

## Perceptions of Justice Involved Children on the Child Justice System in Nairobi County, Kenya

\*Florence Mueni Muema, Stella Kemuma Nyangwencha & Margaret Njoroge

United States International University-Africa

Email: [fxmueni@gmail.com](mailto:fxmueni@gmail.com)

\*Corresponding author

Cite: Muema, M.F., Nyangwencha, S.K., & Njoroge, M. (2023). Children experiences of the child justice system in Nairobi County, Kenya. *The University Journal*, 5(3), 1-16.

---

### Abstract

---

*Children seeking justice, interact with numerous agencies as they navigate through the justice system. They are more often than not subjected to a myriad of processes some of which are too complex and even traumatizing. Despite the existence of many international instruments guiding on the interaction between them and justice actors, children remain passive participants lacking agency and inclusion in matters affecting them. This makes it difficult for the justice system to respond appropriately to their needs. In Kenya there is a dearth of studies with regard to how children who have passed through the justice system experience and perceive it. The aim of this study was to find out how children experienced the system, its processes and practitioners. The sample size constituted 36 children aged 12-17 years drawn from remand homes, probation hostels, youth corrective centers and Borstal institutions. The participants were distributed across five focus group discussions which were guided by a semi structured interview tool that enabled children to share their experiences with police officers, prosecutors, lawyers, magistrates, probation, children and prisons officers. The findings indicate that children experience some justice actors as threatening, unemphatic, shaming, and could not trust them. With regard to the environments, the police station was described as the most scaring and unsafe while the court room was intimidating, too formal and sometimes oblivious to the distress children experience when seated in court. There was limited participation as children were not consulted or informed about various legal processes. There were also positive interactions with some justice practitioners. The study provided rich insights into the justice system from the eyes of the child. The findings can be used to institute reforms in the child justice system and promote therapeutic jurisprudence so as to enhance access to justice for all children.*

**Key Words:** Perceptions, Child justice system, Kenya, Justice, Children, Therapeutic jurisprudence.

### Introduction

Justice involved children are served by systems that have complex laws, legal structures and procedures that can be beyond the comprehension of a young person (Richardson et al., 2016). Adversarial court systems used by common law countries like Kenya are the most complicated as the child in conflict with the law is tasked to prove their innocence while the child victim is subjected to legal procedures to show their competence to testify (Bala et al., 2001; Oraegbunam, 2019; Saunders et al., 2020). Like adults, children may have certain expectations about the treatment they are likely to receive from each of the agencies they will

interact with (Fine et al., 2019). Conversely, it is the lived experiences based on face-to-face interactions and the procedures they are put through that shape their perceptions of the justice system (Fine et al, 2022).

That said, various jurisdictions have enacted strategies aimed at creating a child friendly justice system that buffers the child against the negative experiences associated with their contact with the justice system (Richardson et al., 2016). In the USA for example, teen courts are formal courts where cases relating to young people are heard by peers who also act as jurors, defense counsel and judges (DeFosset et al., 2017). In South Africa, the welfare model has facilitated the establishment of children courts where young people are taken through informal, inquisitorial child-friendly procedures and welfare-oriented rehabilitation (Moyo, 2013). In Kenya, a new children Act was enacted in 2022, and envisions a child friendly justice system. The children act has many provisions that attempt make the judicial experience less stressful for children.

ix government agencies and actors are considered the custodians of the child justice system in Kenya. These include; Police officers, magistrates, prosecutors, children officers, probation officers, lawyers and prison officers. These agencies have different mandates that stipulate their roles and manner of interaction with children. Joint services to justice involved children are coordinated through the national council for administration of justice (NCAJ) which has a standing committee on children matters (NCAJ, 2019). Despite this coordinating framework, the child justice system in Kenya faces numerous challenges in case management and coordinated responses to the psychosocial needs of children (NCAJ, 2019).

This paper is premised on the theoretical framework of therapeutic jurisprudence. Therapeutic jurisprudence examines the law and how justice involvement can impact children in positive or negative ways (Lens, 2017). Justice agencies who implement various statutes have been granted by those laws discretionary powers that if not used appropriately can have adverse effects on children. These mainstream agencies are required to use their mandates to act in ways that promote the best interest of child. However, sometimes pursuit of punishment and accountability for one's actions overrides treatment of the child's criminogenic needs. This may result in stigma, exclusion, humiliation, shaming, and exclusion from engaging in activities that other peers have access to (Motz et al., 2020; Perlin & Lynch, 2018). Therapeutic jurisprudence is a theoretical model that provides justice agencies with a lens through which they can use their legal mandates to help children experience the system as helpful and one that is designed to meet their mental health needs (Lens, 2017). The theory embodies aspects of psychology and social work which justice actors can incorporate. These include dignity, empathy, taking child's views into consideration and access to mental health services (Gavin, 2021).

