

Public Policy and Practice in Juvenile Rehabilitation Programmes in Kenya: Current Trends and Needed Reforms

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Abstract

Historically juvenile rehabilitation schools and services in Kenya have oscillated between government ministries of education; home affairs; gender, children and social development; and currently the ministry of labour, social security, and services. This cyclic oscillation implies hesitancy in policy statement on the function of the rehabilitation schools. Furthermore, the practice in juvenile rehabilitation has undergone paradigm shifts from the punitive disciplinarian, to carminative, egalitarian, and systematic paradigms between 1909 and 1995. This is in spite of the numerous international policies on juvenile rehabilitation, prevention of offence and treatment of incarcerated offenders, to which Kenya is a signatory, and is expected to have ratified. Empirical and theoretical support shows that with appropriate policy provisions, an offender is effectively rehabilitated. In view of the cyclic oscillation of juvenile rehabilitation, the Kenyan policy guidelines visa-a-vise international policies, and the current practices in juvenile rehabilitation were examined in this paper, with a purpose of answering the following questions; what are the policy provisions on juvenile rehabilitation in Kenya? Do juvenile rehabilitation policies in Kenya conform to international standards? How effective is the current juvenile rehabilitation in Kenya? This paper created a basis for formulation of rehabilitation principles that lead to effective rehabilitation. This was achieved through an examination of policy and practice in Kenyan public

juvenile rehabilitation schools using mixed research methodology that borrowed aspects of both phenomenology and descriptive survey research designs. The findings indicate inadequate policies, discrepancies between policy and practice and generally, an ineffective rehabilitation programmes.

Keywords: *Policy, Juvenile Offender, Rehabilitation, Reforms*

Introduction

Juvenile rehabilitation refers to the policies, practices, tools and approaches used to modify a child's behaviour (Friend, 2008). It is a form of special needs education for learners with Emotional and behavioural disorder, and in particular, for learners in conflict with the law (offenders). Juvenile rehabilitation was instituted in Kenya in 1900s by the colonial government to deal with young offenders whose activities were considered detrimental to colonial interests (Chloe, 2002). Ever since, the theme on increased efforts to reform juvenile offenders has persisted. However, these efforts have undergone paradigm shifts over the years, from the punitive disciplinarian, to caritative, to egalitarian, and to systematic paradigms between 1909 and 1995 (Mugo, 2004). This paper anchors on the assumption that these paradigm shifts aligned with changes in policy.

This paper focused on public policy and practice in juvenile rehabilitation schools and programmes in Kenya. It aimed at shedding light on the policy framework that informs juvenile rehabilitation. Comparisons between policy and practice through examination of operational programmes followed. This in turn underscores the needed policy reforms for strengthening juvenile rehabilitation in Kenya.

Juvenile rehabilitation in Kenya is mandated to the Department of Children through Rehabilitation Schools and program (Munyao, 2006). The department, schools, and program have undergone cyclic oscillation between government ministries over the years. Existing literature shows that juvenile rehabilitation schools and programmes have oscillated between government ministry of; Education; Home Affairs; Gender, Children, and Social Development; and currently the ministry of Labour, Social Security, and Services (Mugo, Kangeth'e & Musembi, 2006). This

implies hesitancy on policy statement on the function of the rehabilitation schools. At the same time, the country has witnessed increased levels of crime. These preceding factors roused research interest that yielded this paper.

According to Gargiulo, (2012) many policies that are common in SNE have resulted from the interaction of a variety of forces, situations and events, that make it necessary to focus on the needs and provisions for persons with special needs. These forces lead to legislation and litigation for general equity. Furthermore, Friend (2008) argues that variation in rehabilitation programmes has led to a search for those “principles” that distinguish effective treatment interventions from ineffective ones.

