

POLICY AND PRACTICE IN THE ASSESSMENT OF JUVENILE OFFENDERS IN PUBLIC JUVENILE REHABILITATION SCHOOLS IN KENYA

By: Beth N. Wambugu, Madrine King'endo, Joyce N. Kinyua

Contact Email: bwnyawira@gmail.com

kmadrine@gmail.com

Authors details:

Dr. B.N. Wambugu – Lecturer, Moi University

Dr. M. King'endo – Lecturer, Kenyatta University

Mrs. J. N. Kinyua – Lecturer, Karatina University

Abstract

Historically assessment of juvenile offenders began during colonial era, when every young people who disobeyed colonial rules of regional zoning, labour provision, and hut tax among others were considered offenders and detrimental to colonial interests. Subsequently, the colonial government sentenced such people to institutional rehabilitation, which employed punitive measures to deter the young offenders from reoffending, thereby protecting the colonial interests. The independent government inherited this system of handling offenders. Generally, juvenile rehabilitation practices in Kenya have undergone paradigm shifts from the punitive disciplinarian, to caritative, egalitarian, and systematic paradigms between 1909 and 1995. On the contrary, policies guiding assessment of offenders have not undergone as much evolution. To date, courts of law still process children in conflict with the law. The court makes a ruling to either release the child or commit the child to rehabilitation or probation care. The main policies on which juvenile rehabilitation anchors on are the Children Act, and Special Needs Education Policy. These policies are largely silent on assessment and do not provide opportunities for diversion of children from the courts. Consequently, every child in conflict with the law is processed through a court of law. The interaction of the child with a law court is labeling and impacts on the rehabilitation outcomes. The paper created a basis for comparing policy versus practice in the assessment of juvenile offenders aiming to shed light on the status quo, and project policy on assessment for diverting children from the courts of law. The study utilized mixed method research approach, which borrowed aspects of both phenomenology and descriptive survey research designs. The findings indicate lack of policy on assessment of offenders, and ineffective assessment procedures and tools.

Key Words: Policy, Practice, Assessment of Juvenile Offenders

Introduction

Juvenile rehabilitation refers to policies, practices, tools and approaches used to modify a child's behaviour (Friend, 2008). It is a form of special needs education (SNE) for learners with Emotional and Behavioural Disorder, and in particular, for learners in conflict with the law (juvenile 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). The assessor of the time weighed a child's behavior against the colonial dictates for regional zoning, security, and maximization of African labour. Ever since, the theme on increased efforts to reform juvenile offenders has persisted in Kenya. 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); consequently, this paper assumed that assessment of the offender has changed over the years in tune with the paradigm shift in overall rehabilitation practices. Furthermore, this paper anchors on the assumption that these paradigm shifts aligned with changes in policy and consequently improvement in assessment and rehabilitation practices.

This paper therefore focused on public policy and assessment practices in juvenile rehabilitation schools in Kenya. It aimed at shedding light on the policy framework that informs assessment of juvenile offenders. Comparisons between policy and practice through examination of operational assessment tools and procedures followed. This in turn underscored the needed policy reforms for strengthening assessment of juvenile offenders in Kenya.

The overall mandate of juvenile rehabilitation in Kenya falls under the Department of Children through rehabilitation schools (Munyao, 2006). The department and schools have undergone cyclic oscillations between government ministries over the years. Existing literature shows that the department and schools have oscillated between government ministry of; Education; Home Affairs; Gender, Children, and Social Development; (Mugo, Kangeth'e & Musembi, 2006), and currently the ministry of Labour, Social Security, and Services. 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 Kirk, Gallagher and Anastasiow (2003) assessment is the systematic process of gathering educationally relevant information to make legal and instructional decisions about the provision of special services. Assessment of a juvenile offender aims at gathering information on behavioural aspects that hinder a child from learning at the regular school; assessment also involve identifying relationships between any academic problem and the learning environment.

Special needs education scholars (Kirk, et. al 2003; Meyen and Skrtic, 1988) recommend multidisciplinary assessment where several professionals from varied backgrounds assess a child. Multidisciplinary assessment facilitates identification of most of the causes of behaviour disorders. Meyen and Skrtic, (1988) insists that identification procedures must be accurate for learners with special needs to obtain the needed educational resources for intervention. The need for accurate assessment of juvenile offenders can therefore not be over-emphasized.

