygiene such as soap and tissue were not adequate.

The rigour of academic programmes at the schools is also designed to develop discipline as well as empower children towards future economic stability. At the schools, the new national curriculum has been introduced and is lauded

for incorporating behavioural growth as learning outcomes in all modules. The modules include topics relevant to rehabilitation such as drugs and substance abuse, rights and responsibilities and taking care of the environment. The national curriculum therefore provides a platform for a structured engagement on behavioural issues. For instance, the head teacher at the Kericho Rehabilitation School uses these modules as a starting point and tailors the lessons to address the unique behavioural needs of the boys. However, the academic programmes in all the schools are constrained by inadequate number of teachers. The few teachers available rotate through the classrooms leaving some classes unattended. To address this concern, some of the schools benefit from volunteer teachers or trainee teachers on training practice but is not always the case. The children interviewed pointed out that the lack of adequate number of teachers impacts on their learning and were of the view that this lowered the standards of learning in the institutions. Also, while the schools benefit from the government education capitation, the resources are inadequate and the schools rely on partners to cater for the shortfalls.

Co-curricular activities such as sports, music, dancing, and clubs are designed to develop overall discipline, individual responsible conduct and teamwork. Common clubs include scouts and the Presidents Award-Kenya. It was however noted, that the co-curricular programmes are not uniformly offered in the schools. Some schools have better organised programmes in comparison to others. It emerged that the availability of programmes are determined by the individual initiative of staff and the support of partners. In view of the role played by co-curricular activities towards rehabilitation of the children, it is important to have well organised and consistent activities in all the schools.

98 National Standards and Regulation for Statutory Children's Institutions.



With respect to training in skills, a range of options are offered. These include farming, animal husbandry, welding, wiring, basic computer skills, tailoring, beading and masonry. While the training in skills is generally well received by the children, it emerged that the skills sections are underfunded and are not well stocked with the requisite materials. Often, training is discontinued for lack of the materials. In many of the schools, there are as few as one computer shared amongst students. It was also noted that the number of trainers is inadequate and where a trainer is transferred or leaves the institutions, the affected section remains closed indefinitely. There are partners who support some of these programmes and in some cases would facilitate engagement of a trainer. It was however observed that this model is unsustainable as when the period of support ends, the programmes are gravely affected. Further, where volunteers are engaged, there are challenges in management as they cannot be subjected to strict performance as employees.

The respondents, both the officers and the children interviewed, raised the need for more contemporary courses as opposed to the old traditional ones offered. Suggestions for new courses included computer based courses such as web designing, art, technical training in mobile phone repair, hairdressing and cosmetology.

Psychosocial support is provided in various ways. First, individual and group counselling is provided by members of staff as well as volunteers. As is the case in reception centres, the schools lack staff with advanced counselling qualifications and rely on partners for cases requiring professional counselling. Second, spiritual guidance is provided, organised around the main religious groups, that is, Christian and Muslim. The staff coordinate consistent religious meetings throughout the week and partners from religious institutions run the weekend programmes. Respondents were of the view that spiritual guidance plays a big role in the rehabilitation process. There is however

need to engage chaplains and kadhis for specific schools to ensure consistency in the delivery of spiritual programmes. Third, the schools facilitate the involvement of parents and guardians as the children serve their terms. Children are facilitated to communicate over the phone with their families or guardians and staff encourage significant others to visit the children. Where the children and the significant others are agreeable, the staff organise conferences in which issues of concern are addressed. The conferences provide a good opportunity for deep seated emotional and psychological issues to be addressed.

One of the issues of concern that emerged is the lack of a focused approach towards rehabilitating children that were involved in terrorist activities, drugs and substance abuse and sexual offences. With respect to sexual offences, it was noted that a number of the cases involved consensual sexual conduct with peers. However, there are also cases where the children had sexually assaulted much younger children, as young as two years old, hence requiring intervention. The highlighted categories of offences, that is terrorist activities, drugs and substance abuse and sexual offences, require concerted and targeted interventions. However, in the rehabilitation schools these are only addressed through general discussions during the group counselling sessions.