A more recent research in Kenya by Kathungu, (2010), shows that the rehabilitation schools and programmes are unaudited despite the frequent changes. Therefore, many questions on juvenile rehabilitation abound, they however coalesce around four main issues: 1. the policy guiding rehabilitation, does it align to international standards and provide guidelines for successful rehabilitation outcomes? 2. The programmes for juvenile rehabilitation, this includes the process of rehabilitation and the rehabilitation personnel; 3. The content of rehabilitation, what are the rehabilitees taught. Does it have potential to deter them from recidivism? 4. Aftercare services for rehabilitees, what are the services offered to rehabilitees who exit the rehabilitation schools. Where are rehabilitation graduates years later? Therefore, there are many research gaps in juvenile rehabilitation.

In this context, this paper focused on these understudied areas, with a main purpose of assessing juvenile rehabilitation policy versus practices, to answer the following questions. What are the policy provisions on juvenile rehabilitation in Kenya? Do juvenile rehabilitation policies in Kenya conform to international standards? Does the policy on juvenile rehabilitation facilitate successful rehabilitation outcomes? In particular, the following objectives guided the work presented in this paper.

Objectives

- To establish the policy provisions for juvenile rehabilitation in Kenya.

- To examine whether juvenile rehabilitation policy provisions in Kenya conform to international standards.
- To assess the effectiveness of juvenile rehabilitation policy in Kenya.

Research Methods

Mixed research method was employed by borrowing aspects of both Phenomenology and Descriptive Survey research designs. According to Creswell (2012), mixed methods research utilizes in-depth contextualized and natural but time consuming insights of qualitative research coupled with the more efficient but less rich quantitative research. This approach allowed for triangulation of different methods of inquiry, data collection, and data analysis.

The population in this paper included nine rehabilitation schools, nine Managers and nine Children's Officers. From this population, a 44.4% sample was selected. The sample comprised four rehabilitation schools selected based on their function and gender, they included Kabete and Getathuru rehabilitation schools for boys, and Kirigiti and Dagoreti rehabilitation schools for girls. The sample also included one Manager and one Children's Officer per school. Three policy documents were also included in the sample. The research employed interviews and document analysis methods of data collection. The researcher interviewed the four Managers and four Children's Officers on aspects of policy and practice. The researcher then conducted content analysis of policy documents. The data were analyzed using descriptive statistics and thematic analysis, and the findings presented in tables, graphs, and narrative form as follows.

Results of the Study

The study managed to obtain information from a total of eight respondents. Document analysis of the Children's Act (2001), National Standards and Regulations for Statutory Children's Institutions (NSRSCI) (2008) and the National Special Needs Education Policy Framework (SNE Policy) (2009) was also done. The research findings were mapped against an analytical framework, which was developed following objectives of the study and the ensuing discussions as follows.

Bio-Data of Respondents

Bio-data of respondents was obtained to provide parameters that supported the study although they were not directly under study. This included working experience of the Managers and Children's Officers in a bid to gauge their capacity for giving reliable information, based on assumption that any respondent with a work experience of six months was capable of responding to the interview questions. Their working experiences are captured in Table 1 below.

Table 1: Working Experience of Managers and Children's Officers

Rehabilitation School	Working Experience in Years	
	Managers	Children's Officers
Kirigiti	16	20
Dagoreti	7	5
Kabete	4	0.5
Getathuru	3	4

All the Managers and Children's Officers had working experiences that ranged between 6 months to 20 years and were all considered to be in a position to give the required information.

Policy Provisions for Juvenile Rehabilitation in Kenya

The legal framework in which special education operates within a particular country shapes the way special education is seen (Farrell, 2009). Against this background, the Managers and Children's Officers were asked to name the policies guiding juvenile rehabilitation in Kenya. The named the following policies shown in Table 2:

Table 2: Juvenile Rehabilitation Policies Named by Managers and Children’s Officers

The Mentioned Policy	Frequency of mention by Managers	Frequency of mention by Children’s Officers
Constitution	1	-
Children Act	4	4
NSRSCI	1	1
Education Act	1	-

Managers and Children’s Officers mentioned four policy documents appearing in Table 2 above, as their guides for juvenile rehabilitation at their schools. All the Managers and Children’s Officers were aware of the Children Act (2001) as the main policy guiding juvenile rehabilitation in Kenya. However, only one Managers and one Children’s Officer mentioned the NSRSCI (2008). This was surprising considering that all documents and forms for juvenile rehabilitation in Kenya in use today are contained within this document.