There is a wide range of empirical literature on children experiences with the justice professionals. Cavanagh et al. (2022) studied the attitudes and beliefs of 396 youth toward the police. Their study found that negative perceptions towards police officers were linked to the way the police treated them. Fine et al. (2019) found that when children have positive interactions with police officers, they are likely to have positive attitudes towards them. However, children have minimal knowledge about the role of prosecutors (Augsberger et al., 2016). In Kenya the directorate of prosecution has developed prosecutor guidelines for handling children matters. This is a step in the path to creating a child friendly prosecutorial process (Office of the Director of Public Prosecution, (ODPP), 2020). However, there is lack of published research on children views of prosecutors in the Kenyan context.

Children courts are established by the children act, (2022), yet there are only two in the country that can fit the basic criteria of a child friendly court. In the rest of the country, adult courts are cleared for children matters with the alternative being having the cases heard in the magistrate's chambers (Wangamati et al., 2019) In a systematic review of literature children and families understanding of court processes, Saunders et al. (2020), found that most children had no idea what was going on even though they were physically present in court because no one simplified the process for them. Studies show that children's experiences of probation officers play a role in their compliance to the conditions of probation (Fine et al., 2019). Children officers provide child welfare services in Kenya. Wilson et al. (2020) in a meta-synthesis of children's experiences with child welfare services established that children found the workers too formal and that they feared sharing their feelings with them as they had difficulties building trust.

Child justice practitioners are drawn from a variety of professional backgrounds. Therefore, the manner of interaction with children may be influenced by the training the person has or dictated by the legal roles and mandates of the agency. Research shows that gaining views from children about their experience of the professionals and the services provided is critical as it provides feedback to the system on aspects of it that are therapeutic and those likely to be psychologically harmful (Saunders et al., 2020; Gearhart et al., 2021). When children come into contact with the justice system either as offenders, victims or witnesses, they may be treated as the invisible stakeholders, lacking agency and inclusion (Pealer et al., 2017). This lack of voice is an infringement of the right to participation and makes the system blind to their psychosocial needs (Creany, 2020). It also goes against article 12 of the United Nations convention on the rights of the child which requires children to be involved in matters affecting them (Augsberger et al., 2016). Conversely, listening to their voices can help enhance administration and access to justice.

The aim of this study was to examine the perceptions of children on the effectiveness of the child justice system in meeting their mental health needs. The study was a child participation avenue for children to describe their interactions and experiences with various professionals from the point of arrest to living in statutory institutions.

## **Methodology**

The study was qualitative in nature and used focus groups so as to gain a rich description of children's lived experiences at each stage of their justice journey. The sample size was 36 participants sampled from a larger population of children committed by courts to various categories of institutions namely; remand homes, rehabilitation schools, youth corrective centers, probation hostels and Borstal institutions. Stratified sampling was used to create three strata and sampling frame of the three agencies that held the population of children under study (children services, probation and prison services). The sampling frame contained a directory of specific sites which hosted children. The authors used the admission ledger in the selected sites to randomly select participants to the focus groups. There were 6-8 participants per focus group. Table 1 presents the distribution of participants.

**Table 1. Distribution of focus groups across institutions**

<b>Statutory Children's Institution</b>	<b>No. of FGDs</b>	<b>No. of participants</b>	<b>Sex</b>	<b>Category</b>	<b>Age</b>
Rehabilitation school	1	7	Females	In need of care and protection and in conflict with the law	14-17
Borstal institution	1	8	Females	In conflict with the law	15-17
Remand	1	6	Males (4) and Females (2)	In need of care and protection and in conflict with the law	12-15
Youth corrective & Training centre	1	7	Males	In conflict with the law	14-17
Probation hostel	1	8	Males	In conflict with the law	17
		Total -36			

An interview checklist of open-ended questions was used to guide the focus groups. The questions centered on participants interactions with the various justice actors and the experiences while in the facilities and institutions.

