



Handling Children through the Juvenile Justice System

Building synergy with juvenile justice agencies on child care and protection: Experiences, challenges, opportunities and Key actionable areas

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HAKI YA MTOTO NI JUKUMU LETU SOTE

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News headlines

- ▶ Child defiles and kills another,
- ▶ gets killed by a mob
- ▶ Children arrested in disco



Njia

- Definitions
- Description of the Juvenile Justice system
- How to handle the Child in Conflict with the law
- How to handle the child in need of care and protection
- Shida!
- Opportunities
- Synergy



definitions

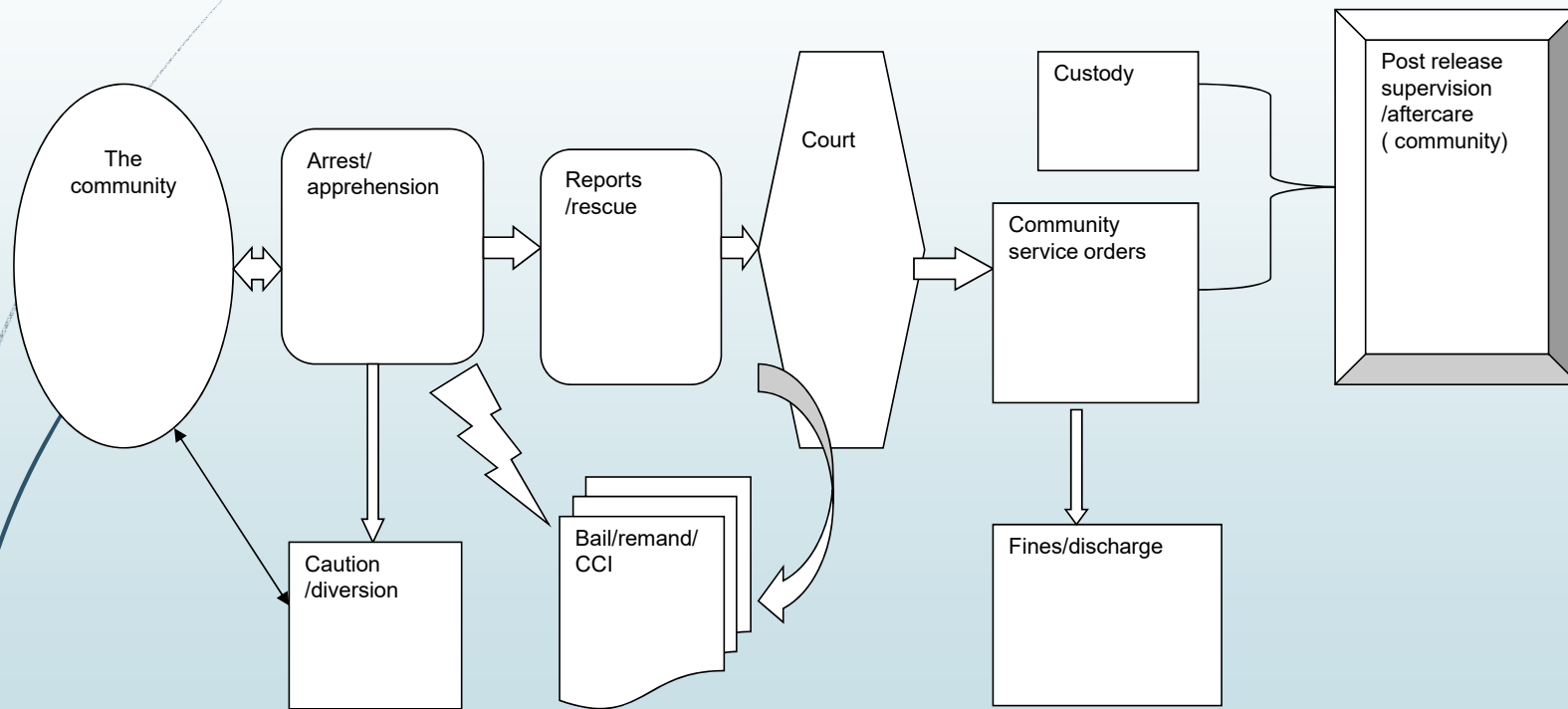
- Child – Katiba, Children Act- any human being below the age of 18
- Justice system- formal and informal, religious, secular , administrative
 - Art 159 Katiba - recognizes informal systems
 - Reporting,
 - investigation,
 - resolution of disputes ,
 - allocation of legal responsibilities,
 - conferring and determining legal status,
 - allocation of care giving responsibilities
 - Socio and economic protection of the child
 - Refugee status determination, immigration procedures
 - Transitional justice processes and structures



Definitions

- ▶ The child offender
- ▶ Suspected, arrested
- ▶ Child in need of care and protection
- ▶ Categories

The processes a child goes through in the Kenyan criminal justice system (CCPO)





The JJS

Formal

- ▶ The Criminal justice system
- ▶ The Civil justice system
- ▶ Child in conflict with the law
- ▶ Child in contact with the law
- ✓ Subject of matrimonial proceedings
- ✓ Inheritance
- ✓ Witness
- ✓ victim