With respect to general care of children, it was noted that in some schools, the clothing provided is not adequate. Some children in the homes visited wore worn out clothes. Respondents pointed out that apart from ensuring that the children are provided with adequate clothing, there is need to rethink the style of the uniform provided. For instance, in very cold regions there is need to provide trousers instead of shorts and to provide closed shoes for the children.

Security concerns were also raised with respect to rehabilitation schools. Unlike borstal institutions which are located within prisons and have wall

fences with prison officers guarding, rehabilitation schools are not well secured. Some of the rehabilitation schools visited have live fences while others have open access in some areas. The officers interviewed are of the view that the low security is a rehabilitation strategy. It is intended to inculcate a sense of responsibility in the children, who though in a position to escape, remain in the premises on their own volition. Nevertheless, there have been emerging trends that require rethinking of the policy on security. For instance, in one of the homes, it emerged that children addicted to drugs occasionally sneak out of the home to obtain drugs. Similarly with the increasing levels of external insecurity there is need to ensure that there is adequate security for the children.

The reintegration process for children in the rehabilitation schools is designed in three stages. First, upon admission, contact is made with the parents or guardians and any other significant others. These individuals are encouraged to visit the children and to maintain contact. Where possible, conferences between the children and parents are facilitated. Officers in the rehabilitation schools indicated that in certain instances, the children's families would reach out to victims and reconcile. This process is however undermined by the unwillingness of families to remain in contact with the children and to embrace recommendations made towards the rehabilitation of the children. It was also noted that in certain instances, no contact details for the parents, guardians or significant others are provided when the children are placed in the schools. This initial stage is therefore delayed and takes a lot of effort on the part of the officers in the schools to contact families.

The second stage in the reintegration process involves an assessment of the home environment to determine the interventions required to ensure smooth reintegration of a child back to the community. At this stage, the committing

officer, either a children's officer or a probation officer, on the ground is required to carry out the assessment and to submit an environmental assessment report to the rehabilitation school. The research revealed that often these reports are not submitted in time and in certain cases are not submitted at all. It emerged that the committing officers are constrained by resources and are unable to make home visits to assess the environment as required.

Finally, upon completion of their term, they are to be taken back home and reunited with their parents or guardians. Ideally, during this process, the accompanying officer is to make contact with the parents or guardians and where possible, community representatives, such as chiefs, to advise them on the rehabilitation of the child as well as the support required subsequently. The reintegration process is however grossly underfunded. As a result the ideal process is not undertaken. Instead, parents are encouraged to pick up their children from the rehabilitation school. This is however not possible in many cases, as many parents or guardians have financial constraints. Where parents or guardians are not able to pick up child, the school is required to make arrangements. Often there are no funds available, and children who have completed their term are required to remain in school until funds are availed. Even then, the funds availed are meagre and the bare minimum is undertaken. That is, physically taking the child back home but without engaging in the envisaged interactions. Another evident gap in the reintegration process is the lack of continued interaction between the child and the committing children's officer for a period after release from the school.

In certain instances, the home environment is not conducive for reintegration and the parents or guardians may be unwilling to support the child. In such cases, partners may intervene and the child may be placed in a charitable children's institution.

3.3.3 Borstal Institutions and the Kamiti Youth Corrective and Training Centre

As noted, borstal institutions are run by KPS and cater for children between the ages of 15 and 18 years. The KYCTC is an institution of its own kind which caters for youthful persons of up to twenty one years. Borstal institutions are designed for children who have committed serious offences who would not otherwise be rehabilitated through non-custodial sentences. In practice, however, there are children committed to the borstal institutions who are better suited for other interventions. The prescribed term in borstal institutions is three years but in practice children serve for one and a half years and upon completion of their vocational courses, they are considered for release on licence. At the KYCTC, youthful persons are confined for a period of four months, which is much shorter than the period in other institutions.

