



CHILD CARE AND PROTECTION OFFICERS TRAINING FACILITATOR'S MANUAL



February 2020



Child Care and Protection
Officers (CCPOs)



Japan International
Cooperation Agency

Facilitator's Manual

for

Training Child Care and Protection Officers

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FOREWORD

An effective and efficient justice system is one that works synchronically in the delivery of services to children while ensuring public protection. The Child Care and Protection Officers (CCPO) program sets out to achieve this aim. The program was initiated following a needs assessment carried out by the Government of Kenya in partnership with the Japanese International Cooperation Agency (JICA) in 2010. The assessment revealed capacity needs particularly related to multiagency working on crosscutting procedures, processes, treatment, rehabilitation and protection of children in contact with the law, that is those in conflict with the law and those in need of special care and protection. Other identified gaps included limited information sharing, limited insights with regard to the role of each juvenile justice agency and their interconnectedness.

Based on these findings, there was consensus among all agencies on the need to develop a joint curriculum and accompanying training manuals. This training manual is unique as it is designed to bring together, in one classroom setting, officers from the various Juvenile Justice Agencies (JJAs). The information contained in the manual is practical and shall empower officers with skills to work for and with children. The overall goal is to standardize the training of the officers serving in each of the juvenile justice agencies so as to ensure that children are served by competent professionals.

It is envisaged that the capacity building will lead to improved quality of services to children in the juvenile justice system in Kenya. The implementation of the CCPO training will require adequate resources. We do welcome partners in the sector to join us in actualizing the trainings to ensure that all child care and protection officers have the expertise and knowledge on how to handle a child that finds themselves in the justice system.

Lastly I wish to express my sincere gratitude to the Japanese International Cooperation Agency (JICA), and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) for their support, both technical and financial, in the revision of the manual.

Hon. Lady Justice Martha Koome, JA

Chairperson

NCAJ SPECIAL TASKFORCE ON CHILDREN MATTERS

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The journey to implementing reforms in the juvenile justice sector in Kenya is an unceasing one. Multiagency networking and public-private partnerships continue to make this journey possible.

Our most sincere gratitude goes out to the government of Japan through the Japan International Cooperation Agency (JICA) for the technical and financial support which ensured the review of the curriculum and the revision of this manual. The professional input and guidance provided by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (*UNAFEI*) team was invaluable. In addition, stakeholders in the children's sector provided their input thus making the document more relevant, comprehensive and inclusive.

We express our appreciation to the National Implementation Team (NIT) for their continued dedication and commitment towards nurturing this program.

Special thanks goes to the drafting multiagency team from all the Juvenile Justice Agencies (JJAs) who worked hard and long hours to ensure the feedback received is incorporated into the document and hence the finalization of this manual. This is a clear show of their dedication.

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ACRONYMS

AAC:	Area Advisory Council
ACRWC:	African Charter on the Rights and Welfare of the Child
ADHD:	Attention Deficit Hyperactivity Disorder
APDK:	Association for the Physically Disabled of Kenya
AU:	African Union
BI:	Borstal Institution
CAP:	Chapter
CBO:	Community Based Organization
CBT:	Cognitive Behaviour Therapy
CCI:	Charitable Children's Institutions
CCPO:	Child Care and Protection Officers
CDF:	Constituency Development Fund
CICWL:	Children in Conflict with the Law
CINCP:	Children in Need of Care and Protection
CM	Chief Magistrate
CO:	Children Officer
COR:	Children Officers Report
CPC:	Criminal Procedure Code
CPT:	Child Protection Team
CPU:	Child Protection Unit
CPV:	Child Protection Volunteer
CPV:	Community Probation Volunteer
CRC:	Convention on the Rights of the Child
CRH:	Children Remand Homes
CSO:	Community Service Orders
DCIO:	Directorate of Criminal Investigation Officer
DCS:	Department of Children Services
DPP:	Director of Public Prosecution
EAR:	Environmental Adjustment Report
EARS:	Educational Assessment and Resource Services
FBO:	Faith based Organization
FGM:	Female Genital Mutilation
ICP:	Individual Care Plan
IG:	Inspector General
IPOA:	Independent Police Oversight Authority
ITP:	Individual Treatment Plan
JDL 1990:	Juveniles Deprived of their Liberty

JJA:	Juvenile Justice Agency
JJS:	Juvenile Justice System
KPS:	Kenya Prisons Service
MLA:	Mutual Legal Assistance
MOU:	Memorandum of Understanding
NALEAP:	National Legal Aid and Awareness Programme (currently NLAS)
NCCS:	National Council for Children Services
NGO:	Non-Governmental Organizations
NLAS:	National Legal Aid Service
NPS:	National Police Service
NYS:	National Youth Service
OAU:	Organization of African Unity
OB:	Occurrence Book
ODD:	Oppositional Defiant Disorders
ODPP:	Office of the Director of Public Prosecutions
PACS:	Probation and Aftercare Service
PBR:	Pre-Bail Report (also known as Bail Information Report)
PO:	Probation Officer
POR:	Probation Officer's Report
P&C:	Protection and Care
PRM:	Peer Review Mechanism
RM:	Resident Magistrate
RNR:	Risks, Needs and Responsivity
RS:	Rehabilitation School
SCCO:	Sub-County Children Officer
SCPO:	Sub-County Probation Officer
SER:	Social Enquiry Report
SMART:	Specific Measurable Achievable Realistic Time-bound
SPM:	Senior Principal Magistrate
SRM	Senior Resident Magistrate
STI:	Sexually Transmitted Infections
UK:	United Kingdom
UN:	United Nations
UPR:	Unconditional Positive Regard
UNCRC:	United Nations Convention on the Rights of the Child
UNTOC:	United Nations Convention Against Transnational Organized Crime
VIR:	Victim Impact Report
WHO:	World Health Organization
YCTC:	Youth Corrective Training Centre

Icons used in this manual

Icon	Meaning
	class activity.
	discussion
	information
	explanation
	revision exercise

INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM IN KENYA

Duration	2 hours
Overview	This unit seeks to create awareness among the trainees on the key features and concepts of the Juvenile Justice System. It highlights the interrelationships and processes among officers and agencies involved in the administration of Juvenile Justice in Kenya.
Key Learning Outcomes	By the end of this unit participants should be able to: a) Outline the historical background of the Juvenile Justice System. b) Outline the key concepts relating to the Juvenile Justice System. c) Demonstrate an understanding of the roles of the various Juvenile Justice Agencies.
Materials	Flip chart and markers, laptop and projector
Session type	Lecture, discussion and group work

1.1 INTRODUCTION

The purpose of this unit is to:

1. Provide information on the Juvenile Justice System (JJS) with the aim of ensuring focus is on the care and protection of children who find themselves in the system and those at risk of getting into the system.
2. Provide a forum for officers in the various Juvenile Justice Agencies (JJA) to acquaint themselves with the roles of the other agencies in the system to ensure a seamless response to children's needs.
3. Give opportunity to officers in the various JJAs to share experiences, learn from one another and so as to create a visible, accessible, child friendly JJS.
4. Provide uniform information among the various Juvenile Justice Agencies and foster collaboration amongst the said agencies in the system.

1.2 THE JUVENILE JUSTICE SYSTEM

The Juvenile Justice System (JJS) is the formal system comprising of all justice sector agencies with mandated to be accountable for the affairs relating to and affecting children. These include: The Department of Children Services (DCS), the National Police Service (NPS), the Judiciary, the Probation and Aftercare service (PACS), Kenya Prisons Service, the Office of the Director of Public Prosecution (ODPP). Other agencies that support the Juvenile Justice System (JJS) include Governmental and non-governmental education, health, and social welfare service agencies.

The Constitution of Kenya and the Children Act no. 8 of 2001 provided that the best interest of the child principle is the backbone of the Juvenile Justice System. The procedures in court and all the other agencies in the criminal justice system should be conducted in a child friendly manner to safeguard the rights, welfare and best interests of the children.

1.2.1. Historical background of the Juvenile Justice System

During the 16th and 17th centuries, in America and Europe, punishment was increasingly viewed as morally wrong and an ineffective education measure. Higher expectations were placed on psychological interventions, education of children in Christian norms and values. The upsurge in the different reform movements was active in USA and Europe and resulted in:

- a) The urge to rescue children from the living conditions in an increasingly urbanized and industrialized environment.
- b) The emergence of a different conception of childhood, related to social and economic change.
- c) Enhancement of education and rehabilitation.

These factors set the stage for the legislation of a separate system to cater for children both in need of protection and those in conflict with the law.

Kenya is a plural legal system where the Constitution, statute law alongside customary and religious laws apply. The Constitution of Kenya acknowledges the existence of alternative justice systems and the traditional dispute resolution mechanisms. During the colonial era, on 12th August, 1897 the English Statutes of general application came into force introducing the English Common Law including Juvenile Administration which focused more on the institutionalization of children. This is the community responsibility of disciplining delinquents.

The Formal Child Protection System has been developing since the early 1960s with issues relating to Juvenile Justice basically being addressed in three sets of laws:

- a) The Children and Young Persons Act (Cap. 141-Repealed)
- b) The Adoption Act (Cap.143-Repealed)
- c) The Guardianship of Infants Act (Cap. 144-Repealed)

The above mentioned set of laws had shortcomings.

On July 31, 1990, Kenya ratified the United Nations Convention on the Rights of the Child (UNCRC).



Explain to the participants that a volunteer children's officer is a citizen who offers his/her time and skills and resources for the realization of the best interests and rights of children, under the guidance of the children's officer without remuneration.

A task force was set up to look into the legislation relating to children matters. On July 31, 1990, Kenya ratified the United Nations Convention on the Rights of the Child (UNCRC)¹. A task force was set up to look into the legislation relating to children matters. On 25th July 2000 Kenya ratified the African Charter on Rights and Welfare of the Child (ACRWC)² The taskforce recommended for a new set of laws drawing from the existing statutes touching on children and incorporating the UNCRC and the ACRWC as an attempt to resolve various legal problems that affected the rights of children.

The process resulted in the enactment of the Children Act No. 8 of 2001 came into force on 1st March 2002. It consolidated and repealed the three pieces of legislation mentioned above. The Act, and the rules and regulations made thereunder are thus the most important legislation in the JJS.

The Children Act introduces novel provisions on the rights of the child. In 2010, we promulgated a new Constitution. These rights of the child were elevated into the Constitution specifically under Article 53³ as read with Article 52⁴ and generally under the Bill of Rights⁵. The provisions brought certainty as to the importance given to the rights of the child by stating, paramountcy of the best interest of the child and elevation of parental responsibility to a Constitutional right regardless of the marital status of parents Article 53(1)(e)⁶.

1.3. JUVENILE JUSTICE AGENCIES (JJAS) IN KENYA

Juvenile Justice Agencies commonly known by the abbreviation JJAs are those whose mandate includes being accountable to the affairs of, relating to and affecting children. They are guided by the Children Offender Rules under the fifth schedule to the Children Act. These include:

- a) The National Police Service (NPS)

- b) Department of Children Services (DCS)
- c) The Office of the Director of Public Prosecutions (ODPP)
- d) The Judiciary
- e) Probation and Aftercare Services (PACS)
- f) The Kenya Prisons Service (KPS)
- g) The Charitable Children Institutions (CCIs)
- h) Chiefs (where do we place them?)
- i) The County Government

The establishment and mandates of these agencies are anchored under and stipulated in the Constitution of Kenya and other legislation including Acts of Parliament such as:

- a) The Children Act 2001.
- b) Probation of Offenders Act Cap. 64.
- c) Community Service Orders Act No. 10 of 1998.
- d) Prisons Act Cap. 90.
- e) Borstal Institutions Act Cap. 92.
- f) National Police Service Act. No 11A of 2011.
- g) Judicature Act Cap. 8.