Informal

- ▶ Elders
- ▶ Clans
- ▶ Family
- ▶ School boards
- ▶ Religious 'courts'
- ▶ Traditional courts



Child in Conflict with the law vs. Child in need of care and protection : Best Interests

- ▶ the welfare of the child is paramount
- ▶ Section 4 of the CA, Article 53 of the Katiba- both Int'l and regional instruments
- ▶ " the term generally refers to the deliberation that **courts** undertake when deciding what type of **services**, **actions**, and **orders** will **best serve a child** as well as **who is best suited to take care of a child**".
- ▶ Distinction is only for the purposes of the **procedure** and the **final orders**

Best Interests of the child :Constitutional guarantees:

(1) Every child has the right—(a) to a name and nationality from birth; (b) to free and compulsory basic education; (c) to basic nutrition, shelter and health care;(d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour; (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and (f) not to be detained, except as a measure of last resort, and when detained, to be held— (i) for the shortest appropriate period of time; and (ii) separate from adults and in conditions that take account of the child’s sex and age. (2) A child’s best interests are of paramount importance in every matter concerning the child.



Section 4 children Act

- ▶ 4. Survival and best interests of the child
- ▶ [4. Survival and best interests of the child](#)



Applicable Guarantees

- ▶ Article 49
- ▶ Persons deprived of Liberty
- ▶ Article 50
- ▶ Equality before the law and fair trial- whether offender or victim
- ▶ The right to participation in the proceedings, right to be treated with dignity
- ▶ Vulnerability- age, nature of offence, special needs
- ▶ All actors together



Child in conflict with the law

- Same procedure as for adults
- Only exception – DIVERSION- which ought to be used before case gets in to the system- away from the formal justice system – alternatives/restorative-family community
- Reconciliation-accountability-responsibility-reintegration
- Constitutional fiats article 53
- Children Act provisions
- Reporting stage- police, village elder
- Child offender rules



Child Offender Rules: Police

- Reporting- what do we say?
- Arrest /apprehension- how is it done
- To be told why
- Booking and detention at police station: CPU: Mandatory
- Duty of OCS to inform the parents or guardians of the child; the DCS of the arrest. Ensure presence of the parent or guardian of the child, or an advocate appointed to represent the child at the time of any police interview with the child.
- Where parent or guardian cannot immediately be contacted or cannot be contacted at all, a Children's Officer or an authorised officer be informed as soon as possible after the child's arrest so that he can attend the police interview.
- Bail, detention, transport



CIL Court

- Atmosphere
- Court cells
- Plea, pre bail reports, parents, guardians, fit person **Before** Remand
- Legal representation
- Psycho social support
- Timely reports: SIR, AAR, PBR, BAR, POR, COR, CSOR, PSR, VIS, Progress Reports, EARS,
- Orders under s. 190-
- Throughcare
- Transfer to institution Rehabilitation school, Probation hostel, Borstal, KYCTC



Child in need of care and protection

- S. 119 categories
- [Children in need of care and protection](#)
- Authorised officers reports/ apprehension by the police/ presentation to court as P&C
- Victim of offence- P&C file
- Child Witness- P&C file
- Child in civil proceedings – P&C file
- Reports AAR, SIR, COR, FAR, Psychologists Report, Progress Reports
- Orders to be made



Others systems

- ▶ AJS

Article 159(2) (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted,

Subject to the bill of rights, the principles of justice and morality , and consistency with the constitution and other written law

The standard is set out in the Constitution- Article 27 (4) non discrimination



Section 114 Orders: Judicial Orders

- Access: visit, stay, contact
- Residence
- Exclusion: violence; threat of violence- remove or restrain the perpetrator
- Child assessment: investigation, evaluation, welfare & upbringing
- Family Assistance: advice, counselling and guidance to a child, parents custodian, guardians, the child's relatives, or any person with care & control
- Wardship- protection and custody of the court
- Production: harbouring, concealment, unlawful detention, intent to remove from jurisdiction: disclose, produce, restrain



Other systems.....

- Religious Courts
- Article 170 (5) The jurisdiction of a Kadhis' court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.
- School boards
- Clans and Elders



The Institutions

- Rehabilitation , Borstal, YCTC, Probation Hostel, Rescue Centres, CCI
- Committed through Court Orders
- Following a Social Inquiry Report
- That order is reviewable
- It is expected that there will be continuous linkages among the relevant JJAs- the court, the committing office, the community, the police, the institution through reports, quarterly reports



Institutions....

- Rehab schools : Separate section sexes, and age categories, and children offenders and children in need of care and protection.
- Transfer, post rehabilitation supervision- Powers of the director not absolute; but being subject to a court order it only follows that the court ought to be involved-and all the other principles- parental and child participation etc
- Application -removal t borstal, treatment, increase in period in the remand



Back to community

- Reintegration
- Supervision
- Community Acceptance
- Community Child Protection Councils eg within Nyumba Kumi Initiatives
- Do not stigmatise



Shida! Actionables

- ▶ Knowledge, Skill and attitude Gaps
- ▶ Children are not little people- responsive



► Asante