### ***Ethical Considerations***

Authority to conduct the study was granted by the National Commission for Science, Technology and Innovation (NACOSTI). Authority to interview children was sought and granted by the heads of all agencies. In order to adhere to the ethics of research with children, two consent documents were developed. The first one was a consent form for managers in charge of statutory institutions where children were interviewed as they have the legal responsibility (*parens patriae*) over the children. The consent form outlined the importance of not coercing any child to participate as well as the mechanisms in place to assist a child in the event that the interview causes them any distress. The second document was the children assent form. This form was written in a child friendly language and highlighted voluntariness of participation and what the study required them to do. Children were informed that they can withdraw from the study anytime if they felt distressed by the questions. The researcher requested that the staff members not be present during the focus group discussions so as to ensure that children were free to share their perceptions of the justice system without any intimidation.

Availability of counselling services was made known for those who needed psychological support. In order to protect confidentiality and avoid causing psychological distress, children

were not required to talk about their offences or the reasons for contact with the system. Child centered techniques such as mindfulness exercises, ice breakers, and movement were used during the focus group sessions.

### ***Data Analysis***

The interviews and focus group were all audio recorded. The audio recorded interviews were then transcribed. Each focus group script was transcribed separately. Once transcription has been completed, the researcher scanned through each interview script while listening to the audio and correcting any typing mistakes and filling in any missing information. Each transcript was then accorded an identity number. A blend of deductive and inductive coding was used. Deductive coding was considered appropriate as it would ensure that the data answered the research questions (Saldana, 2008). There was a set of predefined codes in a code book. Inductive coding ensured that new codes could be created and safeguarded against losing valuable information not reflected in the predetermined codes. Coding was performed several times, re-examining, renaming and merging those that were similar. The codes were further grouped into categories. Once the categories were in place, themes that matched the content of the categories were generated.

### **Results**

The findings presented in this section are a reflection of children experiences at each stage of the justice journey.

#### ***Experiences at apprehension and police stations***

The police station was the first point of contact with the justice system. The participants shared their experiences in police cells and on their interactions with police officers.

#### ***Frightening***

For many children in conflict with the law, apprehension was experienced as a highly distressful incident. Most of them shared that they had been arrested in full view of the public. One participant shared that the police came for him at school and took him immediately after school assembly so other children saw him being whisked away. Police officers were perceived as scary and intimidating. Others recalled being slapped, handcuffed and insulted. One female participant aged 17 years described her experience: “I was a few meters from my home when I was ambushed. They were four male officers. I tried to run, and the police fired in the air and I froze” (FGD-2).

#### ***Anxiety and fear***

The police station was experienced as a stressful, chaotic place. Participants reported physical symptoms such as accelerated heart-beat, shaking, stress, headaches and stomach upsets. All children reported that their finger prints were taken and one child mentioned that her photograph was taken. This participant recalled being frightened and described her experience:

They took pictures of me from different angles and circulated on social media. I knew this because while at the station I borrowed a phone because mine had already been confiscated. When I texted my friend, she asked me where I was because she had seen pictures of me on WhatsApp. I told her to send me the

picture and I was very shocked. It's the pictures the police took of me. Is that a right thing for them to do? When I asked the police, they told me that I had stolen many things so they had put the pictures there so that whoever has lost things could identify me. That was the reason they gave me (FGD-2).

### *Sharing cells with adults*

Most of the children were placed in the same cells as adults. In the cells they were intimidated by adults who forced them to reveal why they were there. Some said that they were not able to sleep and sometimes their food would be taken by adults. One participant described her experience:

My mother came to visit me and brought me some food and a bed sheet to cover myself. At night, the drunk women took the sheet and pushed me from the only mattress in the cell. I spend the whole night standing (FGD-1).

In one focus group, children shared about interacting with serious criminals. One child shared her experience:

During my first day in the cell I met some drunk woman called Rastafaray. She was arrested because of fighting. So, when I was praying she would say she's the devil and I shouldn't pray, she really scared me. She would shout and scream at me (FGD-2).

### *Corporal punishment*

The children described other stressful experiences at the police station. Some explained that they had been beaten, verbally insulted by some police officers. A 17-year-old participant in a youth remand institution described his experience at police cells:

When I was in the police cell, I had a friend there. You see the first time you enter the cell, other inmates try to show you who is in charge. So, one old man started fighting my friend. This police officer came in and said we are the ones who fight old men. I tried to tell him I did not do anything, but he did not want to hear. He started beating me with a pipe that was attached to a metal tube. I was beaten so much I couldn't walk properly (FGD-4).