The borstal institutions adopt a similar approach to the rehabilitation schools. Their programmes focus on discipline, psycho social support, empowerment, nurturing of responsible individual conduct and teamwork. Similar programmes to the ones in rehabilitation schools are run. After the orientation process, children are required to select whether to join the academic programmes or the technical section. During the research, it emerged that some boys are influenced by others to opt for the technical section in which they become eligible for release as soon as they sit for the national examination.

With respect to the academic programmes, the borstal institutions run primary and high schools. The schools are registered as Kenya Certificate of Primary Education as well as Kenya Certificate of Secondary Education examination centres. Just as rehabilitation schools, the academic programmes in borstal institutions are under resourced in terms of teaching staff and teaching materials. The borstal schools bear immense potential for

good performance and should be well resourced. In spite of the challenges, the borstal schools have a record of good performance. For instance, students from borstal institutions have in the past been admitted to good schools, including Maseno, Nakuru High, Moi High School Mbiruri, St. Patricks Iten and Mukumu boys.

The teachers noted that they spend considerable amounts of time with the children and therefore directly impact on their rehabilitation. They therefore require training on rehabilitation of children in conflict with the law and in counselling. None of the teachers interviewed have received any form of training on rehabilitation but a few had pursued qualifications on basic counselling on their own initiative.

In light of the age of the children committed to borstal institutions, there is a greater emphasis on training in technical skills for individuals who are not keen or better placed to pursue the academic programmes. It is understood that at the time of release from the borstal institutions, the children are on the verge of becoming adults hence the need for being empowered to become financially stable and independent. This approach informs better equipping of their technical workshops in comparison to rehabilitation schools. In addition to farming, animal husbandry, welding, wiring, basic computer skills, tailoring, beading and masonry, the borstal institutions also train mechanics, bakers, hairdressers and barbers. The borstal institutions have well qualified instructors but in some instances they may lack an instructor owing to transfers.

Unlike in rehabilitation schools, children being released from borstal institutions having qualified in technical skills are assisted to obtain tools that assist them to begin working upon release. This is organised through PACS and partners. However, there are instances where some of the children do not receive this form of support. Proper training in skills for the youthful persons is effective when

coupled with other programmes addressing behavioural issues. During the research, a boy who had been released from Shimo La Tewa Borstal Institution and settled in Kirinyaga was visited. The boy, who had acquired skills in welding, was running a successful workshop and routinely hired ex borstal boys as a way of helping them reintegrate back into the community.

Similar approaches for rehabilitation are adopted at KYCTC save that the short term does not allow for extensive training and engagement in full-fledged academic programmes.

The same reintegration approach as in rehabilitation schools is adopted by KYCTC. Children are facilitated to get in touch with parents or guardians, who are allowed to visit the children. Where parents or guardians and the children are agreeable, conferences may be organised to enable the parties to address underlying issues. Similar to rehabilitation schools, one of the challenges experienced is that parents and guardians are domiciled in locations that are far from the borstal institutions hence having financial implications. Children are released on licence from the borstal institution and are placed under the supervision of a probation officer. Where borstal institutions are not located far from the committing probation officer, the officers maintain contact with the children by visiting them routinely. This enhances a smooth reintegration process. Like in the rehabilitation schools parents or guardians are encouraged to pick up their children from the institution. Similar challenges relating to funding are experienced, and it disclosed that often, where parents or guardians do not respond the pick-up call, the children are escorted up to the bus station and advised to report to the committing probation officer.

A notable good reintegration practice observed at Kamae Borstal Institution is the work for pay model. With the support of a partner, children make beaded items for sale and part of the proceeds are kept for the child. The accumulated proceeds are handed over to the child on the day of release.

3.3.4 Probation Hostels

Probation hostels are run by PACS and cater for both children and youth for a year. They are designed for persons who would ordinarily serve a probation order but their circumstances require them to be removed from their home environment.⁹⁹

Like the other institutions in which children in conflict with the law are held, the programmes in the probation hostels focus on discipline, psycho social support, empowerment, nurturing of responsible individual conduct and teamwork. The children are taken through various modules on different issues such as human sexuality, HIV/AIDS, health and nutrition, character formation, anger management, youth in conflict and entrepreneurship. They also embrace and emphasise on the “good life model” in which the basic needs of the individuals are adequately provided so as to minimise the push factors. This approach also nurtures trust from the children hence making them more receptive to the rehabilitative options. Further, academic programmes at primary school level are offered as well as training in technical skills. Children at high school level, who are of good conduct are facilitated to attend school out of the hostel.