Other mentioned policies included the Education Act Cap 211 of 1980 (GoK, 1980) and the Constitution of Kenya (2010). Each appears once in the list of managers. Important policies like the SNE Policy (2009) did not feature even once. Furthermore, all the documents mentioned were local, implying that the Managers and Children’s Officer do not consider any international statutes as important guides in their work.

The international policies that the Managers and Children’s Officer were expected to mention included, the Convention on the Rights of the Child (UN, 1989) and the United Nations Standard Minimum Rules for the Administration of Juvenile justice (Beijing Rules) (UN, 1985). Other international policies include United Nations Guidelines for the Prevention of JD (Riyadh guidelines), (UN, 1990a) and United Nations Rules for Juveniles Deprived of their Liberty (Havana Rules), (UN, 1990b). These policies outline the nature of treatment, rights, welfare, and education of the juvenile offender.

Juvenile Rehabilitation Policy Provisions in Kenya versus International Standards for Juvenile Rehabilitation

In Kenya, rehabilitation of juvenile offenders occurs in exclusive schools (Kochung Report, 2003). As a special needs educational function, juvenile rehabilitation anchors on both the policies on special needs education and the policies on juvenile offenders. The government of Kenya has domesticated some of the international policies; for instance, the Convention on the Right of the Child was ratified through the Children Act (2001), and the Beijing rules (UN, 1985) domesticated through the NSRSCI (2008). Many of the international policies on special education and juvenile offenders are yet to be embraced in Kenya. The following is a discussion of ratified and unratified international policies.

Policy Governing Special Needs Education

Several policies on persons with special needs such as the Universal Declaration of Human Rights, (UN, 1948) have been in existence for decades. However, the American Public Law 94-142 was a landmark progress in legislation for the education of persons with disabilities (Gargiulo, 2012). The American Public Law 94-142 passed in 1975, it contain the core principles that ensure the educational rights of learners with special needs (Wright & Wright, 2004). These principles include Zero Reject, Free Appropriate Public Education, Least Restrictive Environment, Non-Discriminatory Evaluation, Parent and Family Rights, and Procedural Safeguards (Friend, 2008). These principles are the basis for most of the other policies in special needs education.

The policy guiding juvenile rehabilitation in Kenya is quite divergent from these principles in the following ways. The children's Act (2001) contravenes the principle on Zero Reject policy through its recommendations that offenders be rehabilitated in exclusive rehabilitation institutions where children remain under the main care of the School Manager. The second principle is Free Appropriate Public Education implying that children are provided with free and appropriate education regardless of their needs. Juvenile rehabilitation in Kenya is free, however it negates in the second part because offenders are committed to rehabilitation schools that are far away from their regular school. Furthermore, the third principle advocates least restrictive environment. According to (Friend, 2008), the

Least Restrictive Environment for most learners is the general education setting. The current rehabilitation schools are very restrictive because, they were conceived as ‘jails’ for children by colonial government (Chloe, 2002), and to date they are used for holding children in conflict with the law. Thus, they still operate as facilitates for incarcerated minors. This presents high chances of ‘labeling’ of rehabilitation graduates, which affects their post-institutional life trajectories.

The fourth principle is Non-Discriminatory Evaluation. It entails a multi-disciplinary approach. This compares favourably to the Kenyan policy on juvenile rehabilitation, which provides for assessment through the NSRSCI (2008) forms. However, the local policy does not provide for the part on multi-disciplinary approach to assessment. The policy is silent on the assessment personnel. Consequently, there are chances of discriminatory evaluation of juvenile offenders.

Kenya developed an SNE policy (2009), however, this policy is sketchy and does not explicitly show how special education will be provided. Some categories of special needs such as the Emotional and Behavioural Disorders under which juvenile rehabilitation falls are only appearing in the list of categories. Consequently, provisions for such learners become the jurisdiction of the individual school.