The Constitution of Kenya is the beacon upon which the other statutes are founded. The Children Act is the foundational Act that addresses all matters relating to children. The implication therefore is that as much as we have a specific Act (the Children Act), we also find issues of children featuring in the other Acts that give specific mandates relating to children to the criminal justice institutions.

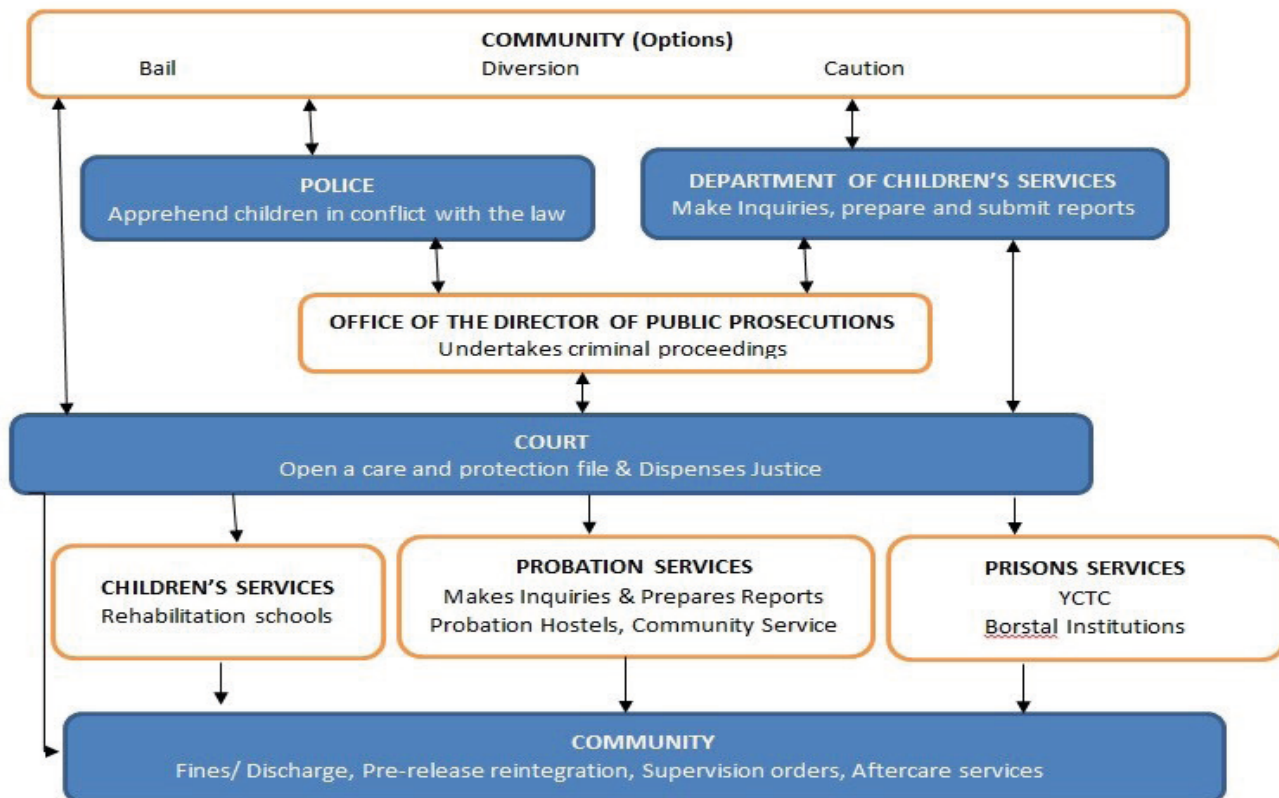


Figure 1: Children in conflict with the law

In the case of children in need of care and protection, the JJAs play various roles as outlined in Figure 2 below.

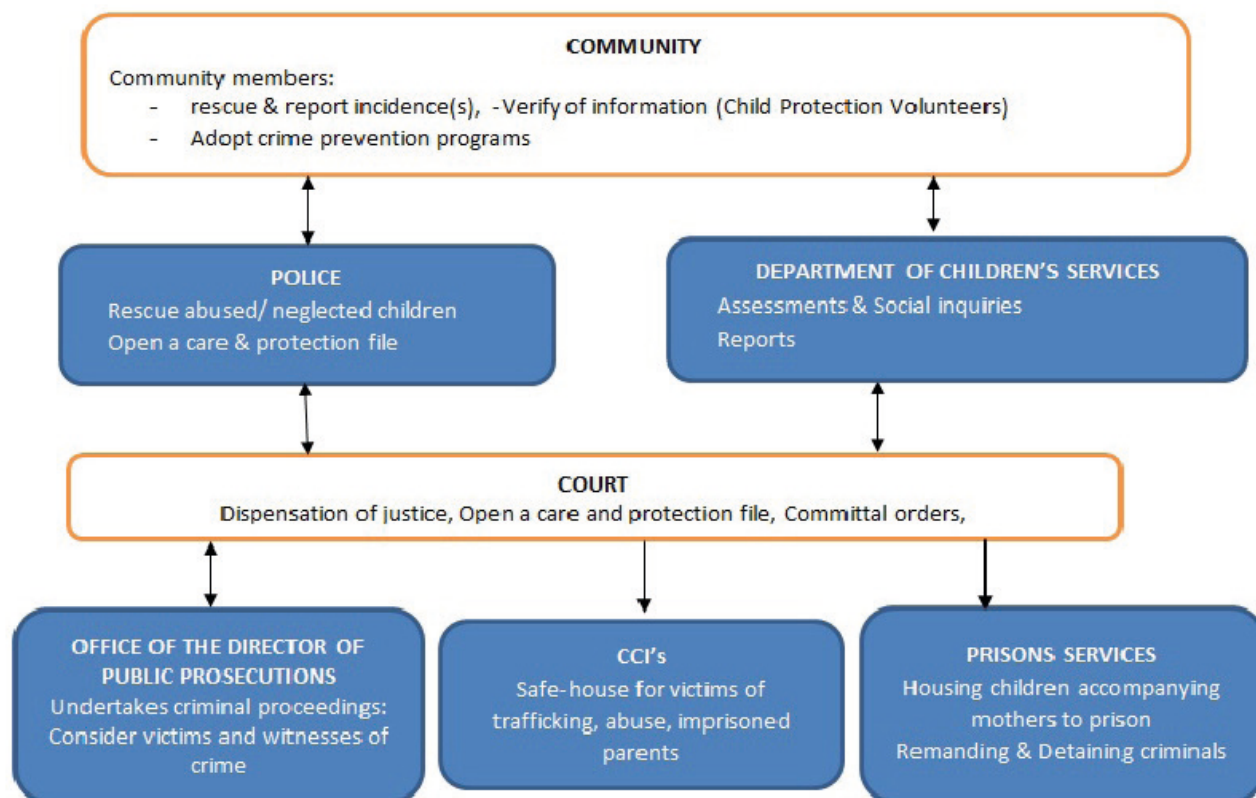


Figure 1.2: Children in need of care and protection

1.3.1: The role of the various Juvenile Justice Agencies

1.3.1.1. The Police

Article 243⁷ of the Constitution of Kenya establishes the National Police Service (NPS) consisting of the Kenya Police Service and the Administration Police and provides for the enactment of the National Police Service Act No 11A of 2011.

In regards to Juvenile Justice System, the following are the roles of the police:

Prevention of child crime and abuse by the NPS

Towards the prevention of child crime and abuse, and violation the role of the National Police Service is to:

- Educate the public on how to prevent child crime and abuse.
- Remove a child undergoing or likely to undergo abuse or exposure to criminal activity from such environments and moves them to a place of safety.
- Enforce laws and policies on child protection.

Handling cases of child crime and abuse by the NPS

In handling cases of child abuse, the role of the Police is to:

- Carry out investigations in cases of child crime & abuse.
- Apprehend suspects of crime.
- Ensure that the Children Act is implemented.
- Assist in implementation of Alternative Dispute Resolution (ADR) mechanisms, such as diversion programs, for

⁷ Art 243 Constitution of Kenya – Establishment of the National Police Service

children in conflict with the law, mediation and arbitration.

- e) Collaborate and network with medical personnel and other professionals such as social workers and other stakeholders in investigating, compiling, reporting and prosecuting cases of child crime and abuse.
- f) Apprehend children in conflict with the law and arrest child abusers.
- g) Preserve evidence and exhibits which is vital to investigation and successful prosecution of child related cases.
- h) Maintain accurate records and data on cases involving children.
- i) Rescue children in need of care and protection including victims of trafficking, sexual abuse among others.

Child Protection Units

The police also ensure the smooth running of the units and that all children at the units are catered for. The role of these units include:

- a) Carrying out psychological support and counselling.
- b) Facilitating workshops for parents, as well as the community, on various matters concerning children such as their rights, drug and substance abuse, and child empowerment.
- c) Facilitating the reunion of children with their guardians and/or parents as well as with the community.
- d) Facilitating provision of medical care, food, shelter and education to vulnerable children.
- e) Carrying out daily street patrols to rescue children in need of care and protection especially those living in the streets.

1.3.1.2. Children's Officers

A children's officer is a person appointed by the Public Service Commission of Kenya and deployed by the Director for Children's Services in accordance with the Children Act, 2001. They are tasked with the duty of making enquiries, investigations, providing reports and assessments, as may be required by any court, enforcement of the court order made under the Children Act and taking care of the welfare of children in contact with the law. Roles as set out in s. 37 and 38 of the Children Act include:

- a) Conducting social enquiries and submitting reports to the Court.
- b) Giving guidance and counselling children in contact with the law, that is to those in need of care and protection and those in conflict with the law, also known as juvenile offenders, their parents and/or guardians as the case maybe.
- c) Safeguarding the welfare of any child placed under care of statutory children institutions such as remand homes, rescue centres and rehabilitation schools, by virtue of a Care and Protection Order.
- d) Providing assistance and procure accommodation for any child in contact with the law in the community in collaboration with other relevant agencies.
- e) Tracing the parents or guardians of any lost, or abandoned child and to return them to their lawful place of residence.
- f) Intervening on behalf of a child in contact with the law and is in danger of imminent injury or harm, where possible by securing the removal of such child to a place of safety.
- g) Mediating in accordance with the Children Act, in family disputes involving children and their parents, guardians, or other persons who have parental responsibility in respect of children and promote family reconciliation.
- h) Making arrangements for the assessment of children placed under their care, and to provide counselling guidance and other support services for children and their families.

- i) Assisting children through court proceedings and other interviews hearings.
- j) Implementing diversion programs.