Female respondents described incidents of sexual harassment by police officers. Those who shared about this were girls in Borstal and rehabilitation schools. One 16-year-old female participant described how sexual harassment takes place:

Very early in the morning they wake us up to go and wash the OB room. When you are bending washing the floor, they touch your buttocks. Who do you report to? They are holding guns, they will beat you, and you are there with a case, so you just keep quiet (FGD 2).

### *Friendly Police Officers*

The participants were also asked if there were helpful experiences with police officers or at the police station. Majority said that police officers allowed them to contact their family and to be brought personal items and food and this served to calm them. Children considered officers who talked to them without shouting and who encouraged them to tell their truth in

court as helpful. Female police officers were perceived as more empathetic than male officers. One participant who had a positive view of police officers for their guidance explained that the officers: “Used to come and preach to us in the cells and tell us to have peace of mind. That helped me to relax a bit” (FGD -5). Other helpful acts by police officers included, buying the child food, assisting them in how to plead, and checking on them in the cells and allowing them to get out of the cell for a few minutes to bask in the sun.

### **Experiences in Court**

The children provided information about their subjective experiences of the courtroom, court officers and interacting with perpetrators.

#### *Fear of magistrate*

To gain a comprehensive understanding of children perceptions of the courts and judicial officers, the participants were asked to share their experience of the court. Most described courts as too formal and strict. Almost all children experienced fear of the court. They were afraid of face to face encounter with a judge or magistrate. One participant expressed her fear:

The court I go to the judge looks at you in a very scary way. One time I was in court. There was this magistrate who had scary way of looking at people. When my case was called, the magistrate looked at me with those scary eyes. I became very frightened till I started nose bleeding (FGD-2).

#### *Fear of facing the perpetrator*

Another issue that emerged during the focus group discussions was that most of the times, the children had to face their perpetrators in court. In virtual courts, it was distressing for some child victims to look at the face of the perpetrator on the screen as one child stated:

“When I sat on the computer, I saw his face. I froze. When they asked me whether he is the one I said he is not because he was staring at me”. Another respondent added “You see the person who did something bad to you on the computer and you forget what you wanted to say” (FGD-3).

#### *Anxiety over case outcome*

Not knowing the possible outcome of their case was also a source of anxiety for some respondents. Those in police stations and remand homes in particular were apprehensive due to not knowing the outcome of their case. A participant described how this anticipation anxiety builds up:

At the court cells, they usually take you to a room and tell you how your case will go on and they say things will go bad, especially since your case is serious you will be jailed for 14 years (FGD-4).

The participants reported lack of sleep due to anxiety. To others, the information given to them in court regarding committal to institution was not clear and they were too afraid to ask questions. This was substantiated by a participant who had this to say:

You got to court and every time they say you wait. You go again and they tell you to stay here in remand for another 14 days. No one tells you what will happen. You don't know if you are waiting to go to jail or to go home. Even when you are given food you don't feel like eating. When you put up your hand in court, you are told to put it down (FGD 3).

#### *Lack of interest by Pro-bono Lawyers*

A number of children had interacted with lawyers representing them. Two participants shared their experience with lawyers:

They first assess how one looks like if you are shaggy or look poor, they don't help you. They don't bother much with you and how you feel. Also, if your case takes too long, they don't come to court (FGD-1).

A good number of participants who said they did not have legal representation especially those in conflict with the law said that they had been forced to plead guilty by police officers. One of the respondents who was already serving his sentence explained:

I was in court where I accepted that I was guilty but when I reached industrial area remand, I was told that I had pleaded not guilty. So I was very confused because I had accepted my crime but it was written that I hadn't. So they started saying I am playing games with the court" (FGD-5).

#### **Expressing their Needs to the Court**

The study established that the court environment and the procedures in court were all driven by legal actors leaving little room for children to participate by communicating their psychosocial needs. According to the participants, the environment did not allow them to participate fully and inform the court of their psychosocial needs, whether in virtual or in person sessions. They felt that the court was not aware of their experience at police station or remand because it did not ask. A 16-year-old participant in one of the focus groups said this about expressing her needs to court:

When you are in front at court where you stand with the police officer so that you don't run away, you are asked if you have something to say, then you hesitate, then you put your hand up, the police officer behind you pushes your hand down, the judge does not see it because they are busy writing things (FGD-5).

