



Policing Juvenile Delinquency in Criminal Justice in Kenya

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ABSTRACT

The role of the Police is to protect and serve in crime prevention, intervention and investigation. However, minors appearing before the juvenile courts in Kenya are mostly street children who have dropped out of school or are forced by poverty into the streets despite Free Primary Education (FPE) in Kenya. The study objective was to establish the treatment given to street children during arrest and to assess the training of the police officers on the process of separating children in need of protection from children accused of crimes. The study area were four counties in Kenya, which are, Bungoma, Kakamega, Vihiga and Busia. A sample of 113 was obtained from the target population that comprised of Police Officers, Children Officers, Probation Officers, Prison officers in charge of Borstal institution and any 5 juveniles present in the court in all the four Counties. Data was collected using questionnaires and interviews. Results indicate that children found breaking the law are meted with force and brutality during

street arrests. It is recommended that intensive training is necessary in relation to arrest of children with deviant behaviours and identifying those in need of protection. The study is useful for policy making and adding to the body of knowledge in policing juvenile delinquency.

Keywords: Juvenile, Policing, Delinquent, Protection

1.0 INTRODUCTION

The concept of juvenile delinquency is a byproduct of econo-political, religious and social dynamism. These four thematic changes began during Renaissance era but were highly felt during the Enlightenment and the Industrial Revolution. These thought-provoking transformations regarding offences by children led to legal changes at the end of the nineteenth century that created the legal status of juvenile delinquents and a separate legal system that included juvenile courts and reformatories. (Lawson & Heaton,

2010). By the early twentieth century United States, had a separate legal status and legal system for juveniles. These progressions led to the social construction of juvenile delinquency; the 'discovery' of childhood and adolescence, the doctrine of *Parens Patriae* and the rise of positivist criminology. As a product of these changes, the concept of juvenile delinquency came to signify a separate and distinct status for young people, both socially and legally (Wright & Beaver, 2005). The Middle Ages lacked awareness of the specific needs of children. Emergence of positivist thinker like Rousseau pointed to the distinctive human plight confronted by adolescents during the transition from childhood to adulthood. He provided cascading stages of development, emphasizing how these stages differ and how these differences influence learning and necessitate appropriate educational methods (Cloward & Ohlin, 2010). In Africa, the emergency of Juvenile delinquency is attributed to the scramble for Africa where African land was taken away by colonialists while in South Africa it is a recipe of Apartheid (Mugo, 2004).

Kenya has over 300,000 street children with more than 60,000 in Nairobi, (UNICEF, Report, 2017). This has necessitated the additional of remand homes from 3 to 11 (under the administration of the Children Department) with a reported capacity of 2500 children. The recent upsurge of juvenile delinquency cases in Kenya has forced the country to rethink its approach to juvenile policing. According to the Institute of Economic Affairs (2015) on their Compendium on youth's involvement in crime, 51% of all crimes reported to police were committed by Juveniles. As a result of the rising cases of juvenile delinquency law enforcement agencies have resorted to a more modern approach to address the menace. Some of the modern approaches adopted by most law enforcement agencies that have

proved significant in solving crimes committed by juveniles in Kenya include, community policing and closely working with community organizations who embrace a more rehabilitative method (Mugo, 2004).

Pointedly, concerns have been raised on law enforcement officers who patrol the streets as they arrest street children. Police roundups are conducted with brute force and little regard of the welfare of the juveniles, who are often taunted, scolded, manhandled and beaten at the time of arrest (Omboto, 2013). Once arrested and taken to police station, their cases are referred to court whereby they encounter the Judiciary, Probation Department, Prisons Department and Department of Children's Services Department. Children enter into the revolving doors of the juvenile justice system and (Griffin 2010).

Although, the care and protection system are conceptually separate from the criminal justice system, the Department of Children Services institutions established under the Children Act 2001 work with the criminal justice system in addressing juvenile delinquency. These institutions are categorized into three; the Children's Remand Homes established under section 50 of the Children's Act; the Rehabilitation Schools formerly known as the Approved Schools established under section 47 of the Children's Act; and Children's Homes and Charitable Institutions established under section 58 of the Children's Act.

Despite the effort placed by government to provide care for delinquent children, some of juvenile non-criminal cases that police officers handle include truancy, loitering and curfew violations. In such instances police officers release the children to their guardians on free bond. Pointedly, on cases of serious crimes such as murder, juveniles are kept in remand homes' custody until they are arraigned in court (Mutavi, 2017).

1.2. Statement of the Problem

The rising cases of deviant behaviors by juveniles have led to social disorder and destructions of societal moral values. The increasing cases of juvenile delinquency in Kenya have posed a great challenge to the law enforcement. Some of the contributing factors to the rising cases of juvenile delinquency include, dropping out of school, truancy and poverty. According to NCCP, (2019), 80% of the children appearing before the juvenile courts are street children, some arrested for committing crimes.

Although, modern approaches of juvenile policing have seen more focus on the children's welfare taking care of the orphaned, abandoned, abused and other destitute children.