Policy Governing Juvenile Rehabilitation

The international policies on juvenile rehabilitation include the Convention on the Rights of the Child (UN, 1989), which urges all nations to protect children and outlines the rights of a child who commits offence. Its principles overlap with other international policies on juvenile rehabilitation. The other policies on juvenile rehabilitation include; the Beijing Rules, (1985), the Riyadh guidelines, (1990), and the Havana Rules, (1990). According to Bueren & Tootell, (2014), the later three policies operate within the framework each other.

The set of three policies are the international guidelines for a three-stage process of juvenile rehabilitation. Firstly, the Riyadh Guidelines are social policies applied to prevent and protect young people and children from committing offence. Secondly, the Beijing Rules establishes a progressive justice system for young persons in conflict with the law. Finally, the

Havana Rules safeguards the fundamental rights and establishes measures for social re-integration of young people once deprived of their liberty, whether in prison or other institutions. Each of the three policies was analyzed and its ratification in Kenya examined as follows.

United Nations Standard Minimum Rules for Administration of Juvenile justice (Beijing Rules)

The Beijing Rules establishes a progressive justice system for young persons in conflict with the law. The Rules have six parts. The first part is on General Principles, it refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, by minimizing intervention for offending through the juvenile justice system, and reducing related harm such as ‘labelling’. This principle requires diversion of children from the juvenile justice system, quite contrary to the local policy (Children’s Act, 2001) which requires that all children be apprehended to a children’s court.

The second part is on Investigation and Prosecution; it requires that a judge or other competent official or body immediately consider the issue of release of an apprehended juvenile, (Beijing Rule, 10.2.). Again, the Children’s Act, (2001) contravenes this by limiting the jurisdiction of releasing a child to the court, so that an apprehended child is processed all the way to presentation before a court before considerations for release. The third part relates to investigation and is not part of rehabilitation.

The fourth part the Beijing rule is on Non-Institutional Treatment, section 18.2 of stipulate that ‘no juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary’. The Children’s Act, (2001) negates by recommending that offending children who are committed stay at the rehabilitation school while the committal order is in force.

The fifth part of the Beijing Rules is on Institutional Treatment; its section 19.1 states that the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period. This is not adhered to in Kenya because, although the Children’s Act, (2001) give a variety of options of handling an apprehended child, most magistrates and judges consider institutional care as the first resort.

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh guidelines)

The Riyadh Guidelines are social policies applied to prevent and protect young people and children from committing offence. These Guidelines stress the “need for, and importance of progressive delinquency prevention policies” that should:

Avoid criminalizing and penalizing a child for behavior that does not cause serious damage to the development of the child or harm to others.

Provide educational opportunities that meet the varying needs of young people, especially those at risk or in special need.

Recognize that part of maturing often includes behaviour that does not conform to societal norms, and that tends to disappear in most individuals with the transition to adulthood.

Avoid labeling a youth a deviant or delinquent as this contributes to negative patterns of behaviour.

These guidelines by the United Nations have not been implemented in form of policy formation in Kenya. This may be the reason for the rise in levels of juvenile delinquency in Kenya.

United Nations Rules for Juveniles Deprived of their Liberty (Havana Rules)

The Havana Rules safeguards the fundamental rights and establishes measures for social re-integration of young people once deprived of their liberty, whether in prison or other institutions. Rule 17 states that detention before trial shall be avoided to the extent possible. This is not provided for through policy on juvenile rehabilitation. All offenders are apprehended and kept under police custody or children’s remand while investigation is in progress. Rule 19 of the Havana Rules is adhered to, through policy provision within the Children’s Act (2001) requiring that all records such as the Social Inquiry Form remain highly confidential. Rule 20 states that no offender will be received at rehabilitation institution without a varied committal order. This is ratified through the Children’s Act (2001), which states that the committing authority shall be a presiding judge or magistrate.