To some of the children, being denied the opportunity to talk in court made them feel isolated and that their fate was in the hands of the people talking on their behalf.

#### *Complicated roles of justice actors*

Some participants perceived the court as confusing as there were many actors whose role they did not understand. For example, children in FGD-3 thought that the prosecutor was the court clerk "Because he reads files and calls people's names and reads to you what you have done and where you will be jailed". Others described the prosecutor "The lady in a black suit who talks a lot of English". Magistrates were being referred to as "Judge" and they are always writing things". Some children did not seem to know the difference between a probation officer and a children officer.



*Helpful 'in camera' Court sessions*

Some children shared that their cases were heard in the chambers where only a few people would be present. Those who had their session in chambers reported feeling more confident to express their needs. There were those who recounted that they would be brought to an open court and sit in until all the matters for adults are mentioned or heard, then they would be heard last. One participant explained the anxiety associated with sitting through court sessions and listening to hearings of adult cases: "Sitting there and listening to people being jailed, you get scared that you will also be jailed" (FGD-1). Another one shared about their discomfort with the CCTV cameras in court. In the words of this participant: "The cameras stressed me because when you are talking, it is like there are people in there watching you so when you speak, I feel like they are laughing at you" (FGD-2).

**Perceptions of Probation and of Probation Officers**

Children in Borstal institutions and remand homes had interacted with probation officers. Some had positive experiences while others had negative encounters. The children presented an image of the probation officer as a law enforcer, and at the same time an adviser. Those who found probation officers helpful explained that the officer had written a report for them and talked to their parents and explained to them the outcome of the case. Some children said that the probation officer gave them advice to use the time of residing at the institution to change their behavior. The children in remand institutions talked about experiencing anxiety as they had to wait to find out the recommendations made by officers. One respondent who found probation officers unhelpful qualified their views by saying: "The probation officer scared me because they were very harsh. I remember they told me that I resembled the devil and I look scary that even other children can fear me. I felt really hurt by her words" (FGD-4).

Others expressed disappointment at probation officers for having given them false information regarding the institutions they were committed to. The participants said they had been told by their officers that they were going to boarding school only to find that they are in a correctional facility. A 15-year-old participant in a Borstal institution described what she was told:

I was told I was going to a boarding school. Even my mother wanted to buy me things for school but the probation officer told her not to buy because I will be given many things there. The probation officer told me that at borstal, we would get nice clothes and we would be going for games and sightseeing trips, only for me to come here and find it is a prison (FGD-2).

**Perceptions of Children Officers**

Children who had been to rescue centres, children remand homes and rehabilitation schools were able to describe their experiences. To some, the children officer was described as a good person who 'never leaves your side'. However, the experiences with support staff in institutions run by the directorate of children services were mixed. Some children found remand homes to be a good place that provided for their basic needs. Contrariwise, there were those who had bad experiences in remand as this one participant explained:

They would beat the small girls mostly, saying that they are the ones who know about boys. They would beat you when you wet the bed. They tell you that you

that you will not wet beds the way you want. Then in the morning, they make you do press-ups. If you are unable, they beat you and say since we used to steal and carry people's things, we should have no problems doing the press-ups (FGD-1).

There were also those who felt a sense of helplessness because the children officer had refused their parents to visit them in the institution. In all the three institutions, the participants expressed a need to attend formal schooling noting that the education provided at the institutions was not enough. Others shared that they were forced to repeat classes as the institutions did not have all the levels of classes. Another participant described children officers as people who did not tell their parents the truth. She explained: "When we went for tracing, they told my parents that they will be taking me to school, but I have stayed here for years and have not gone to school, I am tired of living here" (FGD-3).

### **Experiences in Borstal Institutions and Youth Corrective Centers**

Participants served by Kenya prisons service were those in youth remand, Borstal institutions and youth corrective training centres. Since the focus groups took place during the pandemic lockdowns, some of their experiences included being isolated for long periods in a room where one could only get out for a few minutes of sun. Most found the experience distressing. The prison officers were described as strict and punitive, but the welfare officers and chaplains were helpful. When asked to talk about the negative experiences, the participants reported that sometimes they would be given collective punishment which most found unfair. This was exemplified by one youth:

Here when one person makes a mistake, you are all punished. You are beaten, and it is not the normal beating, it is too much. They do not listen to you if you are innocent. You are told to do squats until your legs hurt (FGD-4).