The role of child protection volunteers in Juvenile Justice System

Volunteer children's officers are appointed by the Director of the department of Children Services upon recommendation of area advisory councils, who are legally constituted under section 32(q) of the Children Act, which include:

- a) To ensure the rights of children in the community are protected.
- b) To provide guidance to children in need of care and protection at community level.
- c) To rehabilitate and reintegrate child offenders into the community.
- d) To promote networking and collaboration in provision of services by partners and stakeholders in the children sector.
- e) To act as secretary in the local Area Advisory Council (AACs).

Activity



Ask the participants to suggest some of the qualifications they would look for in child protection volunteers and grounds on which one may be disqualified. Note down their responses on a flip chart.

1.3.1.3. The Office of Director of Public Prosecutions (ODPP)

The Office of Director of Public Prosecutions (ODPP) is established under Article 157⁸(1) of the Constitution of Kenya.



Explain to the participants that a Community Probation Volunteer is a person who willingly provides selected services of a probation officer without expectation of payment and having been mandated to do so by an authorized body.

Pursuant to Article 157(6)⁹ the mandate of the ODPP is to institute and undertake prosecution of all criminal matters and all other aspects incidental thereto. The ODPP is the national prosecutorial authority. In executing its roles, the ODPP aims to provide quality, impartial and timely services in a manner that is professional efficient and fair. The role of ODPP in the JJS includes:

- a) Reviewing files and recommending Alternative Dispute Resolution (ADR) mechanisms such as diversion or prosecution as envisaged in the National Prosecution Policy, the ODPP Diversion Policy, guidelines and explanatory notes.
- b) Initiating and facilitating plea bargaining.
- c) Making an application for appointment of legal representative for the child offender.
- d) Ensuring that all proceedings involving a child are conducted in camera.

⁸ Director of Public Prosecutions - (1) There is established the Office of Director of Public Prosecutions.

⁹ The Director of Public Prosecutions shall exercise State powers of prosecution and may - (a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed; (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and (c) subject to clauses (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

- e) Requesting the court to call for necessary reports such as PORs, CORs, PBRs, VIR to assist the court in making appropriate orders.
- f) Advocating for child-friendly facilities.
- g) Ensuring that the child offender or their advocate and respective parties to a case are supplied with all the documentary evidence that the prosecutor will rely on.
- h) Bringing to the attention of the court any information, for example an offender's previous convictions, that might assist the court in making its decision.
- i) Recommending to the court to open a Care and Protection (P&C) file in respect of the child and call for the children's officer to make follow-up.
- j) Ensuring cases are handled expeditiously and without undue delay.
- k) Protecting the identity and privacy of the child victims by use of their initials on the charge sheet.
- l) Making applications for use of protection measures in court for vulnerable witnesses as envisaged in Section 31¹⁰ of the Sexual Offences Act.

1.3.1.4 The Judiciary

The Judiciary is established under Chapter 10 of the Constitution of Kenya and the Judicature Act Cap 8. Its role in the Juvenile Justice System (JJS) includes:

- a) Dispensing justice to safeguard the rights of children.
- b) The duty and power to adjudicate on issues involving children which includes the following as provided under the Children Act No. 8 of 2001.
 - (i) Parental responsibility
 - (ii) Custody and maintenance
 - (iii) Guardianship
 - (iv) Child in conflict with the law
 - (v) Safeguarding the rights and welfare of the child including holding trials in camera to protect the privacy of the children involved.
- c) Directing a parent or guardian to attend court, where a child is charged with any offence or for any other reason brought before court, unless the court is satisfied it would be unreasonable to require such attendance.
- d) Convening Court User Committees on Child Justice.
- e) Handling children matters expeditiously and without unnecessary delay.
- f) Ensuring that all children in contact with the law have legal representation.
- g) Visiting statutory children institutions.
- h) Examining the operative policy and legal regimes as well as the emerging case law to identify the challenges and make appropriate recommendations.

1.3.1.5. Probation Officers

Probation and Aftercare services are fundamental requirements in the Juvenile Justice System. The legal framework for Kenya Probation and Aftercare service is provided by the Probation of Offenders Act Cap. 64. The roles of Probation Officer include:

- a) Preparing and presenting to court various reports: Pre Bail or Bail Assessment, POR, CSOR, pre-sentence, resentence, Victim Impact Assessment, Social Inquiry, Institutional Reports, EARs. Making preliminary inquiries as the court may direct, into the antecedents, home, surroundings and other circumstances of a child in contact with the law and to provide advisory reports to the courts.
- b) Undertaking the supervision of children in conflict with the law placed on probation.

¹⁰ Section 31 of the Sexual Offences Act - Vulnerable witnesses

- c) Making progress reports.
- d) Collaborating with the Children Officer and other authorized officers in supervision of children.
- e) Advising, assisting and counselling the child and endeavouring to secure his or her association with suitable youth movement or other welfare organizations.
- f) Keeping proper and up-to-date records in respect of every child probationer for whom he or she is responsible including roles of visits and interviews and relevant details to the conduct and the progress of the child probationer.
- g) Reporting to the court and case committees on the conduct, mode of life and general progress of every child probationer placed under his/ her supervision.
- h) Reintegrating, resettling and empowering child offenders within the community.
- i) Implementing crime prevention programs.
- j) Facilitating Diversion Programs.

Community probation volunteers

The roles of Community Probation Volunteers (CPVs) include:

- a) Preparing and verifying information as requested by Probation Officers;
- b) Supervising selected offenders serving non-custodial sentences in areas identified by Probation Officers, which can, for instance, include assisting in job search and provide guidance to youth at risk of offending;
- c) Assisting in resettlement, reconciliation and restitution;
- d) Assisting in crime prevention and encouraging community participation in the same;
- e) Sensitizing the community on role of Probation and After Care Services as well as the concept and the role of a Volunteer Probation Officers;
- f) Attending appointments and activities organized by Probation Officers.

1.3.1.6 Kenya Prison Service

The Kenya Prisons service derives its mandate from the Prisons Act (Cap. 90), the Borstal Institutions Act (Cap. 92) of the Laws of Kenya and the Children Act.

The roles of the Kenya Prisons Service and Prison's Officers working with children in conflict with the law include:

- a) Confining and keeping juvenile offenders in safe custody.
- b) Rehabilitating and reforming juvenile offenders through training, counselling educational and professional programs.
- c) Facilitating administration of justice by producing children in conflict with the law to court for case proceedings.
- d) Controlling and training of children in conflict with the law in Borstal institutions and the Youth Corrective Training Centres(YCTC).
- e) Providing proper sanitary arrangements, water supply, food, clothing, medical attention, and bedding for the young offenders.

Section 30(4)¹¹ of the Prisons Act, Cap 90, states that an infant of a female prisoner may be received into prison with its mother until it attains 4 years of age. The officer in charge of prisons is mandated to provide the infant with clothing and other necessities at public expense until arrangements for proper care outside prison are made. The preparation for separation when the child grows older, are also made, while providing for continued contact with parents and extended family even with alternative care provisions (UNICEF, 2007). The roles of Kenya Prisons Service and Prison's Officers working with children in need of care and protection include:

- a) Providing care for children accompanying their mothers to prison.

¹¹ Subject to such conditions as may be prescribed, the infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at public expense: Provided that such child shall only be permitted to remain in prison until it attains the age of four years or until arrangements for its proper care outside prison are concluded, whichever shall be the earlier.

- b) Liaising with other Juvenile Justice Agencies to ensure that children left at home due to the imprisonment of their parents or guardians are provided with care and protection
- c) Facilitating remote parenting and child-friendly visitation for parents (for children who are 4 years or older) in prisons as well as facilitating family conferencing as may be necessary.
- d) Liaising with other agencies for reintegration into the community.

1.4. REFERENCES

Department of Children's Services and JICA 2003. *The Manual for Children's Officers, Staff of Children's Institutions, and Volunteer Children's Officers (Second Revised Version)*.

Department of Children's Services and JICA 2008. *National Standards and Regulation for Statutory Children's Institutions*.

Department of Children's Services and JICA 2008. *The Handbook for Volunteer Children Officers*.

Hoge, R. D., & Andrews, D. A. (1996). *Assessing the youthful offender: Issues and techniques*. Springer Science & Business Media.

Jostine, Junger, Tas, & Scott, H. Decker, 2008. *International Thematic Manuals of Juvenile Justice*. Kenya National Bureau of Statistics. 2012. *Statistical Abstract 2012*. Nairobi.

Naties, V. (1989). *United Nations Convention on the Rights of the Child (UNCRC)*.

Peters, J. K. (2005). How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study. *Nev. LJ*, 6, 966.

Probation and Aftercare Services. 2010. "Probation" Issue 6.

Republic of Kenya. *The Adoption Act Cap. 143 - (Repealed)*.

Republic of Kenya. *The Borstal Institutions Act Cap. 92*.

Republic of Kenya. *The Children Act No. 8 of 2001*.

Republic of Kenya. *The Constitution of Kenya- 2010*.

Republic of Kenya. The Community Service Order Act No. 10 of 1998.

Republic of Kenya. The Guardianship of Infants Act Cap. 144 (Repealed).

Republic of Kenya. The Judicature Act Cap. 8 Revised Edition 2012.

Republic of Kenya. The National Police Service Act No. 11A 2011.

Republic of Kenya. The National Police Service Standing Orders.

Republic of Kenya. The Prisons Act. Cap. 90.

Republic of Kenya. The Probation of Offenders Act Cap. 64.

UNICEF (2007). *A World Fit for Us: The Children's Statement from the UN Special Session on Children: Five Years on.*

UNICEF (2007). *Implementation Handbook for the Convention on the Rights of the Child.*

UNICEF (2011). *Kenya Statistics*. Retrieved from http://www.unicef.org/infobycountry/kenya_statistics.html

UNICEF and Republic of Kenya. (2007). *Review of progress towards the world Fit for children + 5 goals in Kenya.*

UNICEF and Republic of Kenya. (2010). *Violence: against children in Kenya: findings from a 2010 national survey.*

GENERAL PRINCIPLES RELATING TO CHILD JUSTICE AND INTERNATIONAL LEGAL INSTRUMENTS

Duration	4 hours
Overview	This is a brief introduction to the concept and key principles of Juvenile Justice System (JJS). The participants should understand and apply the concept of the JJS as essential for the entire unit in this training manual.
Key Learning Outcomes	By the end of this unit the participant should be able to: <ol style="list-style-type: none"> 1. Demonstrate a knowledge of the Instruments, their implementation, the manner of monitoring and evaluation 2. Discuss the general principles in handling children within the JJS. 3. Discuss international instruments and special child care and protection measures for children. 4. Discuss the rationale for international instruments and special child care protection measures for children. 5. Discuss the application of these instruments in the JJS including the Reporting Mechanisms.
Preparation/Learning activities	Find out if participant is well versed with the JJS. Request the participant to share his/her experience in two to three minutes.
Materials	Flip chart and markers, laptop and projector
Session type	Lecture, discussion and activity (role-play)

Activity (individually)



1. On the flip chart write the words 'Juvenile Justice System'.
2. Ask the participants to define the word. Write down their responses.
3. Ask the participants for the rationale behind the formation of a Juvenile Justice System and note down their responses.
4. Ask the participants to indicate instances when the system is used and write down their responses.
5. Ask how the JJS applies to their places of work.