Most of the Havana rules are adhered-to in practice. However, they have not been ratified into a policy document. Some of these rules appear in the children's act (2001). Other Rules in this set of rules are not unrealizable in the current local rehabilitation schools and programmes. For instance, section C of the Havana Rules requires that offenders be assessed, classified, and appropriately placed in the right programmes. This is unrealistic in Kenya because of the limited rehabilitation facilities in terms of physical facilities, personnel, and tools. The Managers and Children's Officers confirmed that there are few dormitories, which leads to mixing children with different risk levels at the rehabilitation schools and the consequent behavior contamination. They also commented on inadequately trained personnel, saying that less than a quarter of their personnel were qualified in behavioural sciences.

Section J of the Havana Rules states that every committed juvenile should be allowed as much contact with the wider community. This is the opposite of the provisions within the Children's Act saying that a committal order shall be in force unless revocation is done by the committing court. Moreover, during the committal period, the juvenile can only access the wider community through a leave of absence, which the manager said is hard to obtain when a rehabilitee plans a visit outside the school.

The Havana Rules Section N, outlines in details how the rehabilitee should return back to the community, and recommends that assistance should be given to the exitee in form of suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration, and until they re-establish themselves in the community. The Managers and Children's Officers were quick to say that the post-institutional phase of juvenile rehabilitation was non-functional. This resonates earlier findings by Wakanyua, (1995), Munyao, (2006), and Mugo, et.al, (2006) showing that the exit strategies in Kenya were poor and there was no follow up of exitees. With this background, this study sought to assess the effectiveness of juvenile rehabilitation in Kenya.

Assessment of the Effectiveness of Juvenile Rehabilitation Policy in Kenya

According to Watt (2006), the levels of recidivism is a major factor that can be used in determining the success of a rehabilitation programme and hence its efficacy. This paper established the levels of recidivism through interviews and document analysis. The Managers and Children's Officers were asked their opinions regarding effectiveness of juvenile rehabilitation in Kenya. Their responses were shown in figure 1.

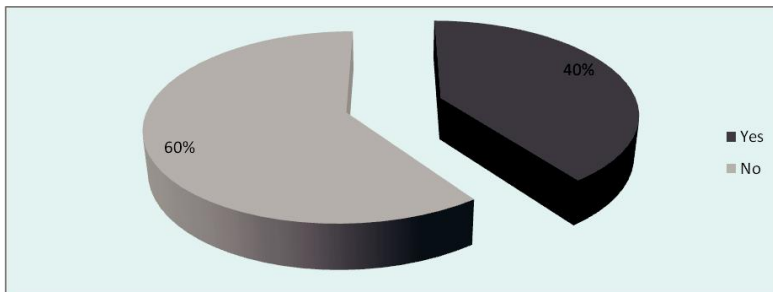


Fig. 1: *Opinion of Managers and Children's Officers on Effectiveness of Juvenile Rehabilitation Programme*

The above research findings clearly show that more than a half of the Managers and Children's Officers felt the juvenile rehabilitation in Kenya was ineffective. To ascertain their responses, document analysis of Summary Assessment Report of Newly Admitted Child was done to identify repeat offenders. This analysis entailed looking for records of repeat offenders from the forms entered between July 2011 and January 2012 when the data collection was concluded. Ninety Summary Assessment Report of Newly Admitted Child forms were analyzed. The findings were as follows.

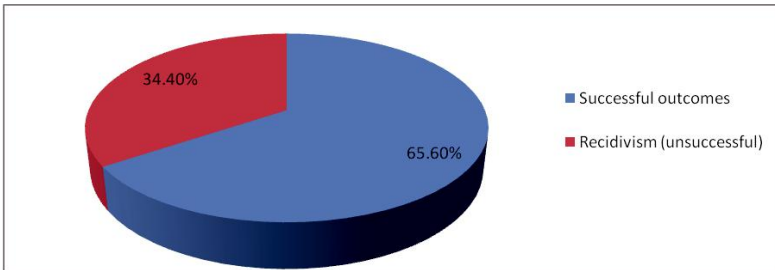


Fig. 2: *Success versus Recidivism of Juvenile Rehabilitation Outcomes*

These findings show that more than a third 31(34.4%) of the ninety rehabilitation graduates whose forms were analyzed came into conflict with the law in their post-institutional lives. This translates to 59(65.6%), successful outcomes of juvenile rehabilitation. This denotes very high levels of recidivism among graduates of public juvenile rehabilitation institutions. The findings negate the earlier findings by Watt, (2006) showing that many children stop offending when appropriate juvenile rehabilitation is offered.