Mugo, Musembi and Kang'ethe (2006) compiled An Annotated Bibliography of Research Between 1958-2005 in Kenya, they found that law enforcement officials carried out arrest of children brutally, and that the children were abused and exploited with impunity for being homeless among other things. These researchers established that the same children were processed back and forth through the juvenile justice system, and that some children were denied of their liberty even though they were not in conflict with the law. Moreover, a more recent research by Kathungu (2010) shows that rehabilitation schools are unaudited despite the frequent oscillations between government ministries and paradigm shifts in their operations.

Therefore, many questions on juvenile rehabilitation abound, they however coalesce around three main issues in this study: the first issue concern the policy provisions on assessment of offenders, what are the policy provisions? How are offenders identified? The second issue focuses on assessment tools and procedures; can they identify all causes of behavior disorders? The third issue relates to effectiveness of the policy provisions and practice in assessment of juvenile offenders. Are they able to distinguish between offenders and none-offenders thereby leading to diversions and effective rehabilitation? These many questions point out research gaps on policy and practice guiding assessment of the juvenile offender in Kenya. In this context, the paper focused on these understudied areas, with a main purpose of assessing juvenile rehabilitation policy versus practices in assessment of juvenile offenders. In particular, the following objectives guided the work presented in this paper.

Study Objectives

1. To establish the policy provisions for assessment of juvenile offenders in Kenya.
2. To examine whether assessment tools and procedures in Kenya conform to policy.
3. To determine the effectiveness of assessment of juvenile offenders.

Research Methods

Mixed method research approach was employed by borrowing aspects of both Phenomenology and Descriptive Survey research designs. According to Creswell (2012), mixed methods research approach 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 target population included the 9 rehabilitation schools mandated to rehabilitate children in conflict with the law, 9 managers, and 9 Children's Officers (COs), and 130 service providers. From this population, the researcher purposely sampled the two rehabilitation schools that assess all committed children, which are Getathuru for boys and Kirigiti for girls based on their function and gender. The respondents included one Manager and one Children's Officer per school, sampled purposively, and ten service providers per school, randomly selected based on the officer on duty at the time of the study. In total, 24 respondents comprising of 2 Manager, 2 Children's Officers, and 20 service providers participated in the study. In addition, 3 documents were selected purposively for content analysis on policy provisions.

The methods of inquiry employed were interviews, questionnaires, and content analysis. Managers and Children's Officers responded to interviews on aspects of policy and practice, while the service providers responded to the questionnaire items on assessment tools and procedures. The researchers conducted content analysis of policy documents to establish policy provisions on assessment of offenders. Also analyzed were assessment tools used in Kenya. 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 24 respondents. Content analysis of the Children's Act (2001), National Standards and Regulations for Statutory Children's Institutions (NSRSCI) (2008), and the National SNE Policy Framework (2009) was done. A previously

developed analytical framework based on objectives of the study guided presentation of research findings. The following sections present the research results and the ensuing discussion.

Bio-Data of Respondents

Bio-data of respondents obtained provided parameters that supported the study although these parameters were not directly under study. These included working experience of the managers and Children's Officers, and professional qualification of service providers.

Working Experience of Managers and Children's Officers

The study assumed that a work experience of six months gave a respondent the needed capacity for responding to the interview questions adequately. Managers and Children's Officers stated their working experiences as follows;

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

Rehabilitation School	Working Experience in Years	
	Managers	Children's Officers
Kirigiti	16	20
Getathuru	3	4

The Managers and Children's Officers had working experiences that ranged between 3 and 20 years, they were all capable of responding to the interviews questions.

Capacity Levels of Service Providers at Rehabilitation Schools

In this paper, professional qualification was the measure of capacity levels of the service providers at rehabilitation schools. The study assumed that a service provider with form four education or minimum professional qualification had the capacity to give the required information. In addition, the researcher weighed the staff capacities levels against policy provisions on basic professional qualification for service providers. The results as presented as follows;