The Nairobi Probation Hostel visited has a well-designed programme for rehabilitation of drugs and substance users. They have adopted the Support for Addictions Prevention Treatment in

99 Probation of Offenders Act, s. 5(1) & (2).



Africa (SAPTA) model through which the youthful persons are supported through different stages towards recovery. A member of staff is trained and runs the programme with the support of partners.

Like the other institutions above, children are facilitated to contact parents and guardians and where possible conferences are organised. The officers interviewed indicated that the major gap with the reintegration process is the lack of modalities for internships for those who have received training in technical skills. Under the PACS bursary scheme, those released may be supported to continue pursuing formal education.

3.3.5 Further Cross Cutting Issues in Facilities Detaining Children

Corporal punishment is outlawed.¹⁰⁰ The research revealed that in Kenya, the transition from the use of corporal punishment to its prohibition left a void. Many officers feel ill equipped with regard to punishment options. Nevertheless, some officers have devised effective but lawful punishment models. For instance at the Othaya Rehabilitation School, a weekly privilege was introduced and where misconduct occurs, this privilege is withdrawn. At Kamae Borstal Institution, the girls are categorised in houses and individual misconduct or good conduct either loses or earns marks for the house. This creates a sense of community ownership for community responsibility and accountability for individual conduct. Other forms of punishment include additional chores such as gardening over and above the assigned individual duty. What therefore emerged from the research is

the need for sensitisation and experience sharing on punishment models that adhere to legal standards.¹⁰¹

In addition to the lack of rehabilitation programmes addressing terrorism, drugs and substance abuse, the institutions discussed do not have adequate mechanisms to protect children in the institutions from radicalisation and in some institutions exposure to drugs and substance abuse.¹⁰²

Recidivism remains an issue of concern. During the research, some children in the Borstal institutions, both boys and girls, admitted to have previously served terms in the rehabilitation schools. There is therefore need to identify and address the gaps in the rehabilitation and reintegration process to reduce the recidivism rates.

Whilst the holding facilities are largely maintained in good order, some of the facilities are dilapidated and need refurbishment. The dormitories do not have lockers, forcing children to hang their belongings in different spaces. This makes the dormitories appear untidy and disorganised. In the absence of lockers, children are also forced in some cases to carry some of their personal items in their pockets, thus degrading them.

Risk and needs assessment is a critical process as it determines the appropriate interventions for each child. During the research it emerged that often there are discrepancies in assessment of a child by different officers at different stages. It was noted that not all officers involved in this assessment have been trained on it and it appears that the discrepancies may be occasioned by the gaps in training.

100 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, r. 17.3; Children Act, s. 191(2); United Nations Guidelines for the Prevention of Juvenile Delinquency, para 54.

101 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, r.66 -71.

102 Such institutions are considered rife recruitment zones, see Penal Reform International, Children and Violent Extremism: International Standards and Responses from Criminal Justice Systems (PRI 2018).

It was noted that the statutory institutions do not have protocols in place and facilities to handle children with special needs and those with disabilities.

3.4 Non-Custodial Orders

The Children Act provides for a wide range of non-custodial orders that can be made with respect to children who have been found guilty.¹⁰³ These non-custodial orders provide leeway to tailor make responses that are most suitable for individual children hence bearing rehabilitative potential. During the research, probation officers indicated that in some cases children are placed on probation under section 191(1) (c) of the Children Act.