Little is done to distinguish the minors on basis of their offences because there is neither a special section nor training on how to handle juveniles arrested in Juvenile criminal system. The ordeal is worsened by children spending inordinately long hours in Remand Homes under policing. It was in the view of this, that this paper attempted to assess policing juvenile delinquency in Kenya from the time of arrest, arraignment up to when the minor is released and whether the police have been trained to identify those in need of care and protection during street arrests.

1.3 Objectives

- i. To establish the process of arrest of minors that are in conflict with the law and their arraignment in court.
- ii. To assess ways in which Police Officers, distinguish between the children in need of protection from those accused of crimes in the Juvenile System.

1.4 Scope of the Study

The study area was Western part of Kenya between 2018-2019. The study was limited to police officers, Children Officers, Probation Officers, Prison Officers, Borstal institutions officers and rehabilitation schools in the 4 counties of Western Region of Kenya and Juveniles present in Court, remand homes and Borstal institutions.

2.1 Juvenile Delinquency

The word "delinquency" is a Latin word "delinquere" which means "de" i.e. "away" and "linquere" i.e. "to leave" thus, meaning "to leave" or "to abandon" (Clowad & Ohlin, 2010). A juvenile is considered to be a child who has not surpassed a specific set age as mentioned in the law of any country and does not bear resemblance as an adult person and who cannot be held legally liable for a criminal offense. The juvenile delinquent is a child who has violated certain laws which declare the act or the commission of an offence. A juvenile and a minor are used in different perspectives in legal terms. The term juvenile is generally used in reference to a young criminal offender (Lawson & Heather, 2010). According to the Kenyan Constitution, Children & Young Persons Act 141, the term juvenile refers to a person who is of 14 years or more and under 16 years. According to the Convention of the Rights of a child, a juvenile is a person who is under the age of 18 years (UNICEF 2017). Juvenile delinquency, is also known as juvenile offending, that is, the participation in an illegal or antisocial behavior by minors.

The primary law in Kenya concerning children in conflict with the law is the Children and Young Persons Act 141 (CYPA). The CYPA establishes juvenile courts for the purpose of hearing all charges against persons less than eighteen years of age, except in cases where children are charged jointly with adults. Where children

are charged jointly with adults, the cases are heard in regular adult courts. (Marun et al, 2015). In practice, the special protections accorded to children under the CYPA are often disregarded, as children are often tried in regular adult courts without cognizance of the fact that they are children.

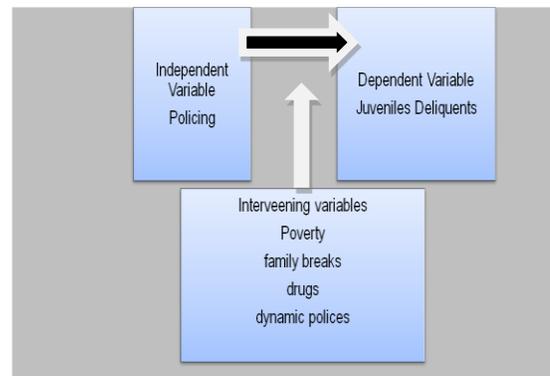
2.2 Anomie and Social Learning Theory

The study was guided by two theories that explain the rising cases of Juvenile delinquency; The anomie theory was advanced by Robert Merton in the 1940s. Merton's theory of Anomie posits that juvenile delinquency occurs when juveniles are not able to achieve their goals in the cultural accepted manner and therefore some decide to deviate by adapting their own means of achieving the culturally accepted goals. As a result of the gap that exists between the need and the means to satisfy their needs. Notably, if their goals are unattainable within legal means, they find unlawful means by which to attain their goals. According to Du (2019) a juvenile who does not have food to eat and is not able to find a job to make money will either steal food or money to purchase food. This theory was not enough to explain the arrest of juveniles in conflict with the law hence it is backed by social learning Theory. Social learning theory is rooted on the belief that people are not born with the ability to act violently, rather they learn to be aggressive through their life experiences (Bandura, 1977). Social learning theory believes that mental or physical traits can predispose a child to violence. However, a person 's violence will rely on other factors in the society, a view supported by Siegel, (2004).

2.4 Conceptual Framework

The independent variables in this study is policing while dependent variable is juvenile delinquency. However, there are intervening

variables affecting the achievement of reducing juvenile delinquency policing. This has been conceptualized in the framework below.



Source: Researcher, 2019

3.0 Research Design

A cross-sectional descriptive research design was used in this study to assess the ways in which juvenile involvement in criminal activities and those in need of protection and care were treated by the law enforcers during street arrests in town centres. The study area was the four counties of Bungoma, Busia, Vihiga and Kakamega in Western Kenya. A sample size of 113 was obtained from the target population using purposive sampling method of key informants comprising of police officers, Children Officers, Probation Officers and prison officers in charge of Borstal institutions. Twenty respondents were interviewed comprising of five selected juveniles present in the court and Borstal Institution. Data collection instruments included questionnaires and interview guides. Both quantitative and qualitative data was analyzed, and results presented in tables and graphs with emphasis on graph analysis.