Youth in focus groups held in Borstals and youth corrective centers spoke about their perception of the uniforms they wore:

We don't like this uniform because it looks like the one worn in by people in Mathari hospital. When you walk outside the compound with this uniform people out there think you did very bad things and you are mad (FGD-4).

However, they also reported positive experiences at these institutions. They appreciated the vocational training provided. They stated that some prison officers are friendly and genuinely care about their welfare.

### **Stigma due to involvement with the justice system**

The young people were apprehensive over their return to the community. In all the focus groups participants stated that they feared that they will be rejected or met with hostility by the community and especially their peers. Such a perception was echoed by one male youth:

When I was in school, I had friends. Now they know I am in prison. They might not want to associate with me. It's like my name is tarnished. In our village I don't know how people view me. They think that I am a criminal (FGD-4).

Another participant in a female focus group dreaded the thought of going back home:

When I was arrested, neighbors started saying negative things about me which really hurt me yet I was helping them out even after my mother would refuse me to do so. So, I would like that when I leave here that I don't go back to live there.

## **Discussion of Results**

The main thrust of this study was to find out the perceptions of children on the child justice system. Overall, the results show that children's experience of each agency shaped their views and attitudes. Analysis of qualitative data revealed that children found interactions with police officers highly stressful. For some children, the arrest process and experience at the cells was life threatening. This finding bears some similarities with reports from other countries. For example, Jackson et al. (2019) examined the mental health consequences of highly charged police interactions with youth. The researchers found that the children experienced high levels of emotional distress during a stop by police, social stigma and post-traumatic stress after the stop. Gearhart et al. (2021) also found that the presence of police-initiated post-traumatic stress symptomology among youth. On the other hand, those who had interacted with friendly police officers had a positive view of police service. Despite the authority and fear that police are likely to elicit, respondents were able to pick out non-verbal and verbal behaviors that communicated empathy and compassion. The children were also able to pick out what they felt was non therapeutic treatment by children officers and probation officers.

Children in need of care and protection did not understand clearly who a court prosecutor was and tended to confuse prosecutors with court clerks. They saw the prosecutor as the person who sends perpetrators to jail. On the other hand, child offenders described their interaction with prosecutors as hostile. Mental health service providers and key informants corroborated this as in some focus groups, prosecutors were said to be busy with high caseloads. These diverse perceptions are a reflection of the role conflict and competing interests of prosecutors who have to deal with both categories of children and chart out how to interact with the victim and how to interact with the offender. Indeed, the children's views were similar to those of KI-1 who stated that prosecutors hardly interact with children in conflict with the law. Given that prosecutors handle both protection and conflict with the law cases, there is need for more discourse on therapeutic interactions between prosecutors and child offenders.

The children had mixed opinions towards courts and magistrates. Magistrates were helpful but at the same time terrifying. The courtroom was described as a place they had to go but wished they could avoid. Notable issues among the children included, a magistrate's body language, multiple examinations, being voiceless in court and intimidating environment. The lack of children court structures in a separate space from adult courts could be attributed to these experiences. These views concur with previous research on perceptions of courts. Saunders et al. (2020) in a meta-synthesis found that children and parents felt alienated by courts and experienced the court process as too technical and distressing.

Appearing in court as an accused person or a witness was a source of anxiety and fear. According to the respondents, anxiety was caused by fear of facing perpetrators, uncertainty about the outcome of their case. Previous studies have reported court experiences as evoking distress in children. European Union Agency for Fundamental Rights (FRA) in a 2017 study found that 35 % and 28 % of children felt less safe in criminal proceedings than in civil proceedings respectively. In the same study, 61% were most likely to feel unsafe when heard in a courtroom during criminal proceedings.

There were mixed views about probation officers. Some found the officers' friendly while to others, probation officers could not be trusted. This brings to focus the role conflict faced by probation officers who are law enforcement agents, case managers and at the same time therapists to their clients. This situation is not unique to Kenya. Studies with other populations have revealed that young offenders find their relationship with probation officers fair and respectful while at the same time restrictive and full of sanctions (Vidal & Woolard, 2015).