Children placed on probation supervision are required to report to the probation officer on a monthly basis. At the commencement of the supervision, the officers design a treatment plan and identify a child's rehabilitation needs. Some of the interventions undertaken include family conferences whereby the child, parents or guardians and any significant others discuss matters pertaining to the wrongdoing and the measures to be taken. Where possible victim offender conferences are conducted to reconcile the parties and for the children to take responsibility for their actions. Probation officers are trained in basic counselling and therefore provide some level of psychosocial support. Where more advanced counselling skills are required, referrals are made. PACS has established partnerships with various service providers who may provide additional support to the children when required. For instance, in Mombasa, they partner with Reach Out, an organisation which deals with rehabilitation of drug addicts.

103 S. 191(1).

The value in probation orders lies in the fact that children are rehabilitated whilst within the community hence avoiding the challenges that are faced by children reintegrating to the community after having been away for a period of time. Further, access to individuals who may contribute towards the rehabilitation of an individual is easier. For instance, teachers in the school attended by the child.

3.5 Partner Involvement: Best Practices

Partners play a significant role in the rehabilitation and reintegration of children. Their support ranges from technical to financial. Of particular significance and long term impact is the facilitation of relevant training of staff dealing with children. Also notable is partners' contribution towards rehabilitation and reintegration programmes. In all the institutions visited, there were a myriad of partners involved in one way or another. It was however noted that important partners such as the County Governments are not optimally engaged.

Table 5 below documents best practices in involvement of partners in the rehabilitation and reintegration of children.

3.6 Community Based Interventions and Community Involvement

During the visits it emerged that communities are involved in and support programmes in the institutions dealing with children in conflict with the law. However the level of involvement depends on the locality of the institution and the networks created by the institution. For instance,

Table 5: Partner Involvement - Best Practices

1 Collective Community Action (CCA) – Capacity Building

- Key strategy is to strengthen the vocational skills programmes in rehabilitation schools by providing technical support staff in institutions and training officers in these institutions to ensure a consistent supply of trainers.
- Facilitating training on Throughcare and Aftercare Procedures for officers across the country.
- Equipping staff to prepare for, carry out case conferences and undertake follow up activities.
- Assisting institutions to start clubs to complement the rehabilitation programmes e.g. beading, soap making and bakery clubs. Officers are trained on all the activities done by the clubs.
- Provision of specialists such as medics and professional counsellors to address specific issues in institutions.
- Provision of staff to conduct tracing of families where there are no contact details.
- Upon release, provide tool boxes and facilitate officers to take children home.
- In suitable cases, provide start-up capital.
- Make arrangements for children to be attached to a vocational school or obtain an internship position/apprenticeship upon release; in dire cases provide school fees for the first term after release.
- In liaison with DCS conduct follow up visits of children who have been released.

2. Resources Oriented Development Initiatives (RODI), Kenya – Community Mobilisation, Rehabilitation and Reintegration Programmes

- Establish crime prevention clubs in rehabilitation schools and other schools.
- Provide training for children in organic farming, soap making, making disinfectants and bleach, yoghurt making etc. Officers in the schools are also trained. Exhibitions are held and parents invited to witness. Children are issued with certificates upon the successful completion of a programme.
- Upon release, they establish contact with the child, provide start-up chemicals and encourage the family to support the child.
- Provide a contact person in the counties that they operate in to serve as a support system for a child upon release.
- Facilitate open days for parents in which they are sensitized on matters of interest such as drugs and substance abuse, radicalisation and parenting skills.

3. St Joseph Cafasso Consolation House – Halfway Home

- Half-way house for young children below the age of twenty three who have completed their term at Kamiti Youth Correctional and Training Centre.
- Caters for offenders whose home environment is not yet conducive for their return.
- During their stay, attempts are made to improve the home environment and/or assist the offender to transition elsewhere. Attempts are also made to reconcile the offender with the victim.

4. Gladshouse – Rehabilitation and Reintegration through Sports

- Supports institutions by providing coaches to train teams in sporting activities such as football.
- Introduces children to professional sports. Gladshouse took boys from Likoni Rehabilitation School to the Russia World Street Football.
- Through sporting activities, children are trained to lead a disciplined lifestyle and their self-esteem is enhanced.
- Engage in tracing and returning children home upon release.
- Help in identifying foster families within the community.