4.0 Discussion and Findings

Juveniles present in the court were interviewed. This study established that Juveniles from remand, may be committed by courts to approved schools if they are less that

Juveniles Response	Yes %	No %
Whether police record age whether need care during arrest	10.0	10.0
Whether they are arrested with adults	15.0	12.0
Whether in police cell for more than 48 hrs	14.0	10.0
Whether they are provided with legal representation	8.0	25.0
Whether they keep in touch with parents while in remand	10.0	10.0
Whether they receive medical treatment inside remand homes	10.0	14.0
Whether they are mixed with adult remandees	22.0	11.0
Whether they are provided with rehabilitation training	11.0	8.0
Total	100	100

15years old or younger, while Borstal institution which in this study was Shikutsa is for boys at least 15 years old. This study established that there was no Borstal Institution for girls in Kenya instead they are confined to adult women prisons. Although a wide range of alternatives to custodial treatment are provided for under according to Children and Young Persons Act, special remedial measure for juvenile delinquency was farfetched. There are two Borstal Institutions in Kenya, Shikutsa and Shimo-Latewa in Mombasa County. This study established that from the two institutions were introduced by the British colonial and since then there is no additional Borstal institution despite increase in Juvenile delinquency.

A ray of questions was posed to the Juveniles to indicate Yes or No on how they are arrested and treated while in a custody. The results are recorded in Table 1.

Table 1. Juveniles Delinquency Policing Response

Source: Researcher, 2019

According to Table 1, 14% of Juveniles present in the juvenile's courts stated that they spent more than 48hours in the police cells before being taken to court. Additionally, there was a tie of 10% on whether the police take their age records. Children in need of care and protection and those children accused of crimes were treated in the same manner. According to police officers handling the juveniles, 22% of the officers indicated that the minors were occasionally mixed with adults. Notably, Odongo (2004) in his study, found the same in his research on Juvenile Justice System in Kenya. Further, they were handled the same way with adults. This study established that Kenya does not have a separate professional prosecution service that specifically deals with children's cases. Criminal cases involving the juveniles are presented by police prosecutors. Some 25% juveniles lacked legal representation. A study carried out by Ojo (2012) established that children were less represented in a court of law

compared to adults. A study by Griffin (2010) found out that juveniles who were in custody in Kenya did not have legal representation and the police that handled the arrests needed further training on how to deal with juveniles in their custody. Commonly, most children are held in police cells for 48 hours between arrest and the first arraignment in court. Rarely do police contact parents or guardians during the first 48 hours after the arrest to inform them about the arrest and when their children will appear in court. According to Ombogo (2013), in a study carried out at Kamiti prison in Kenya, he established that some children were sharing remand homes with adults. Furthermore, Kakuvi (2014) linked the increase of recidivism in the western region to an influence of learned behavior among the street children.

Children rights in Kenya are concerned about the length of time taken between first appearance and conclusion of cases, whereby juveniles 15 years and older are held together with adults in remand center awaiting trial.

4.2 Training Juvenile Arrests

The Police officers were asked to indicate whether they have been trained on minor arrests. Responses varied with general reference to training received in police training college. However, this study established that non state actors have been offering trainings to police officers, probations, and children officers on the rights of arrested children. The police officers were asked to indicate if they have undergone training on Juvenile arrests. The results are indicated in Figure 2



Figure1: Training on Juvenile Arrests

In Kakamega County 50% of police officers indicated that they had additional training on children’s rights arrests while 13% in Vihiga reported that they had undergone training. Another 15 % in Busia County and 10% of police officers in Bungoma reported to have undergone children’s rights training. This study established that there was a low percentage of officers who have been trained in Busia, Bungoma Vihiga and Busia. It was established that police officers had a healthy working relationship with children’s officers and, probation officers. The Juveniles are assigned to probation officers in cases who usually issue a pre-sentencing report within a period of two to four weeks. This study established that there was no specialization within the police service regarding arrests of children.

5.0 Conclusion

Policing Juvenile delinquency in Kenya should take another strategy of bringing together State and non-State actors as partners to curb cases of children engaging in deviant behaviors and in this way reduce crimes committed in the streets and arrests. More trainings, advocacy on children rights during arrest and policy making is necessary in order to adequately address the current policing styles of juveniles in conflict with the law.

5.1 Recommendations

There is need for development of training manuals on courses related to arrest of children for all parties involved in the Juvenile Justice system.

Children who are in conflict with the law do not have access to legal representation, thus, it is strongly recommended that policy change to introduce legislations that makes it mandatory for juvenile to be provided with an attorney be made. The attorney should be paid by the government.

The children in need of welfare support in terms of food, clothing, shelter and health care, must not be put in the same custody with delinquent juveniles to avoid contamination and for effective rehabilitation.

Parents ought to exercise strict parental care to their children to prevent engagement in delinquent acts.

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