Respondents' experience of children officers and protection services was ambivalent. They reported appreciating the protection aspect of children services but at the same time experiencing distressful incidents with the staff in rehabilitation, remand and rescue centers. They felt alienated from decision making and not treated as individuals with unique needs. Overstaying in institutions was cited as a major source of anxiety and psychological turmoil. The issues raised by children are an indication of how the justice system can revictimize children, and are comparable to views of children in Nigeria as reported in a study by Atilola et al. (2020). In this study, (74%), of the children reported verbal abuse, 90% reported physical abuse, while 36% had been denied water and food.

With regard to Prison officers the children experiences at Borstal institutions were mostly negative. They found the environment too confining. Some felt that they did not merit being in these facilities. The uniforms were described as colonial and stigmatizing. These views are however not as surprising, since Borstal institutions are more restrictive and highly secured detention facilities that still operate on regulations set by the colonial government in 1963 (Okech, 2016). These views echo those of Borstal inmates in one facility in Nigeria studied by Auwalu et al. (2016). In this study, 80% of the youth found the environment in Borstals depressing and isolating.

## **Conclusion**

The experiences of children with police, magistrates, prosecutors, probation officers, children officers and prison officers remain imprinted in their brains, shaping their beliefs and attitudes regarding the justice system. Children in need of care and protection reported better experiences with police officers and children officers. Children in conflict with the law had some positive experiences but more negative experiences with each of the six agencies. Their experiences may have been shaped by the manner in which the justice practitioners treated them. This is a reflection of society's view towards child offenders and it blinds the system to the underlying welfare needs of these children. It is important that justice actors be cognizance of the fact that children cross over from welfare to offending and therefore, one who started out as in need of care and protection may have crossed over to delinquency because their protection needs were not met.

## **Recommendations and Areas for Further Study**

To make the judicial process less traumatizing for children, courtrooms ought to be designed from a child's perspective. The directorate of public prosecution can develop a tailored interview protocol which safeguards the child's psychological wellbeing. Pre-trial programs can prepare remanded children, child witnesses and victims to handle the fear and anxiety of attending court. The national police service may consider a consistent contingent of police specifically designated to work with children. Capacity building of probation and children officer is necessary so as to give them skills on interviewing and involving children

throughout the phase of rehabilitation. Further studies could cover justice involved children from other counties as well as focus on the impact of justice involvement on children.

### Acknowledgements

My appreciation goes out to the children and young people who shared their narratives and experiences of the justice system. I thank Miriam Mang'oka and Zephania Suter for helping with transcription.

### References

- Atilola, O., Abiri, G., Ola, B., & Ogun, O. (2020). Comparative risk of victimization for adolescent boys processed through the juvenile and adult criminal justice systems in Lagos Nigeria. *International Journal of Forensic Mental Health, 19*(4), 377-390.
- Augsberger, A., Lens, V., & Hughes, A. (2016). I didn't know you were fighting so hard for me: Attorneys' perceptions of youth participation in child dependency proceedings. *Family Court Review, 54*(4), 578-590.
- Auwalu, F. K., & Oluigbo, S. N. (2016). Built environment for rehabilitation: Case studies of selected juvenile rehabilitation centres in Nigeria. *Journal of Design and Built Environment, 16*(2). <https://doi.org/10.22452/jdbe>
- Bala, N., Lee, J., & McNamara, E. (2001). Children as witnesses: Understanding their capacities, needs, and experiences. *Social Distress and the Homeless 10*, 41–68.
- Cavanagh, C., Fine, A., & Cauffman, E. (2022). How do adolescents develop legal cynicism? A test of legal socialization mechanisms among youth involved in the justice system. *Justice Quarterly, 39* (3), 478-496.
- Creaney, S. (2020). Children's voices—are we listening? Progressing peer mentoring in the youth justice system. *Child Care in Practice, 26*(1), 22-37.
- DeFosset, A. R., Schooley, T. S., Abrams, L. S., Kuo, T., & Gase, L. N. (2017). Describing theoretical underpinnings in juvenile justice diversion: A case study explicating teen court program theory to guide research and practice. *Children and Youth Services Review, 73*, 419-429.
- European Union Agency for Fundamental Rights, (2017). Child-friendly justice: *Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States*. (Report No. 978-92-9239-658-9). Fra. doi:10.2811/91391
- Fine, A. D., Del Toro, J., & Orosco, C. (2022). Consequences of fearing police: Associations with youths' mental health and felt obligation to obey both the law and school rules. *Criminal Justice, 83*. 101934. <https://doi.org/10.1016/j.jcrimjus.2022.101934>
- Fine, A. D., Fountain, E., & Vidal, S. (2019). Juveniles' beliefs about and perceptions of probation predict technical violations and delinquency. *Psychology, Public Policy, and Law, 25*(2), 116. <https://doi.org/10.1037/law0000195>.
- Gavin, P. (2021). Therapeutic jurisprudence and the development of family courts in