5. The European Committee for Training and Agriculture (CEFA) – Capacity Building, Supporting Policy Development, Rehabilitation and Reintegration

- Has supported training of officers serving in institutions dealing with children in conflict with the law.
- Has supported development of manuals for officers.
- Promotes and supports family group conferencing as a model for rehabilitation and reintegration.
- Introducing participatory educational theatre.

6. The Onion Movement, Nakuru County Minister Halima Habibi – Economic Empowerment

- Providing start-up capital of a kilo of onions to a group of delinquent boys for sale.
- Upon sale, profits kept in a revolving fund for the boys; initial capital used to purchase more for sale.
- Continued contact with the boys as they remit the profits; guidance and mentorship offered in the process.

institutions in Nairobi attract more involvement of the community in comparison to other institutions.

The nature of involvement varies from station to station. For instance, the institutions in the Kabete environs attract university students who are involved in the institutions recreational activities. Common in most of the institutions is involvement of religious groups which routinely visit the institutions. Apart from participating in the religious forums in the institutions, individuals form ties with the children and offer long term mentorship. A case in point is a boy who served a term at the Wamumu Rehabilitation Centre who established a long term relationship with church members who eventually supported his education upon release. Community peer to peer initiatives, such as children from the community being involved in programmes such as the Alpha Course, a religion based course on life issues, were also said to be effective. They enable the children to benefit from peer to peer counselling and to be positively influenced by other children.

Community based interventions were particularly said to be instrumental where restorative options are pursued and in the reintegration process. One of the respondents serving a term in one of the borstal institutions, for having killed a peer during

a fight, revealed that his rehabilitation process had been enhanced by the community's involvement. While still at the police cell, a community elder had visited him and upon expressing remorse, he initiated reconciliation with the victim's family.

The research revealed that there is scope for more community involvement and more community based interventions can be explored. At Othaya, the court, on the basis of the constitutional mandate to promote alternative dispute resolution, is working together with the traditional elders in suitable cases.¹⁰⁴ The traditional elders have been trained by the Federation of Women Lawyers (FIDA) on human rights and the court refers suitable disputes to them for solutions to be identified. If satisfied with the outcome, the parties record a consent in court. It was disclosed that the court had not used this process with respect to children in conflict with the law but no reservations were raised against its suitability for children. Such an intervention provides a platform for community involvement and community support towards the rehabilitation and reintegration of children. Many children interviewed were apprehensive about going back to the community for fear of being victimised. With community based interventions, the community would be better prepared to receive the children hence facilitating reintegration.



Children working on handicrafts

104 Article 159.

4. Recommendations

The survey revealed the existence of robust practices and programmes throughout the child justice system that are informed by underlying objectives to rehabilitate and reintegrate children back into the community. Further, gradual reforms in the system to facilitate the realisation of these objectives were evident. In particular, it was noted that there are efforts to enhance interagency cooperation which are informed by the realisation that these objectives cannot be realised by an agency singlehandedly. However, the research highlights gaps, shortcomings and challenges that undermine efforts to rehabilitate and reintegrate children in conflict with the law.

To sustain the ongoing reforms and to address the issues highlighted, the following recommendations are made:

4.1 Recommendations on Overarching Matters

4.1.1 Child Policy

As illuminated in the report, there is need for a coherent and cohesive multi-agency vision for the child justice system. It is therefore recommended that:

- A national child justice policy is developed jointly by all child justice agencies under the leadership of the NCAJ.
- The child justice policy consolidates the agency specific and multi-agency policy documents relating to the child justice system that have been organically developed.

- The child justice policy addresses the policy gaps identified through a robust review of existing policy documents.