2.1. GENERAL PRINCIPLES IN HANDLING CHILDREN WITHIN THE JUVENILE JUSTICE SYSTEM

These principles are embedded in international instruments as general principles and are basically tilted towards a child welfare model. The child welfare model reflects a doctrine of *parens patrie* where the state has the right to assume responsibility for the well-being of the child. This model assumes interventions drawn on medical, psychological, educational or social work techniques and are directed towards the community, the youth and family to derive desirable rehabilitative results.



Discuss with the participants, the following general principles in handling children within JJS:

- a) The focus is the best interest of the child with the discretion not limited to the court but referred to all levels of the system that is police, public prosecutor, children's officers, probation officers, prisons and the court.
- b) A lot of emphasis is placed on treatment rather than punishment.
- c) Considerable effort is made to reduce the formal character of court procedures.
- d) Hearing is not in public and procedures are confidential to protect the Juvenile's privacy.

The following are the principles of handling children in contact with the law:

- i) Best interest of the child - In all matters relating to children, the best interests of the child shall be paramount and be upheld with utmost importance.
- ii) Non-discrimination
- iii) Child participation - In all matters relating to children and in all the stages of child justice, child participation shall apply and no decisions shall be taken without the consent of the child or without hearing the opinion of the child.
- iv) Survival and development

2.2 INTERNATIONAL INSTRUMENTS AND SPECIAL CHILD CARE AND PROTECTION MEASURES FOR CHILDREN

Activity



Ask the participants to pair up and discuss the rationale for international instruments and special child care protection measures. Note their responses of the participants on the flip chart.

Share with the participants the following:

- i) The need to be aware that children are a special category of persons who need special protection and procedures due to their physical and mental vulnerability.
- ii) Children are entitled to all the rights and freedoms set forth in the Universal Declaration on Human Rights and other international instruments on child care and protection.
- iii) Special protection measures provided for in the Children Act, 2001. These measures should be applied by all the courts handling children in contact with the law to ensure that the best interests of the child is observed. These measures include:
 - i) **Sitting of Children's Court** [Section 74(A)]¹² indicates that a Children's Court sits in a different building or room, or at different times, from those in which sittings of courts other than Children's Courts are held, and no person should be present at any sitting of a Children's Court except - (a) members and officers of the court; (b) parties to the case before the court, their advocates and witnesses and other persons directly concerned in the case; (c) parents or guardians of any child brought before the court; (d) *bona fide* registered representatives of newspapers or news agencies; (e) such other persons as the court may specially authorize to be present.

From practice, in some circumstances, some parties might be sent out if it is in the best interests of the child.

¹² Sec. 74(A) of the Children Act - Sitting of Children's Court

- ii) **Consideration of the child's opinion** [Section 76 (3) (a)] indicates that where the court is considering whether or not to make an order, the feelings and wishes of the child with reference to age and understanding shall be considered. A social inquiry report would assist the court in this. In addition, it shall also consider any harm the child might have suffered, or is at risk of suffering. In certain circumstances, the courts may make orders such as removing the child from the place where the child suffered harm or avoiding further torture of harm or appointing guardian ad litem if necessary, to protect the child and any other orders that may be necessary to protect the child.
- iii) **Legal representation** (Section 77)¹³ read with Article 50(2) (g) and (h) of the Constitution¹⁴ gives the court authority to order that the child be granted legal representation. Any expenses incurred in relation to the legal representation of a child under this circumstance shall be cleared out of monies provided by Parliament. The Court may request the National Legal Aid Service (NLAS) to provide legal representation for the child. NLAS is the government body mandated to provide legal advice and legal aid.

Discuss

The following are international instruments formulated in the interest of the protection and care of children. Ask the participants to discuss them.

- i) United Nations Convention on the Rights of the Child (UNCRC)
- ii) African Charter on the Rights and Welfare of the Child (ACRWC)
- iii) Maputo Protocol
- iv) United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines 1990)
- v) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- vi) United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The JDL Rules 1990)
- vii) United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- viii) United Nations Resolution 1997/30 – Administration of Juvenile Justice – Vienna Guidelines 1997 of 21 July, 1997
- ix) The United Nations Convention Against Transnational Organized Crime (UNTOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Person Especially Women and Children (2000)
- x) United Nation Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)



Kenya joined the United Nations in 1963 and ratified the UNCRC in 1990, the UNTOC in 2004 and its Protocol in 2005. In 1963, Kenya became a member of the Organization of African Union (OAU). OAU was then replaced by the African Union (AU) in 2002.

The ACRWC was adopted by the AU and entered into force. Kenya signed and ratified this Charter in 2000. These conventions are legally binding in Kenya¹⁵. Despite the guidelines and rules not being legally binding, they have a significant meaning indicating normative standards in the field of Juvenile Justice.

¹³ Sec. 77 of the Children Act - Legal aid (1) Where a child is brought before a court in proceedings under this Act or any other written law, the court may, where the child is unrepresented, order that the child be granted legal representation. (2) Any expenses incurred in relation to the legal representation of a child under subsection (1) shall be defrayed out of monies provided by Parliament.

¹⁴ (g) to choose, and be represented by, an advocate, and to be informed of this right promptly; (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

¹⁵ Article 2(5) The general rules of international law shall form part of the law of Kenya. (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

2.3 RATIONALE FOR INTERNATIONAL INSTRUMENTS AND SPECIAL CHILD CARE PROTECTION MEASURES FOR CHILDREN

Children are a special category of persons who need special treatment and procedures due to their physical, psychological and emotional vulnerability. Part 3¹⁶ of the Constitution of Kenya stipulates the specific application of rights that are guaranteed and should be given to children, persons with disabilities, youth, minority and marginalized groups as well as the older members of society who need special attention. They are entitled to all rights and freedoms stated in the Universal Declaration of Human Rights and other international instruments on Child Care and Protection.

There are several international instruments and special protection measures relating to child care and protection.

- a) It's important for each JJA to understand their respective roles vis-a-vis the instruments.
- b) It's also important to note that an African child requires special guidelines and care due to the unique factors of the African political, socio-economic, cultural, and developmental circumstances.

2.3.1. UN Convention on the Rights of the Child (UNCRC)

It was adopted by the UN General Assembly Resolution 44/25 of the 20th November 1989. It has 54 Articles that collectively aim to set out standards for the defence of children against neglect and abuse they face to varying degrees in all countries.

The most important consideration is the best interest of the child is stated in Articles 3, 9, 18 and 21 of the Convention. The Articles implore member countries to enact laws to execute these provisions; the preamble to the Children Act has incorporated it. In summary, the rights set out include:

1. **Provision:** The right to possess, receive or have access to certain things or services such as name and nationality, health care, education, rest and play and care for all including disabled and orphans.
2. **Protection:** The right to be shielded from harmful acts and practices such as separation from parents, engagement in warfare, commercial and sexual exploitation and physical and mental abuse.
3. **Participation:** The child's right to be heard on decisions, affecting his or her life as abilities progress. The child should have increasing opportunities to take part in activities of society, as a preparation for adult life through freedom of speech and opinion, culture, religion and language.
4. **Parental/community involvement:** Involvement of parents and communities in the upbringing of the child as stated in Articles 5, 9 and 18.
5. **Privacy and confidentiality:** The child's privacy should not be interfered with as stated in Article 16¹⁷.
6. **Humane treatment of children deprived of liberty:** Article 37 prohibits subjecting children deprived of liberty to torture, cruel, inhuman, degrading treatment or punishment. It further provides that such children shall have a right to prompt access to legal and other appropriate assistance.

Article 44 requires state parties to report to the Committee on the Rights of the Child regularly as follows:

State Parties undertake to submit to the Committee, through the Secretary General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein (in this Convention) and on the progress made on the enjoyment of those rights:

¹⁶ Part 3 Constitution of Kenya – Specific Application of rights

a) Art. 52 - Interpretation of Part (1) This Part elaborates certain rights to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groups of persons. (2) This Part shall not be construed as limiting or qualifying any right.

b) Art. 53 – Children.

¹⁷ Article 16 – Privacy and Confidentiality (1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. (2) The child has the right to the protection of the law against such interference or attacks.

- a) *Within two years of the entry into force of the Convention for the State Party concerned.*
- b) *Thereafter every five years.*

2.3.2. African Charter on the Rights and Welfare of the Child (ACRWC)

Adopted by the African Union (AU) formerly the Organization of African Unity (OAU) in (1990) and entered into force (1999). It reaffirmed and ratified the UNCRC.

It specifically reaffirms that African children are faced with different types of abuses including economic and sexual exploitation, gender discrimination, and involvement in armed conflict, harmful cultural practices, early marriages and street children. The charter prohibits and protects children against such practices. It further promotes affirmative action for girls and boys and abolition of all forms of discrimination and seeks for a committee of experts responsible for receiving complaints on non-compliance be established.

The charter also provides unique features such as provision of special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of an offence and thereafter places responsibilities of the child towards the family and the society.

Article 31 of the charter provides for the responsibilities of the child. Children have responsibilities towards their families and societies, to respect their parents, superiors and elders, to preserve and strengthen African cultural values in their relation with other members of their communities.

Implementation

The Charter establishes the African Committee of Experts on the Rights and Welfare of the Child whose mandate is:

- a) To promote and protect the rights enshrined in this Charter.
- b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.
- c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party.
- d) (d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

The reporting procedure requires that within two years of ratification a state makes its initial report, thereafter every three years on the implementation of the Charter. The Committee then responds by way of concluding observations.

2.3.3 Maputo Protocol

Maputo protocol is the protocol to the African charter on human and peoples' rights on the rights of women in Africa.

Preamble

Firmly convinced that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated; any other AU Guidelines on Child Protection.

Although the protocol is about women's rights Article 1(k) specifies that "Women" means persons of female gender, including girls.

There are however some Articles that are specific to girls, such as:

- a) Article 1
 - (g) "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
 - (j) "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of

arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;

b) Article 11

(4) States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

c) Article 12

(2)(c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

The treaty for the establishment of the East African Community has Article 120 on Social Welfare.

The Partner States undertake to closely cooperate amongst themselves in the field of social welfare with respect to;

(c) the development and adoption of a common approach towards the disadvantaged and marginalised groups, including children, the youth, the elderly and persons with disabilities through rehabilitation and provision of among others, foster homes, health care education and training.

African Youth Charter signed on 28th June 2008 defines minors as young aged between 15 and 17 years.

2.3.4. United Nations Guidelines for the Prevention of Juvenile Delinquency: The Riyadh Guidelines (1990)

The Riyadh Guidelines were adopted and proclaimed by the UN General Assembly Resolution 45/112 of 14th December 1990. The guidelines spell out what member state governments should do to avoid Juvenile Delinquency. The principles embedded in Riyadh Guidelines include:

1. Engagement of the community through humanistic orientation to develop a child personality indicated in principle 1, 2 and 6.
2. Child participation.
3. Promoting the best interest of the child principal as a focus in preventive programs through the national legal systems.
4. Avoidance of criminalizing a child for delinquent behaviour indicated in principle 46.

The principles of the Riyadh Guidelines also apply to child institutions in relation to punishment.

2.3.5. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly referred to as the Beijing Rules was adopted by the United Nations in resolution 40/33 of the 29th November, 1985. The rules are best known for the Principle of Diversion.