- Ireland. *European Journal of Current Legal Issues*, 25(1).  
<https://webjcli.org/index.php/webjcli/article/view/734>
- Gearhart, M. C., Bender, A., Barnhart, S., Berg, K. A., & Jones, C. (2021). Youth profiles of police-initiated post-traumatic stress symptomatology. *Child and adolescent social work journal*, 39(4), 525-537.
- Jackson, D. B., Fahmy, C., Vaughn, M. G., & Testa, A. (2019). Police stops among at-risk youth: Repercussions for mental health. *Adolescent Health*, 65(5), 627-632.
- Lens, V. (2017). Engaging parents in family court: Lessons from an observational study of child protection cases. *Journal of social work*, 17(2), 129-146.
- Motz, R. T., Barnes, J. C., Caspi, A., Arseneault, L., Cullen, F. T., Houts, R.,... & Moffitt, T. E. (2020). Does contact with the justice system deter or promote future delinquency? Results from a longitudinal study of British adolescent twins. *Criminology*, 58(2), 307-335.
- Moyo, A. (2013). Balancing the best interests of the child and the interests of society when sentencing youth offenders and primary caregivers in South Africa. *South African Journal on Human Rights*, 29 (2), 314-350.
- Office of the director of public prosecutions (2020). *A prosecutor's guide to children in the criminal justice system*. <https://www.odpp.go.ke/downloads/>
- Okech, C. J. (2016). The juvenile justice in Kenya: Growth, system and structures. [https://www.unafei.or.jp/publications/pdf/RS\\_No101/No101\\_5\\_VE\\_Okech\\_1.pdf](https://www.unafei.or.jp/publications/pdf/RS_No101/No101_5_VE_Okech_1.pdf)
- Oraegbunam, I. K. (2019). The jurisprudence of adversarial justice. *Ogirisi: A New Journal of African studies*, 15, 27-51. <http://dx.doi.org/10.4314/og.v15i1.2>
- Pealer, J., Terry, A. N., & Adams, K. R. (2017). Voices from inside the walls: Views of the juvenile justice system from the youthful offenders. *Corrections*, 2 (2), 130-147.
- Perlin, M. L., & Lynch, A. J. (2018). She's nobody's child/the law can't touch her at all: Seeking to bring dignity to legal proceedings involving juveniles. *Family Court Review*, 56(1), 79-99.
- Richardson, E., Spencer, P., & Wexler, D. B. (2016). The international framework for court excellence and therapeutic jurisprudence: Creating excellent courts and enhancing wellbeing. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2782162](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2782162).
- Saldana, J. (2008). *An introduction to codes and coding*. London: Sage.
- Saunders, B. J., Lansdell, G., & Frederick, J. (2020). Understanding children's court processes and decisions: Perceptions of children and their families. *Youth Justice*, 20 (3), 272-292.
- Special Taskforce on Children Matters. (2019). *Status report on children in the justice system in Kenya*. National Council for Administration of Justice. <https://ncaj.go.ke/wp-content/uploads/2019/11/NCAJ-Report-Digital-Version.pdf>

Vidal, S., & Woolard, J. (2016). Parents' perceptions of juvenile probation: Relationship and interaction with juvenile probation officers, parent strategies, and youth's compliance on probation. *Children and Youth Services Review*, 66, 1-8. <https://doi10.1016/j.chilyouth.2016.04.019>

Wangamati, C. K., Yegon, G., Sundby, J., & Prince, R. J. (2019). Sexualised violence against children: A review of laws and policies in Kenya. *Sexual and reproductive health matters*, 27(1), 16-28.

Wilson, S., Hean, S., Abebe, T., & Heaslip, V. (2020). Children's experiences with child protection services: A synthesis of qualitative evidence. *Children and Youth Services Review*, 113, 104974. <https://doi.org/10.1016/j.chilyouth.2020.104974>