4.1.2 Law Reform

The Children Act, as well as the international and regional legal instruments provide a good foundation upon which child justice can be realised. However, there is need for domestic law to consolidate the developments and institutional reforms that have been achieved. There is also need for review of laws related to children in conflict with the law which are now outdated. The Children Bill sought to address this and to formalise restorative options such as diversion. It is therefore recommended that:

- The Children Bill be discussed widely by stakeholders and its enactment be prioritised.
- A review of the existing laws relating to children in conflict with the law be conducted with a view to inform law reform.
- Gaps in legislation on pertinent aspects such as reintegration and aftercare of children in conflict with the law should be identified and requisite bills drafted.
- A strong multi-agency monitoring mechanism to track the implementation of the child justice laws and policies should be established under the auspices of NCAJ.

4.1.3 Inter-agency Coordination

The effectiveness of the child justice system and in particular rehabilitating as well as reintegrating children in conflict with the law is largely dependent on the interagency cooperation.

It is therefore recommended that:

- Court Users' Committees (CUCs) be strengthened in all stations.
- Cognisant of its strategic position, the NCAJ facilitates multi agency planning to enhance synergies and continued interagency cooperation in the child justice system.
- A position for a coordinating officer in the NCAJ be created to enhance the implementation of inter-agency as well as multi-agency policies.
- A mechanism for data sharing be established.

4.2 Cross-cutting Recommendations

As highlighted in the report, certain issues of concern apply across the board. In this regard, the following recommendations, relating to the child justice agencies, are made:

1. Officers in all the child justice agencies should be trained on the Throughcare and Aftercare Procedures for Statutory Institutions in Kenya and monitoring be routinely carried out to ensure adherence to the Procedures.
2. All agencies should adopt a gender lens in the planning and implementation of rehabilitation and reintegration programmes.
3. Specialised rehabilitation programmes on violent extremism, drugs and substance abuse and sexual misconduct should be designed at two levels. First, as components of the general rehabilitation and reintegration programmes offered in institutions. Second, as tailor-made comprehensive programmes targeting children who fall under these categories.
4. Staff capacity audits in terms of numbers and expertise should be conducted to inform future recruitment as well as capacity building.
5. All staff in institutions for children in conflict with the law should be equipped with basic counselling skills and each institution should have a cohort of staff with advanced counselling qualifications.
6. More training on risk and needs assessment of children should be conducted for DCS' and PACS' staff.
7. To enhance evidence based decision making, DCS, PACS and KPS should carry out an assessment of recidivism rates vis a vis success rates in rehabilitation of children who have attended their institutions.
8. To effectively harness partners' support, mechanisms to facilitate better coordination of their support be put in place. This will address duplication of efforts and provide more structured as well as constructive guidance to partners on the support needed. With better structures, technical support such as in training, provision of trainee and volunteer teachers as well as counsellors, would be more consistent.
9. In view of the County governments' mandate which impacts on rehabilitation and reintegration of children in conflict with the law, formal engagement with County Governments and identification of areas of partnership should be pursued.
10. To realise the full potential in the use of community based interventions and for more community involvement in programmes within institutions, agencies should foster a better structured engagement. It is recommended that a mapping of possible community based interventions and modalities

for community involvement be undertaken. Upon mapping, the agencies should formally engage the communities.

11. Protocols on handling children with special needs and children with disabilities should be developed by all agencies. In the meantime, due attention should be paid to these children's needs and reasonable accommodation be made for them at all stages.
12. All institutions should be fitted with lockers for children to enhance the ambience and to promote good order.

4.3. Agency-specific Recommendations

4.3.1 Department of Children Services

With respect to the DCS's rehabilitation and reintegration programmes, the following recommendations are made:

- A blueprint for rehabilitation and reintegration programmes should be designed for implementation in all DCS's institutions for uniformity as well as quality control. However, in light of contextual realities, leeway should be provided for tailor made practices that resonate with the blueprint.
- Suitable rehabilitation and reintegration programmes should be designed for children's remand homes as the general programmes designed for other institutions may not be appropriate.
- A sustainable funding model for rehabilitation and reintegration programmes should be adopted. To this end, mapping of donor partners should be conducted and sustainable

funding models explored. As a basis for enhanced state funding, an extensive cost benefit analysis should be conducted.