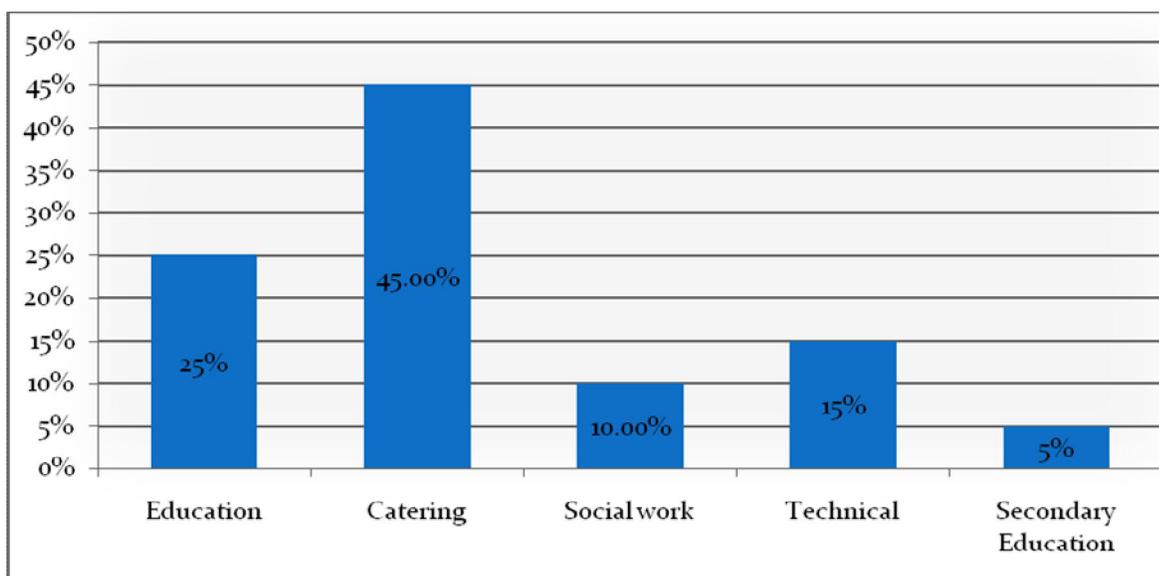


Figure 1: Distribution of Service Providers by Professional Qualifications

The findings shown in the bar graph Figure 1 indicate that majority 9,(45%) of the service providers were qualified in catering, and 5,(25%) had qualifications in education. Another 3,(15%) were qualified in technical areas including computer work and hairdressing, while 2,(10%) were qualified in social work. One (5%) of the staff members had secondary education.

These findings indicate that all the service providers were qualified to respond to the questionnaire. It also emerged that most service providers assessing children at juvenile rehabilitation schools were qualified in hospitality and culinary work. Therefore, they lack skills and qualifications in behavioural sciences, which are necessary for handling behavioural matters. Discussions on policy provisions on qualification of service providers occur in the subsequent section.

Policy Provisions for Assessment of Juvenile Offenders in Kenya

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

Table 2: Policies Guiding Assessment of Juvenile Offenders 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 the policy guidelines for assessment of juvenile offenders in Kenya. All Managers and Children's Officers mentioned the Children Act (2001) as the main policy guiding assessment of juvenile offenders in Kenya. However, only one Managers and one Children's Officer mentioned the NSRSCI (2008). This was surprising considering that all assessment documents and forms used in Kenya today are contained within this document. Other policies mentioned included the Education Act Cap 211 of 1980 (GoK, 1980) and the Constitution of Kenya (GoK, 2010). Each appears once in the list as mentioned by the managers.

The researcher observed that important policies like the national SNE Policy (2009), Persons with Disability Act (2003), and the Kochung Report (2003) did not feature even once. Furthermore, all the documents mentioned were local, implying that the Managers and Children's Officers 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 juvenile rehabilitation practices in terms of nature of

treatment, rights, welfare, and education of the juvenile offender. Kenya is a signatory to these policies and should have ratified them all considering that the youngest of the international policies is more than two decades old. The government of Kenya has so far domesticated some international policies; for instance, the Convention on the Right of the Child ratified through the Children Act (2001), and the Beijing rules (UN, 1985) domesticated through the NSRSCI (2008).

Policy Provisions versus Juvenile Rehabilitation Practices In Kenya

They study proceeded to compare policy and practice. This section included all findings and discussions on policy provisions versus practices on varied selected aspects of juvenile rehabilitation. As an SNE function juvenile rehabilitation anchors on policies on SNE and on juvenile offenders. This section has four areas based on the selected aspects of juvenile rehabilitation. The research considered policy provision for each aspect and compared the provisions with actual practice.