The following principles are insisted on in the rules:

1. Emphasizing on the well-being of young people and ensuring that any reactions should always be in proportion to the circumstances of both the offenders and the offence.
2. Encouraging of the use of diversion programs.
3. Applying discretion at all stages of the trial, placing checks and balances to take actions deemed most appropriate in each individual case in the best interest of the child.
4. Ensuring the right to privacy and procedural safeguards including presumption of innocence.
5. Ensuring proceedings are conducive to the best interest of the child and that a child should be free to express himself in the proceedings and as much as possible should be represented.
6. Using inquiry reports in social, family and education background to identify appropriate social services.
7. Avoiding institutionalization of a child unless it is of last resort and if opted for, is in the best interest of the child.

2.3.6 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The JDL Rules 1990)

The JDL rules 1990, as commonly referred to, was adopted by the United Nations Resolution 45/113 of December 1990 after the 68th plenary session. They are geared towards enunciating safeguards for a child deprived of liberty. Provisions given include:

1. Treatment of juveniles in custody or any form of detention as per the scope and application of the rules as provided for in Article 11 – 16¹⁸.
2. Juveniles under arrest or awaiting trial as per Article 17-18¹⁹.
3. Management of juvenile facilities as provided for under Articles 19-80²⁰.
 - ï Records as per Articles 19 and 20.
 - ï Admission, registration, movement and transfer of children as per Articles 21-25.
 - ï Classification and placement Articles 27-30.
 - ï Physical environment and accommodation as per Articles 31-37.
 - ï Development of individualized treatment plans as per Articles 27-30.
4. Access to education, healthcare, recreation, religion, notification of illness and death in the best interest of the child while in custody, contact with the community, disciplinary measures, and limitations of physical restraint and use of force.

2.3.7 United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)

These rules are intended to:

1. Promote greater community involvement in the management of criminal justice, especially in the treatment of offenders, at the pre-trial, diversion, sentencing and post-trial stages.
2. Promote a sense of responsibility among the offenders towards society.

The rules also guide their implementation by state parties. They state that governments shall endeavour to ensure:

- i) Proper balance between the rights of individual offenders, victims and concern of society for public safety and
- ii) Crime prevention.

Where appropriate and compatible with the legal system, the police, the prosecution or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims.

Sentencing options applied at trial stage include:

1. Verbal warning
2. Conditional discharge
3. Economic sanctions
4. Confiscation
5. Suspended or deferred sentences
6. Probation and Judicial supervision
7. Community service orders
8. Referral to attendance centres
9. House arrest

¹⁸ JDL 1990 - Part II – Scope and Application of the Rules – Articles 11 – 16

¹⁹ JDL 1990 - Part III - juveniles under arrest or awaiting trial - Articles 17-18

²⁰ JDL 1990 - Part IV (A) – (N) – management of juvenile facilities – Articles 19 - 80

At the post-trial stage, orders or post-sentence dispositions range from:

- i Permission
- i Parole
- i Pardon
- i Halfway houses
- i Furloughs

2.3.8 United Nation rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (The Bangkok Rules)

The Bangkok Rules aim at addressing treatment of women prisoners including the children accompanying them to prison.

Rule 49²¹ talks about the decision to allow children to stay with their mothers in prison. For this to take place, relevant procedures should be developed from the court process to admission into the prison with the mother to institutionalization around the prison²² and reintegration back into the community.

Rule 52²³ indicates that the decision to separate a child from his or her mother in prison, individual assessment in the best interest of the child must be done. Removal should be undertaken only when alternative care arrangements are in place and the family/kinship given first priority (child-friendly procedures be followed). Women should be accorded maximum possible opportunities to meet and interact with their children after separation.

2.3.9 United Nations Resolution 1997/30 – Administration of Juvenile Justice – Vienna Guidelines 1997 of 21 July 1997

The aim of the guidelines is to ensure full implementation of the UNCRC particularly to ensure that there is cooperation between member states and the United Nations. Towards that end:

- a) Adequate resources should be allocated. This should include human, financial, technical and information resources, should be allocated and utilized officially at all levels (international, regional, national, provincial and local) and in collaboration with other partner states to ensure all rights of the child are enforced and protected²⁴.
- b) Comprehensive and consistent national approach in the area of juvenile justice with respect to interdependence and invisibility of all the rights of the child should be ensured.

Targeted actions provided by the Resolution:

1. The role of the state in ensuring effectiveness in birth registration programs²⁵
2. The state to ensure that no child under the age of criminal responsibility is subjected to criminal charges²⁶.
3. The government to set up agencies and programs to provide legal and other assistance to children²⁷.
4. Comprehensive child-centred Juvenile process.²⁸

²¹ Bangkok Rules - Rule 49. Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

²² Bangkok Rules - Rule 51

²³ Bank Rules - Rule 52 (1) Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws. (2) The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials. (3) After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

²⁴ Article 10

²⁵ Article 12

²⁶ Article 13(C)

²⁷ Article 16

²⁸ Article 14(A)

5. A review is done by experts on children laws²⁹
6. Establishment of Juvenile court³⁰

Juvenile justice should be given due attention, nationally, regionally and internationally, including within the framework of the United Nations (UN) system wide action³¹.

Special protection measures to alleviate the problems of children such those working/living in the streets, or children permanently deprived of a family environment, children with disabilities, and children of minorities should be put in place and ensured.

2.3.10 The United Nations Convention Against Transnational Organized Crime and The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

2.3.10.1. The United Nations Convention Against Transnational Organized Crime

This Convention has made provision for the processes related to transnational crime. The transnational crimes provided for in this convention includes money laundering and human trafficking.

The following articles directly relate to matters of child trafficking:

- i) Article 1 provides that “The purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.”
- ii) Article 24 provides for protection of witnesses during trial.
- iii) Article 25 provides for assistance to and protection of victims of trafficking.

2.3.10.2. The Protocol to Prevent Suppress and Punish Trafficking in Person Especially Women and Children.

This Protocol generally relates to the Trafficking in Persons Act. The purpose of this Protocol is to:

1. Prevent and combat trafficking in persons, paying particular attention to women and children;
2. Protect and assist the victims of such trafficking with full respect for human rights; and to
3. Promote cooperation among state parties in order to meet those objectives.

The Children Act has borrowed definition of certain terms from the Protocol such as, the term “trafficking in persons”.

2.3.11 Standard Minimum Rules for the Treatment of Prisoners, Geneva 1955

The instrument does not specifically deal with children institutions but gives general guidelines on how a prison or penal institution is run. This instrument can broadly be used as a guide on how children institutions should be run. The provisions of these Rules that may be deemed relevant to the running of children’s institutions and treatment of children in the said institutions include:

- a) Article 5(1) stipulates that “the rules do not seek to regulate the management of institutions set aside for young people such as borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.
- b) Article 5(2) notes that the category of young prisoners should include at least all young persons, who come within the jurisdiction of Juvenile courts. As a rule, such young persons should not be sentenced to imprisonment (this relates to the general principle of institutionalization being a last resort when dealing with Juveniles).
- c) Part I on rules of general application which deals with: basic principle; registration of inmates; separation of categories; accommodation guidelines; personal hygiene; clothing and beddings for the inmates; food rations; exercise and sports for the inmates; provision of medical services; discipline and punishment; instruments of restraints; information to and complaints by inmates; contact with the outside world (parents and guardians); books; religion; retention of inmates’ properties; notification of death, illness, transfers etc; removal of prisoners,

²⁹ Article 15

³⁰ Article 14(D)

³¹ Article 26

institutional personnel; and inspection (visiting Justices and Courts from time to time to ensure that proper standards are maintained).

- d) Article 85(2) states that young untried prisoners shall be kept separate from adults and shall in principle and shall be detained in separate institutions.

Revision exercise

- i) Describe the key principles relating to the JJS.
- ii) Outline instruments that uphold these principles and their application to your organization.
- iii) What are some of the challenges in the application of the principles of the JJS in your organisation?
- iv) Select any principle and explain how you would ensure that all the officers in your organization are compliant with it.

2.4. REFERENCES

Guidelines on the Protection of Child Victims of Trafficking, 2006.

Protocol to Prevent, Suppress and Punish Trafficking in person especially Women and Children Supplementing the United Nations Convention on the Rights of the Child. (UNCRC), 1989.

Robert D. Hoge & D.A. Andrews. (1996), *Assessing the Youthful Offender; issues and techniques*. Plenum: Ontario.

The African Charter on the Rights and Welfare of the Child. (ACRWC), 1999.

The Constitution of Kenya 2010.

The Children Act No. 8 of 2001.

United Nation Convention against Transnational Organized Crime (UNTOC), 2000.

United Nations Convention against Transnational Organized Crime, 2001.

United Nations Economic and Social Council, *Resolution 2005/20 and Resolution 2004/27 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*.

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990.

United Nations Resolution 1997/30 Administration of Juvenile Justice (Vienna Guidelines).

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. (JDLs - Havana Rules), 1990.

United Nations Rules for the Treatment of Women Prisoners and Non- Custodial Measures for Women Offenders (the Bangkok Rules), 2010.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985.

United Nations Standard Minimum Rules for the Treatment of Prisoners. (Geneva Rules), 1955.

United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), 1990.

United Nations: The Universal Declaration of Human Rights, 1948.

NATIONAL INSTRUMENTS RELATING TO JUVENILE JUSTICE

Duration	4 hours
Overview	This unit introduces the child care and protection officer to the Kenya's statutes and other legal instruments that guide the implementation of Juvenile Justice system in Kenya.
Key Learning Outcomes	By the end of this unit the participant should be able to: a) Discuss the National JJS legal instruments. b) Apply the National Juvenile Justice System (JJS) instruments in relation to children in Kenya. c) Discuss the challenges relating to application of the underlying concepts of the JJS, in the national legal instruments in each participant's JJA or place of work.
Preparation/Learning Activities	Divide participants in small groups and ask them to name the respective national legal instruments applicable to their respective JJA. Have a representative from each group present to the plenary.
Materials	Flip chart and markers, laptop and projector
Session type	Lecture, discussion and case studies

3.1 DOMESTIC LAWS RELATING TO CHILDREN MATTERS

Activity



Ask participants to review the general principles in international instruments which they learnt in Unit 2.

There are also domestic laws related to children matters. They include:

1. Constitution of Kenya 2010
2. Children Act 2001
3. The National Police Service Act (Cap 84)
4. The Probation of Offenders Act Cap 64 and Community Service Orders Act No 10 of 1998
5. The Kenya Prisons Service Act (Cap 90)
6. The Borstal Institutions Act (Cap 92)
7. The Penal Code (Cap 63)
8. The Sexual Offences Act No 53 of 2006
9. The Prohibition of Female Genital Mutilation Act No 32 of 2011
10. Counter – Trafficking in Persons Act No 8 Of 2010
11. Basic Education Act Number 14 of 2013
12. The Computer Misuse and Cybercrimes Act 2018
13. The Legal Aid Act 2016

14. Victim Protection Act No 17 of 2014
15. The Marriage Act of 2014
16. Succession Act Cap 160
17. Witness Protection Act
18. Best interest of the child principles - in all matters relating to children the best interest of the child shall be paramount and be taken with utmost importance Article 3 of UNCRC, ACRWC article 4(1).
19. Child participation- in all matters relating to children at all the stages of the child justice system, child participation shall apply and no decisions shall be taken without the consent of the child or without hearing the opinion of the child as provided for under UNCRC Article 9(2), Article 12, Article 13, ACRWC Article 4(2) and Article 7.
20. Involvement of parents

The UNCRC, Article 5 states that legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. It also states under Article 9 that all interested parties shall be given an opportunity to participate in the proceedings and make their views known in matters of parental responsibilities. The ACRWC states that the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, reintegration into his or her family and social rehabilitation under Article 17(3). Article 19 of the ACRWC provides for parental responsibility.