- The recruitment criteria particularly for Assistant Children Officers and welfare officers should be reviewed to ensure that competent staff are hired.
- A survey on the infrastructure in all DCS' institutions should be carried out and resources mobilised for the refurbishment of those found dilapidated.
- Stricter and more elaborate measures should be undertaken to ensure the safety of children in the institutions. It is recommended that DCS reconsiders its minimal security policy particularly in areas where there is easy access to narcotic drugs and psychotropic substances.
- For better data management and planning, the Child Protection Integrated Management System should be utilised across the board.
- Area Advisory Councils should be strengthened to optimally support reintegration of children upon release from institutions.

4.3.2 Kenya Prisons Services

With respect to the Kenya Prisons Services, the following recommendations are made:

- KPS should consider establishing a staff department of officers with skills and specialised training to serve children in conflict with the law and youth offenders. This will address the gaps created when trained officers are transferred to adult institutions and vice versa.
- More funds should be raised to ensure that the rehabilitation programmes run optimally.



The Probation Female Hostel Siaya, run by the Probation and After Care Service

- The rationale and operation of, as well as the duration of custody in, the Kamiti Youth Corrective and Training Center should be reconsidered. The outcome of the review should also inform the rehabilitation and reintegration programmes.
- The induction of judicial officers should include sensitisation on the range of orders that can be imposed upon children.
- Visits to sampled institutions dealing with children to equip officers with the necessary background information should be institutionalised.

4.3.3 Probation and After Care Service

For the Probation and After Care Service the following recommendations are made:

- All officers should be trained on rehabilitation of children.
- More funding should be mobilised to ensure that social enquiries, supervision and reintegration processes are carried out effectively.
- Children's courts should continue to leverage on the court users committees to enhance service delivery in the child justice system. It is also advisable to have Children's Court users committees dedicated to children's matters.
- Children holding facilities should be provided in all Children's Courts to prevent interaction with adult offenders when children are taken to court.

4.3.4 Judiciary

With respect to the Judiciary the following are recommended:

- Benchmarking between courts should be conducted to showcase courts that have been customised to provide a suitable environment for children. Good practices

in this regard should be replicated in all the Children's Courts.

- Courts should be more deliberate in encouraging active participation of children and ensuring that they understand the proceedings. As much as possible, courts should encourage the participation of parents and guardians particularly when the final orders are being made.
- To avoid committal of young adults to institutions catering for children, courts must remain vigilant and ensure that proper age assessments are carried out.
- The judiciary should develop a standardised medical form and assessment to be used for children in conflict with the law.
- Age and medical assessment of children should be carried out at the earliest opportunity.

4.3.5 National Police Service

For the National Police Service, the following recommendations are made:

- NPS should consider establishing a staff department of officers with skills and specialised training to serve children in conflict with the law and youth offenders. This will address the gaps created when trained officers are transferred to adult institutions and vice versa.
- Separate holding facilities for children, which meet the minimum standards for detention facilities, should be provided in all stations. Provision ought to be made for sanitary towels and bathing facilities for girls.
- Mechanisms to ensure that children are escorted to rehabilitation schools and borstal

institutions within seven days from the date of the court order, should be put in place.

- The requirement that female children are escorted to institutions by female officers should be adhered to.
- A policy against taking children's fingerprints should be adopted.

4.3.6 Office of the Director of Public Prosecutions

For the ODPP, it is recommended that:

- The ODPP's Diversion Policy, particularly with respect to children in conflict with the law, be fully implemented.
- Children's cases be prioritised and prosecuted expeditiously.

4.3.7 Ministry of Education

With respect the Ministry of Education, it is recommended that:

- Rehabilitation schools and borstal institutions be registered with the Ministry of Education.
- The Ministry of Education deploys teachers to remand homes, rehabilitation schools and borstal institutions.

4.3.8 Treasury

With respect to the treasury it is recommended that:

- More funding be allocated to the child justice agencies to enable them to effectively implement reintegration and rehabilitation programmes.



Children training in masonry



REPUBLIC OF KENYA

Ministry of Labour and Social Protection
Department of Children's Services