Qualification of Service Providers

There is no policy provision on the qualification of service providers at rehabilitation schools. The Children Act (2001) is silent on the topic. The SNE (2009) in Part 1 of Section 1.8 prescribes professional delivery of services to learners with special needs for their best interest; it is however not explicit on the professional qualification. Furthermore, a government task force - the Kochung (2003) found that only 20% of teachers in all SNE programmes were trained. The task force recommended training of SNE teachers and support staff in all areas of special needs.

Mugo (2004), in a doctoral thesis on 'Rehabilitation of Street Children in Kenya' questioned whether juvenile rehabilitation was a field for sociologists and advocates, or a field for educators. His study identified juvenile rehabilitation as an educational function and called for urgent provision of policy guidelines on the same. Moreover, the institutions providing juvenile rehabilitation in Kenya are called schools. Juvenile rehabilitation is therefore indeed an educational function.

Education in public schools in Kenya is offered by teachers employed by the government. This is not the case at rehabilitation schools considering that this study established that only 25% of the service providers have a background in education. These findings are supported by research by Kathungu (2010) which found that service provider at rehabilitation schools lacked basic qualification. This study therefore concluded that there are no policy provisions on who should provide juvenile rehabilitation, and that in actual practice, unqualified personnel is engaged by the government to handle children with emotional and behavioural disorders.

Assessment of Juvenile Offenders

The SNE (2009) policy acknowledges emotional and behavioural disorders as one of the category of learners with special needs in section 1.1. Juvenile offenders are a sub-category of learners with emotional and behavioural disorders. The SNE (2009) proceeds to state that, the Educational Assessment and Resource Centres ensure early identification, assessment, intervention, and placement of learners with special needs and disabilities. In practice, learners with emotional and behavioural disorders are assessed at the two national Reception and Assessment Centres for either gender (also called rehabilitation schools) after a court of law have assessed them and committed them to institutional care, – this assessment at Reception and Assessment Centres is not provided-for in any policy document in Kenya.

Furthermore, during the assessment at the law courts, any child who commits an act which when committed by persons beyond the statutory age of 18 years (Children Act, 2001) is considered a crime, is committed to institutional rehabilitation without much assessment of the child for special needs including the context of the offence which could be the cause of the behaviour disorder. As such, some children are committed into juvenile rehabilitation for reasons beyond their control, such as dysfunctional families that lead to street life among children. The assessment is therefore wrong and only aggravates a child's life situation. These findings triggered interest in establishing the tools used to assess a child's behaviour. This is presented below.

Tools for Assessing a Child's Behaviour Disorders

Apart from stating where the assessment would take place (the Educational Assessment and Resource Centres), all policies are silent on the procedure and tools of assessment. This study focused on the assessment tools by asking the service providers to name the assessment tools used to assess a child's behaviour at the rehabilitation school. The data was analysed under the mentioned tool followed by computation of frequencies and percentages for each tool. The results are shown in Figure 2 that follows.