21. Privacy and Confidentiality

The UNCRC under Article 16 states that No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

Article 10 of the ACRWC states that No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

ACRWC under article 17(2)(d) prohibits the press and the public from the trial where the child is involved in the process of administration of justice

Activity



Ask the participants to discuss in groups how the various acts and instruments uphold the general principles in the interest of children in Kenya.

3.1.1. The Constitution of Kenya 2010

This is the supreme law of the Republic of Kenya which binds all persons and state organs. Any law including customary law that is inconsistent with the constitution is invalid. All sovereign power belongs to the people of Kenya.

- a) Article 53(1) provides for the rights of a child particularly that a child's best interests are of paramount importance in every matter concerning the child. The article states that every child has the right:
 - i) To a name and nationality from birth;
 - ii) To free and compulsory basic education;
 - iii) To basic nutrition, shelter and health care;
 - iv) To be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labor.
 - v) 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

- vi) 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.
- b) Article 2(4) also states that any law, including customary law, that is inconsistent with the constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid. Any customs or rites or a cultural practice of this provision which negates the right of a child is outlawed.
- c) Article 2(5) states that the general rules of international law shall form part of the laws of Kenya. This implies that the general international principles which recognize the right of a child are applicable in Kenya.
- d) Article 2(6) states that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.
- e) Article 49(1)(h) gives provision for bail or bond on reasonable conditions pending a charge or trial, unless there are compelling reasons for one not to be released. This means the Constitution now provides for bail or bond to all accused persons including capital offences. This provision also envisages bail where any child is in conflict with the law.
- f) Article 26(1) provides for the right to live while sub section 2 states that the life of a person starts at conception. Article 26(4) prohibits abortion unless there is need for emergency treatment or the life or health of the mother is in danger in the opinion of a trained health professional.

In the Constitution, the rights of a child have been given greater certainty, taking into account vulnerability of an African child who is prone to war, hunger, disease, exploitation and abuse. The mentioned articles take cognizance of the best interest of the child principle.

3.1.2. The Children Act No 8 of 2001

The Children Act (2001) has domesticated the spirit and letter of the UNCRC, ACRWC and the UN Minimum Standard Rules. Through the Act, the principles of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child are given prominence. The Act makes provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children. It also guides on the administration of children's institutions. It provides for the Cabinet Secretary to appoint the Director of Children Services and Children Officers.

- **Part 1 - Preliminary ss1-2** - provides key definitions of a child, authorized officers children institutions, place of safety, guardians and parents.
- **Part 2 - Safeguards for the Rights and Welfare of the Child ss3-22** - forms the parameters for safeguards of the rights and welfare of the child which includes survival and best interest of the child, non-discrimination, right to parental care, right to education, protection from abuse, forced labour, protection from harmful cultural practices and duties and responsibilities of a child.
- **Part 3 - Parental responsibility ss23-29** - provides for parental responsibilities over a child.
- **Part 4 - Administration of children services ss30-46** - establishes the national council for children services, its functions and the appointment of the director of children services, children officers and their functions.
- **Part 5 - Children institutions ss47-72** - provides for establishment of rehabilitation schools, children remand homes, charitable children institutions and their management
- **Part 6 - Children's Courts ss73-80** - provides for the jurisdiction of the children court and general principles in regard to children's court, legal aid and appointment of guardian *ad litem*.
- **Part 7 - Custody and Maintenance ss81-101** - defines custody care and control. It provides for principles to be applied in making custody orders, disputes between custodians, maintenance of children, enforcement of maintenance orders and contribution orders
- **Part 8 - Guardianships ss102-112** - provides for the appointment of guardians by the court
- **Part 9 - Judicial orders for the protection of children ss113-117** - stipulates for the court to make orders in certain proceedings, with Ss114 highlighting the orders which a court may make among them:

- a) Access order
 - b) Residence order
 - c) Exclusion order
 - d) Child assessment order
 - e) Family assistance order
 - f) Ward ship order
 - g) Production order
- **Part 10 - Children in need of Care and Protection ss118-146** - defines children in need of care and protection and proceedings in respect of children in need of care and protection and also provisions of supervision and care orders.
 - **Part11 - Foster Care Placement ss147-153** - provides for conditions for foster care placements.
 - **Part 12 – Adoption ss154-183** - provides for powers to make adoption orders.
 - **Part 13 - Child offender ss184-194** - provides for child offenders and methods of dealing with them.
 - **Part 14 – Miscellaneous and general provisions ss195-200** - provides that the Minister may draft regulations regarding the provisions in the Act.

3.1.3. National Police Service Act No 11A of 2011

The National Police Service Act provides for the functions, organization and discipline of the Kenya Police.

Functions of the Kenya Police Service as provided for in the National Police Service Act include:

- Maintain law and order.
- Preserve peace.
- To protect life and property.
- Prevention and detection of crime.
- Apprehension of offenders.
- Enforcement of all laws and regulations with which it is charged. It is the legal duty of the police to implement the Children Act in all aspects. Under Section 2 of the Children Act, the police are mentioned as authorized officers. The implementation of Part X of the Children Act which relates to children in need of care and protection is also the role of the authorized officer. Section 119 sets out the categories of children in need of care and protection. A child in this category may end up graduating into Juvenile delinquency which can lead to the child getting into conflict with the law.

The police have a pivotal role in preventing children from getting into crime. The police also have a role in conducting investigations in relation to children in contact with the law, both those in need of care and protection as well as those in conflict with the law, to protect the child from further harm and to establish the circumstances causing the child to be in need of care and protection or to be exposed to crime or criminal activity. Sometimes the child is a victim of an offence(s). The culprit may get away if police just handle the case as purely welfare.

3.1.4. Probation of Offenders Act (Cap 64) and Community Service Orders Act No 10 of 1998

The Probation of Offenders Act provides guidance on the probation of offenders. It is the basis of which Probation Officers undertake their mandate. The Act provides for the appointment of the director of Probation and Aftercare Service, probation officers and stipulates their duties.

Section 4 gives power to the court to make a probation order with or without proceeding to conviction. Note that the terms conviction and sentence are not to be used in relation to a child³². The Probation Offenders Act also provides for

³² Sec. 189 of the Children Act

factors to be taken into consideration to be before making the order, for example:

- a) The age
- b) Character
- c) Antecedents
- d) Home surroundings
- e) Health or mental condition of the offender
- f) Nature of the offence
- g) Any other extenuating circumstances in which the offence was committed.

Probation order is provided for under Sec 191(1)(c) of the Children Act, whereby the child is placed under the supervision and guidance of a Probation officer for a minimum period of 6 months to a maximum period of 3 years.

Probation hostel: The Act provides for establishment of probation hostels. Section 5 provides the conditions for placement of offenders to the hostels. The courts may issue a placement order to the hostels as provided for by s.191 (1) (j) of the Children Act.

Community Service Orders are mentioned Section 191(1)(k) of the Children Act. The Act provides for a non-custodial sentence where the offender does unpaid public work pursuant to a court order in the community. Current amendments have made it mandatory for the court to call for a pre-sentence report where a non-custodial sentence is preferred.

A social inquiry report is called for to ensure that the best interests of the child are kept paramount³³.

3.1.5. The Prisons Act (Cap 90)

The Prisons Act provides for children held under the care of the Kenya Prisons Service, that is, those in their detention, for example the Youth Corrective Training Centres (YCTCs).

Section 30(4) provides for children accompanying their mothers to prison noting that subject to such conditions as may be prescribed, the infant child of a female prisoner may be received in prison with its mother and may be supplied with clothing and necessaries at public expense. Provided that such child shall only be permitted to remain in prison until it attains the age of 4 years or until arrangements for proper care outside prison are concluded, whichever shall be earlier.

3.1.6 The Youth Corrective Training Centre (YCTC)

The Youth Corrective Training Centre (YCTC) is established under Part XI, Section 66(1)³⁴ of the Prisons Act which mandates the Cabinet Secretary in charge of prisons to establish through a gazette notice a Youth Corrective Training Centre whose main objective is to instil discipline to first offenders. The only Youth Corrective Centre in Kenya is at Kamiti and admits offenders aged between 17 and 21 years for a defined period of four (4) months during which the inmates undergo short, sharp, shock sentences. All YCTC inmates are committed by the court upon recommendation of Probation Officers.

The court, before placing a child to a youth corrective training centre, observes the best interest of the child by making findings of the circumstances, antecedents and suitability of the institution and /or child.

3.1.7 The Remand Homes

There are times when children are held in the remand within the prison itself. This is not provided for in the Children Act. Questions may be asked as to the legality of the same. According to Section 18(2) and (3)³⁵ of the Children Act, no child shall be subjected to capital punishment or to life imprisonment. Also, a child offender shall be separated from adults in custody.

³³ Child Offender Rule 11

³⁴ Sec.66 of the Prison's Act - (1) The Minister* may, by notice in the Gazette, declare any building, enclosure or place, or any part thereof, to be a youth corrective training centre for the purposes of this Act, and may, in like manner, declare that any youth corrective training centre shall cease to be a youth corrective training centre for the purposes of this Act.

³⁵ Art. 18 - Children Act - Torture and deprivation of liberty (2) Notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or to life imprisonment. (3) A child offender shall be separated from adults in custody.

3.1.8 The Borstal Institutions Act (Cap 92)

It's an act of parliament that makes provision for the establishment of Borstal institutions for youthful offenders and for the detention of youthful offenders. The Borstal institution is a detention centre for children adjudicated of a criminal offence punishable with imprisonment and who have been ascertained by the Court to be between 15-17 years of age at the time of committal. This section of the act stipulates the factors that the courts should consider before committing a youthful offender to a Borstal institution. These factors include:

- a) Offender's character,
- b) Previous conduct and the circumstances of the offence and
- c) Whether it is expedient for his reformation that he should undergo a period of training in a Borstal institution.

The court usually calls for probation pre-sentence reports to assist in establishing the above listed factors and any other necessary matters that should be considered before ordering committal of a young offender to an institution.

Application of principles

- By the court making a finding of the circumstances, antecedents and suitability of the child for placement to the Borstal institution, the principle of best interest of the child is observed.
- The principle of involvement of parents is applied in the process of conducting a social inquiry and investigations whereby the significant other who may be the parent or guardian is interviewed.
- The principle of confidentiality is observed during the court proceeding and also at the time of investigation or interviewing of the child which must be done in private.
- The principle of child participation is adhered to by seeking the opinion of the child on their feelings of placement to the institution when undertaking the social inquiry and also in court before sentence is passed.

3.1.9 The Penal Code (Cap 63)

This is an Act of parliament that provides for criminal offences and their penalties. The age of criminal liability for children is provided for in Section 14 as follows:

1. A person under the age of eight (8) years is not criminally responsible for any act or omission.
2. A person under the age of twelve (12) years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, he had capacity to know that he ought not to do the act or make the omission.
3. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

3.1.10 The Sexual Offences Act No 3 of 2006 (SOA)

This statute uses the definition of the child in the Children Act. It recognizes the various stages of maturity of a child and the special needs of the child. It must be read together with the Children Act more so Part X on children in need of care and protection according to ss119 (k), (l), (n), (r). The courts may make orders according to the Children Act Part X ss114 and other provisions of the law that provide for special protection.