A level of recidivism that exceeds a third may be considered very high considering that only a small number of offenders are required to make a society unsafe, and that these children are released back into the society to continue offending, probably to eventually graduate to hardened criminals, and to ultimately find themselves committed to adult jails. This situation is avertable by provision of better policies.

Summary of Results

Juvenile rehabilitation in Kenya anchors on international policy and guidelines. The government of Kenya has ratified some of these policies including the Convention on the Right of the Child (1984) through the Children Act (2001), and the Beijing rules (UN, 1985) domesticated through the NSRSCI (2008). This shows that most of the international policies are ratified in Kenya close to two decades after their inception. Some international policies are yet to be ratified through policy formulation including the Riyadh Guidelines (1990) more than two decades since their inception.

The Children's Act (2001) is the main policy guiding juvenile rehabilitation in Kenya. However, it is sketchy and lacks important guidelines on assessment of offenders, rehabilitation personnel, and after care services. The policy does not categorically state the function of the rehabilitation programme, this has led to frequent oscillations of the programme between different government ministries.

International policies explicitly outline the provisions for learners with special needs. On the contrary the local SNE Policy (2009) is sketchy and fails to outline provisions for various categories of learners with special needs. Generally, there are glaring discrepancies between international policies and local policy statements regarding juvenile rehabilitation.

Local policy on juvenile rehabilitation contravenes international standards by holding a child captive during investigation, by rampant use of institutionalized care and treatment of offenders, and by inadequate provisions on assessment of offenders. Furthermore, the deficiencies between international and local policies are imprinted by the observed high levels of recidivism among juvenile offenders of up to a third and above. This implies that juvenile rehabilitation programme in Kenya is inefficient.

Conclusions

The researcher concluded that there are discrepancies between international and local policy frameworks on juvenile rehabilitation. These discrepancies lead in effective rehabilitation and high levels of recidivism. The existing local policies are sketchy and lacking in many areas including assessment, rehabilitation personnel, and treatment of children with SNE who find themselves in conflict with the law.

In the time ahead, there is need to improve juvenile correctional policy and practice, to embrace the view that rehabilitation programs, informed by the principles of effective intervention, can “work” to reduce recidivism and create safer societies. An effective rehabilitation programme would provide rehabilitation in least restrictive environment and ensure the rehabilitees are not labelled. In addition, it would provide follow-up services until the rehabilitee is comfortably settled for proactive community life. The paper recommends policy review to address the concerns raised in this paper.

Recommendations

This paper recommends the following changes for the enhancement of public policy and practice in juvenile rehabilitation:

The government should as much as possible align local policy on juvenile rehabilitation to international perspective to capture all the gains within the models composed by a wide variety of professionals from different countries. This translates to more refined local policies and guidelines.

The government should provide policy guideline to facilitate diversion of children from the juvenile justice system in line with the Beijing and Havana Rules.

The special needs education policy guidelines should include information on rehabilitation of children with special needs who present problem behaviour.

The juvenile justice system should provide guidelines facilitating thorough assessment of the offender and ensure the rehabilitation programmes address the cause of behaviour, particularly those relating to the home background.

The government should provide adequate funds to develop more rehabilitation facilities to reduce behaviour contamination, and to facilitate adequate post-institutional phase of rehabilitation to reduce recidivism.

Through government revolving funds, the concerned ministry should provide rehabilitation graduates with resources that enable them to become self-reliant by introducing them to agencies of government funds for youth to reduce recidivism, and foster safer societies.

The government should steer rehabilitation of juvenile offenders towards inclusive schools to eliminate the 'labelling' aspect of the rehabilitation programmes and to embrace the current practice of inclusive education.

The government should employ qualified personnel to enhance the efficacy of the rehabilitation programmes.

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