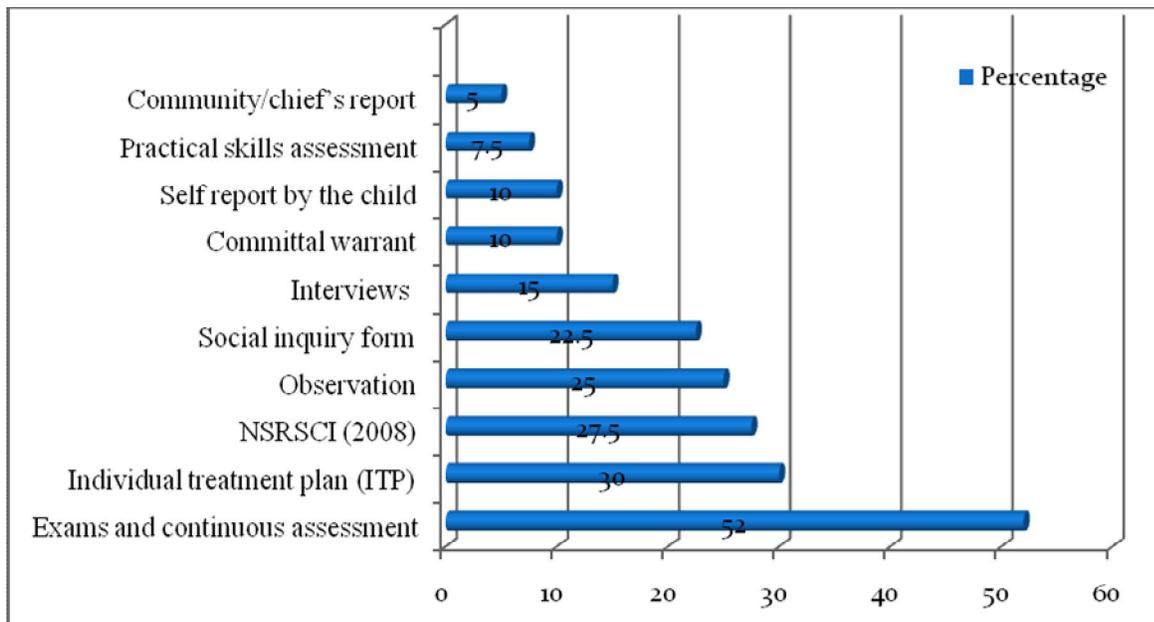


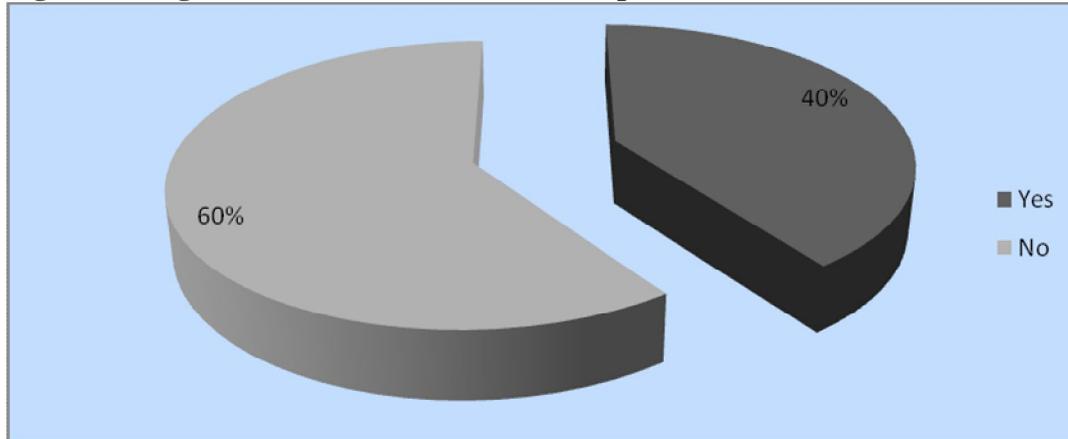
Figure 2: Assessment Tools for Assessing Behaviour Mentioned by Service Providers

The information on Figure 2 show an assortment of tools implying that either the service providers are not certain what assessment tools are yet they do conduct assessments, or that different tools to assess a child's behaviour. This array of tools may also be ascribed to lack of professional capacities or relevant training in assessment among service providers. The assortment of tools named clearly implies lack of policy provisions and unprofessional practice where members of staff cannot name or agree on the tools they use in their line of duty. The researcher concluded that there are no policy guidelines and that assessment of offenders is haphazard.

Assessment of the Effectiveness of Juvenile Rehabilitation Policy in Kenya

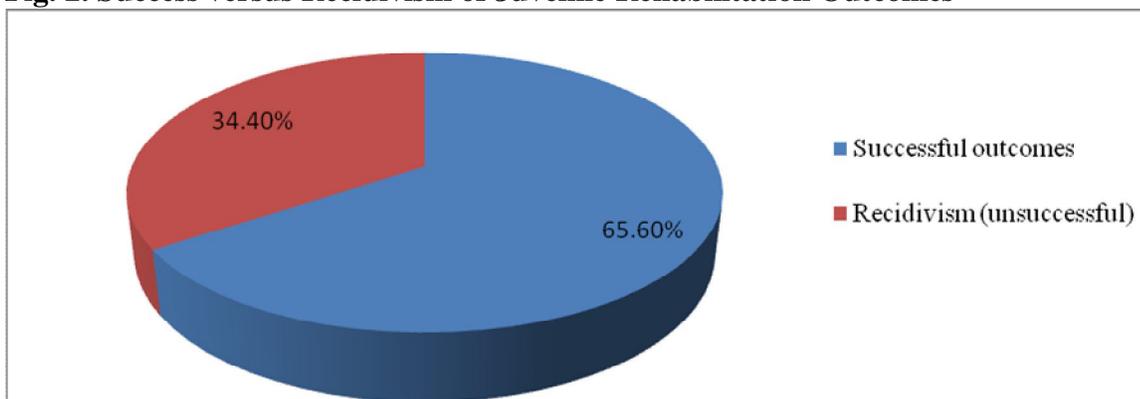
According to Watt (2006), levels of recidivism is a major factor that can be used in determining the success of a rehabilitation programme and hence its efficacy. This paper established the levels of recidivism through interviews and document analysis. The Managers and Children's Officers gave their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