The Act provides for minimum sentences depending on the age of the victim. For instance, for defilement, (i) where the victim is between 0-11 years, the offender is likely to face life imprisonment; (ii) while where the victim is between 12-15 years of age the offender is likely to face 20 years imprisonment; and where the victim is between 15-18 years of age, the offender is likely to face 15 years imprisonment.

The Act also provides protection for children against child trafficking, prostitution and pornography. It provides further protection from sexual abuse by persons entrusted with children, for example, manager or staff of a jail, children's institution (remand home, children's rescue center) or any institution or any other place of custody established by or under any law such as hospital or staff of a hospital, school or special institution of learning whether formal or informal, any person who being in a position of trust, who commits a sexual offence other than rape or defilement with a child faces a minimum sentence of 10 years³⁶.

³⁶ Sec. 24 of the Sexual Offences Act

The Act also provides for vulnerable witnesses and offers protection measures under Section 31-33. Section 31(1-4) states that:

- i) *A court in criminal proceedings involving the alleged commission of a sexual offence, may declare a witness other than the accused, who is to give evidence in those proceedings a vulnerable witness if such witness is-*
 - a) *the alleged victim in the proceedings pending before the court;*
 - b) *a child; or*
 - c) *a person with mental disabilities.*
- ii) *The court may, on its own initiative or on request of the prosecution or any witness other than a witness referred to in subsection (1) who is to give evidence in proceedings referred to in subsection (1), declare any such witness, other than the accused, a vulnerable witness if in the court's opinion he or she is likely to be vulnerable on account of -*
 - a) *Age;*
 - b) *Intellectual, psychological or physical impairment;*
 - c) *Trauma;*
 - d) *Cultural differences;*
 - e) *The possibility of intimidation;*
 - f) *Race;*
 - g) *Religion;*
 - h) *Language;*
 - i) *The relationship of the witness to any party to the proceedings;*
 - j) *The nature of the subject matter of the evidence; or*
 - k) *Any other factor the court considers relevant.*
- iii) *The court may, if it is in doubt as to whether a witness should be declared a vulnerable witness in terms of subsection (2), summon an intermediary to appear before the court and advise the court on the vulnerability of such witness.*
- iv) *Upon declaration of a witness as a vulnerable witness in terms of this section, the court shall, subject to the provisions of subsection (5), direct that such witness be protected by one or more of the following measures-*
 - a) *Allowing such witness to give evidence under the protective cover of a witness protection box;*
 - b) *Directing that the witness shall give evidence through an intermediary;*
 - c) *Directing that the proceedings may not take place in open court;*
 - d) *Prohibiting the publication of the identity of the complainant or of the complainant's family, including the publication of information that may lead to the identification of the complainant or the complainant's family; or*
 - e) *any other measure which the court deems just and appropriate.*

The successive clauses of Section 31 and Section 32³⁷ also provide for vulnerable witnesses. Under Section 33³⁸ the court may ask for a victim impact statement. This must be read with subsections 329A-F³⁹ of the Criminal Procedure Code (CPC) Cap 75 Laws of Kenya.

3.1.11. The prohibition of Female Genital Mutilation (FGM) Act No 32 of 2011

This is an Act of Parliament that provides for the prohibition of the practice of Female Genital Mutilation (FGM), safeguards against violation of a person's mental or physical integrity through the practice of female genital mutilation and for connected purposes.

³⁷ Sec. 31(5) – (13) and Sec.32

³⁸ SOA Sec. 33 - Evidence of surrounding circumstances and impact of sexual offence.

³⁹ SOA PART IXA – Victim Impact Statements - 329A – Interpretation, 329B - Application of Part, 329C - When victim impact statements may be received and considered, 329D - Victim impact statements discretionary, 329E - Formal requirements for victim impact statements, 329F - Rules of court.

The Act has also filled the lacuna of not having a law to safeguard against violation on the disguise of choice by the individual. Section 2⁴⁰ of the Act defines female genital mutilation.

Section 27 of the Act stipulates protection measures that the government will put in place to protect children. The section provides that the government shall take necessary steps within its available resources to:

- i) Protect women and girls from female genital mutilation;
- ii) Provide support services to victims of female genital mutilation; and
- iii) Undertake public education and sensitize the people of Kenya on the dangers and adverse effects of female genital mutilation as well as penalty for the offences.

Offences and penalties have been captured in Part IV⁴¹ of the Act, as read with Section 29⁴² of the Act.

The Act has accorded law enforcement officers the right to enter into any premises to ascertain if there is any action in contravention to this Act. Part V Section 26 provides procedures for law enforcement officers entering into premises in connection with contravention of this Act. It states that: “A law enforcement officer may, without a warrant, enter any premises for the purposes of ascertaining whether there is or has been, on or in connection with such premises any contravention of this Act.”

The Child Care and Protection Officer (CCPO) therefore has a great role in taking action to protect children who are exposed to FGM and therefore should use this Section and other related legislation to rescue such children. The CCPO may institute a suit in court to seek any necessary orders and to institute trial on behalf of the children.

Relationship between the Prohibition of Female Genital Mutilation Act and Children Act

The Prohibition of Female Genital Mutilation Act ties up with the Children Act towards the protection of children, specifically, Children Act Section 14 and 119(h). Section 14⁴³ of the Children Act provides for protection of children against harmful traditional practices. It states that “no person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development.”

Section 119 mentions the categories of children in need of care and protection and has included a child who is exposed to harmful practices⁴⁴. The Prohibition of Female Genital Mutilation Act has totally outlawed female genital mutilation for all ages. The implication of this is that all the people practicing this kind of act should be tried and sentenced.

Relationship with the Constitution

The Prohibition of Female Genital Mutilation Act also ties up with the Constitution of Kenya in the protection of children.

- i) The Bill of Rights (Chapter Six).

⁴⁰ Section 2 of the Prohibition Against Female Genital Mutilation Act – “female genital mutilation” comprises all procedures involving partial or total removal of the female genitalia or other injury to the female genital organs, or any harmful procedure to the female genitalia, for non-medical reasons, and includes— (a) clitoridectomy, which is the partial or total removal of the clitoris or the prepuce; (b) excision, which is the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora; (c) infibulation, which is the narrowing of the vaginal orifice with the creation of a covering seal by cutting and positioning the labia minora or the labia majora, with or without excision of the clitoris, but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose; all procedures involving partial or total removal of the female genitalia or other injury to the female genital organs

⁴¹ PART IV of the Prohibition Against Female Genital Mutilation Act – Offences Section 19 - Offence of female genital mutilation, Section 20 - Aiding and abetting female genital mutilation, Section 21 - Procuring a person to perform genital female mutilation in another country, Section 22 - Use of premises to perform female genital mutilation, Section 23 - Possession of tools or equipment, Section 24 - Failure to report commission of offence, Section 25 - Use of derogatory or abusive language.

⁴² Section 29 of the Prohibition Against Female Genital Mutilation Act - Penalty for offences - A person who commits an offence under this Act is liable, on conviction, to imprisonment for a term of not less than three years, or to a fine of not less than two hundred thousand shillings, or both.

⁴³ Section 14 of the Children Act - Protection from harmful cultural rites, etc.

⁴⁴ Section 119 Children Act - For purposes of this Act, a child is in need of care and protection - (h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child’s life, education and health;

- ii) Article 53⁴⁵(d) The Act has affected this part of the Constitution by providing that children have a right ‘to be protected from abuse, neglect, harmful cultural practices, all forms of violence including inhuman treatment and punishment and hazardous or exploitative labour.’

International instruments relating to the prohibition of Female Genital Mutilation (FGM) include Article 21 of the ACRWC which provides protection against harmful social and cultural practices.

3.1.12. Counter-Trafficking in Persons Act No 8 of 2010

The purpose of this Act as provided for in the preamble is that it is an Act of Parliament to with an aim to implement Kenya’s obligations under the United Nations Convention against Transnational Organized Crime particularly its protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and provide for the offences relating to trafficking in persons for connected purposes.

Section 3 of the Act has defined activities related to trafficking to include exploitation which has been defined to mean: Child labour; Sexual exploitation; Child marriage; Slavery; Involuntary servitude; Forcible or fraudulent use of any human being for removal of organs or body parts; forced labour; sexual exploitation; and/or forced marriage.

These provisions also relate to Children and therefore of great interest to the Child Care and Protection Officers (CCPOs).

Section 4(1)⁴⁶ of the Counter Trafficking in Persons Act has outlined the acts that promotes child trafficking as follows:

- Adoption of a child or offering a child for adoption for purposes of trafficking.
- Fostering a child or offering a child for foster care.
- Offering guardianship or giving out a child for guardianship for purposes of trafficking.

Section 4(2)⁴⁷ criminalizes Acts that promotes trafficking. These actions provide that person who initiates or attempts to initiate adoption, fostering, or guardianship proceedings for the purpose of subsection (1) commits and offence.

Section 4(3)⁴⁸ provides the penalties to a term of minimum imprisonment of 30 years and to a fine not less than 20 million or both and upon subsequent conviction to life imprisonment. This Act has made child trafficking more serious as compared to Section 13 of Sexual Offences Act.

Part III of this Act (Sections 11-18)⁴⁹ has provided guidelines for protection and support of the victim of the trafficked persons including children, and the factors to be taken into consideration in determination of the case. It provides for protection during trial, right to confidentiality under Section 11, victim impact statement Section 1, and restitution under Section 13.

In supporting and protecting victims of trafficking in persons, Section 15(1)⁵⁰ of the Act provides that the Minister

⁴⁵ Article 53 of the COK, 2010 – Children.

⁴⁶ Counter Trafficking in Persons Act, Section 4(1) - Acts that promote child trafficking (1) A person who for the purpose of trafficking in persons — (a) adopts a child or offers a child for adoption; (b) fosters a child or offers a child for fostering; or (c) offers guardianship to a child or offers a child for guardianship, commits an offence.

⁴⁷ Counter Trafficking in Persons Act, Section 4(2) of the Counter Trafficking in Persons Act A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of subsection (1) commits an offence.

⁴⁸ Counter Trafficking in Persons Act, Section 4(3) A person who commits an offence under this section is liable to imprisonment for a term of not less than thirty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life.

⁴⁹ Part III of the Counter Trafficking in Persons Act – Trial of Offenders and Remedies for Victims of Trafficking in Persons - Section 11. Confidentiality. Section 12. Victim impact statement. Section 13. Restitution. Section 14. Victim immunity from prosecution. Section 15. Support and protection of victims of trafficking in persons. Section 16. Trafficked person exempts from paying fees in civil suits. Section 17. Confiscation and forfeiture of proceeds of crime. Section 18. Repatriation of trafficked persons to and from Kenya.

⁵⁰ Section 15(1) of the Counter Trafficking in Persons Act - Support and protection of victims of trafficking in persons (1) The Minister shall in consultation with the Advisory Committee formulate plans for the provision of appropriate services for victims of trafficking in persons and children accompanying the victims, including— (a) return to and from Kenya; (b) resettlement; (c) re-integration;

in consultation with the Advisory Committee shall formulate a support system for victims of trafficking in persons.