Fig. 2. Managers' and Children's Officers' Opinions on Effectiveness of Rehabilitation



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 from 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 have 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.

References

- Chloe, C. (2002). Juvenile Delinquency in colonial Kenya, 1900-1939. *The Historical Juvenile offender Journal* (2002), 45:129-151. Cambridge university press: London.
- Bueren, G. & Tootell, A. (2014). Beijing Rules: Defence for Children International: Faculty of Laws, Queen Mary and Westfield College, University of London. Retrieved at: www.child-abuse.com/childhouse/childrensrights
- Creswell, J. (2012). *Educational research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research (4th ed.)*. Upper Saddle River, NJ: Pearson Education.
- Farrell, M. (2009). *Foundations of Special Education*. West Sussex: Wiley-blackwell.
- Friend, M. (2008). *Special Education: Contemporary Perspectives for School Professionals (2nd Ed.)*. London: Pearson.
- Gargiulo, M. R. (2012). *Special Education in Contemporary Society: An Introduction to Exceptionality. (4th ed.)*. London: Sage.

- Government of Kenya. (1980). Education Act Cap 211 of 1980. Nairobi: Government Printers.
- Government of Kenya. (2001). Kenya Gazette Supplement No. 95 (Act. No. 8). 'The Children Act, 2001'. Nairobi: Government Printers.
- Government of Kenya. (2003). (Kochung Report). A Report of the Task Force on Special Needs Education: Appraisal Exercise. Ministry of Education: Nairobi
- Government of Kenya. (2008). National Standards and Regulations for Statutory Children's Institutions. Nairobi: Government Printers.
- Government of Kenya. (2009a). The National SNE Policy Framework. Nairobi: Government Printers.
- Government of Kenya. (2009b). Statistical Abstract 2009: Kenya National Bureau of Statistics. Nairobi: Government Printers.
- Government of Kenya. (2010). The Constitution of Kenya, (Act. No. 9, of 2008). Nairobi: Government Printers.
- Kathungu, B. (2010). Relationship between Emotional Intelligence and Juvenile offender Performance among Service Providers in Rehabilitation Schools in Kenya. (Unpublished Doctoral thesis). Kenyatta University, Nairobi.
- Mugo, K. J. (2004). *Juvenile Rehabilitation of Street Children in Kenya: Approaches, Quality and Challenges*. New Jersey: Transaction publisher.
- Mugo, J., Kangethe R. & Musembi D. (2006). Juvenile Justice and Management of Juvenile Offenders in Kenya: An Annotated Biography of Research 1958-2005. Office of the Vice President and Ministry of Home Affairs: Nairobi.
- Munyao, R. (Ed). (2006). Practice and Guidelines on Exit Strategies for CYNISP rehabilitation school. Department of Children and Consultative Forum on Exit Strategies. Office of the Vice President and Home Affairs: Nairobi.
- United Nations. (1985). Standard Minimum Rules for the Administration of Juvenile Justice. (The Beijing Rules).
- United Nations. (1989). Convention on the Rights of the Child (1989). UN General Assembly Document A/RES/44/25.
- United Nations. (1990a). Guidelines for the Prevention of Juvenile Delinquency. (The Riyadh Guidelines).
- United Nations. (1990b). Rules for the Protection of Juveniles Deprived of Their Liberty. (The Havana Rules).

- Wakanyua, S.N. (1995). Juvenile Rehabilitation of Juvenile Delinquents: A Survey of Approved school in Kenya. (Unpublished Master's Thesis). University of Nairobi, Nairobi.
- Watt B. (2006). Juvenile Recidivism: Criminal Propensity, Social Control and Social Learning Theory. Retrieved at: www.wiki/sociallearnintheory