Section 22 provides for the establishment of the National Assistance Trust Fund for victims of trafficking in persons run under a Board of Trustees and the main use of the fund. Section 23 stipulates the sources of the said fund and directs the other uses of the fund related to the assistance of victims of trafficking in persons. However, despite being provided for, the fund has not yet been operationalized.

3.1.13. Basic Education Act Number 14 of 2013

This is an Act of Parliament that was put in place: to give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purpose. Under the Act, novel provisions run through the Act which forestall the best interest of the child. It echoes the UN Charter on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and the Children Act 2001.

Part IV of the Act (Sections 28 – 40) provides for free and compulsory basic education. Section 28(1)⁵¹ of the Act stipulates that every child has a right to free and compulsory basic education. Under Section 30 it's the responsibility of every parent to take a child to school failure a penalty of Kshs.100, 000 or 1 year is levied on such a parent. Section 31 prohibits any employer from employing a child of school going age. A fine of Ksh. 5 million or 5 years is levied on such employer.

Under the Act both parent and government have a duty to ensure every child attains basic education. Part VI of this Act – Promotion and Management of Special Needs Education, Section 44 to 48, provides for establishment, management, regulation, duties, reports and future projections for special needs education schools through the counties. This is a responsibility of the county governments. This is to ensure all children regardless of their status attain basic education.

3.1.14. The Computer Misuse and Cybercrimes Act 2018

This is an Act of Parliament that provides for:

1. offences relating to computer systems,
2. enabling timely and effective detection, prohibition, prevention, response, investigation and prosecution of computer and cybercrimes and;
3. facilitating international cooperation in dealing with computer and cybercrime matters.

The Act (Part II) establishes the National Computer and Cybercrimes coordination committee.

Section 24(3) defines child pornography as including data which, whether visual or audio, depicts a child engaged in sexually explicit conduct, a person who appears to be a child engaged in sexually explicit conduct or realistic images representing a child engaged in sexually explicit conduct.

According to Section 25 of the Act, a person who intentionally publishes child pornography through a computer system, produces child pornography for the purposes of its publication through a computer system, downloads, distributes, transmits, disseminates, circulates, delivers, exhibits, lends for gain or possess child pornography in a computer system or on a computer data storage medium commits an offence and is liable on conviction to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding twenty five years or both.

(d) appropriate shelter and other basic needs; (e) psychosocial support; (f) appropriate medical assistance; (g) legal assistance or legal information, including information on the relevant judicial and administrative proceedings; or (h) any other necessary assistance that a victim may require

⁵¹ Section 28 of the Basic Education Act. Right of child to free and compulsory education (1) The Cabinet Secretary shall implement the right of every child to free and compulsory basic education.

3.1.15. The Legal Aid Act 2016

This Act gives effect to Articles 19, 48, 50(2)(g) and (h)⁵² of the Constitution to facilitate access to justice and social justice. It establishes the National Legal Aid Service (NLAS)⁵³, provides for legal aid and for the funding of legal aid (Part II).

Article 2 of the Act defines legal aid as including;

- a) Legal advice;
- b) Legal representation;
- c) Assistance in
 - i) resolving disputes by alternative dispute resolution;
 - ii) drafting of relevant documents and effecting service incidental to any legal proceedings; and
 - iii) reaching or giving effect to any out-of-court settlement;

Art. 40 of the Act stipulates that a person wishing to receive legal aid shall apply to the service in writing, before the final determination of the matter in court, tribunal or any other forum to which the application relates. This application may be made by the applicant in person, any person or organization authorized by the applicant.

Article 35(2)(c) states that the Legal Aid Services shall be provided in children matters. Article 36(1) stipulates that a person is eligible to receive legal aid services if that person is indigent, resident in Kenya and is

1. A citizen of Kenya
2. A child
3. A refugee under the refugee Act
4. A victim of human trafficking or
5. An internally displaced person or
6. A stateless person

In the event that the child has no capacity to have an advocate of their own, the court would request for a pro bono counsel to represent the child. There is a legal aid scheme for payment for the pro bono lawyers so appointed by court. Section 35 (2) (c) and 36 provides for persons eligible for legal aid. The officer in charge of a prison, police station, remand home for children or other place of lawful custody shall ensure that every person held in custody is aware of the availability of the legal aid and maintains a register containing the name of every person held there and their response when asked if he/she desires to seek legal aid.

3.1.16. Victim Protection Act No 17 Of 2014

It is an Act of Parliament that gives effect to Article 50(9)⁵⁴ of the Constitution. It provides for protection of victims of crime, provision of better information and support services, reparation and compensation of victim and special protection of vulnerable victims.

Definitions provided for in the Act

1. In this Act a **victim** is any natural person who suffers injury or damage as a consequence of an offence.
2. **Vulnerable victim**- means a victim who due to age, gender, disability or other special characteristics as may be prescribed by the regulations under this act, may require special justice and welfare services.

⁵² Art 19 Constitution of Kenya – Rules on the enforcement of administration of justice

Art 48 Access to Justice

50(2) Every accused person has the right to a fair trial, which includes the right - (g) to choose, and be represented by, an advocate, and to be informed of this right promptly; (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

⁵³ Art. 5(1) of the Legal Aid Act

⁵⁴ Art. 50(9) Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences.

3. A **child** in this Act is as in the Children Act and includes a child of a victim born after the death of a victim.
4. **Immediate family**; means victim spouse, children, parents, grandparents, step child step sister or step bother and, step parents, where the victim is child, the guardian
5. **Victim officer** – any officer who assists a victim through the various stages of a case
6. **Victim representative** - means any individual designated by a victim or appointed by a court to act in the best interest of the victim
7. A **victim impact statement** is a written or oral **statement** made as part of the judicial legal process, which allows crime **victims** the opportunity to speak during the sentencing of the convicted person or at subsequent parole hearings.

The purpose of this Act is to:

1. Recognize and give effect to the rights of victims of a crime - Part II Section 3(a)⁵⁵ of the Act
2. Protect the dignity of victims through provision of better information, support services, reparation and compensation, supporting reconciliation, putting in place programs to prevent victimization and preventing re-victimization - Section 3(b)
3. Promote cooperation between all government departments, organizations and agencies involved in working with victims of crime.
4. Provides for a vulnerable witness the entitlement to contact his/her family or any primary care giver. Subsection 4(2)(h)
5. Section 5 provides that where in the opinion of a court or a police officer that there is sufficient evidence that the victim is likely to suffer intimidation or retaliation from the accused, he/she shall be referred to the victim protection agency under the Witness Protection Act of 2006.

3.1.17. The Marriage Act of 2014

This is an Act of Parliament to amend and consolidate the various laws relating to marriage and divorce and for connected purposes. The provisions relevant to children matters include;

1. **Section 2** on interpretations which recognizes a child as an individual who has not attained the age of eighteen years;
2. **Section 4** which provides the age of capacity for marriage to be 18 years hence protects children against early marriages.
3. **Section 5 (2)** also provides that a person below the age of 18 years is not competent to witness a marriage
4. **Section 10** prohibits a person from marrying their child, grandchild or that of their spouse either from the current or former marriage.
5. **Section 85** Provides that custody and maintenance of children shall be dealt with in accordance with the Children Act and any other written law relating to children.

3.1.18. The Law of Succession Act Cap 160

This is an Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons, and for purposes connected therewith and incidental thereto.

The sections that directly relates to children matters include Section 3(2) on interpretation of terms refers to a “child” or “children” to include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility. This section adequately sets the ground for children for succession purposes.

Section 3 provides for a child born to a female person out of wedlock, while subsection (2) defines a child of a male person, and states that the child shall have a relationship with other persons through her or him as though the child had been born to her or him in wedlock.

⁵⁵ Art. 3(a) of the Victim Protection Act recognize and give effect to the rights of victims of crime.

Section 3(5) states that notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular Sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act

Section 5 is on the issues of capacity to make a will which excludes children. Section 26 may be used for consideration for children in matters of succession as dependants by the court, if the children have not provided for in a will or in instances of intestacy as the court thinks fit. An order shall be made for that dependant out of the deceased's net estate.

The meaning of who a dependant is where intestate is provided for under sections 29 and 35 which include the children of the deceased, step-children, children whom the deceased had taken into his family as his own. Where a person who has died, intestate has left one surviving spouse and child or children, Section 35(5) provides that the estate of the deceased will devolve to the surviving child or children in the case of death or remarriage of the surviving spouse subject to the provisions of Sections 41 and 42.

Under polygamous marriages, Section 40 provides that the personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children. Section 41 provides that the property devolving upon child should be held in trust.

3.1.19 Witness Protection Act Cap 79

This is an Act of Parliament aimed at:

1. Providing for the protection of witnesses in criminal cases and other proceedings
2. Establishing a Witness Protection Agency and provide for its powers, functions, management and administration, and
3. Connected purposes.

Section 2 of the Act provides that person shall be a protected person for the purpose of this Act if that person qualifies for protection:

- a) By virtue of being related to a witness; or
- b) On account of a testimony given by a witness; or
- c) For any other reason which the director may consider sufficient.

As pertains to inclusion in witness protection program, Section 1 states that the decision to admit into or exclude any person from the program, shall be the responsibility of the director. Section 2 provides that a person may be included in the program only if:

1. The director has decided that the witness be so included;
2. The person agrees to be included; and
3. A memorandum of understanding in accordance with Section 7 is signed by the witness or by -
 - a) A parent or guardian of the person if the person is under the age of eighteen years; or
 - b) A guardian or other person who is usually responsible for the care and control of the person, if the person otherwise lacks legal capacity to sign it.

Where a person has not been offered protection under the programme, a written request for his inclusion in the programme may be made to the director by the witness, a law enforcement agency, a public prosecutor or a legal representative or any other intermediary.

Section 4 provides that in application for the protection of a person below the age of eighteen, the same may be made without the consent of the person's parent or guardian. In such circumstances, the Agency shall process the request without undue delay.

The parent or guardian of a witness will then sign a memorandum of understanding where the witness is under the age of eighteen. Where the memorandum is still operating after the witness turns eighteen, the Agency may require the witness to sign the memorandum. The inclusion of a witness or protected person in the program shall not be treated as a reward or a means of persuading or encouraging the witness to give evidence or to make a statement.

Protective action – Section 4

Section 4(1) states that the agency shall establish and maintain a witness protection program and shall take such action as may be necessary and reasonable to protect the safety and welfare of the protected persons.

Subsection (2) without prejudice to the generality of subsection (1), it is stated that the action taken under subsection (1) may include but not be limited to physical and armed protection, relocation, change of identity or any other measure necessary to ensure the safety of a protected person;

Under Subsection (3), it is provided that an agency may request the courts, in support of the programme, to implement protection measures during court proceedings which measures may include but not be limited to holding in camera or closed sessions, the use of pseudonyms, the reduction of identifying information, the use of video link or employing measures to obscure or distort the identity of the witness.

Under Section 4(4), the Agency shall put in place support measures to facilitate the integration of the protected person.

The purposes of this Act are to:

1. Recognize and give effect to the rights of victims of a crime - Part II Section 3(a) of the Act
2. Protect the dignity of victims through provision of better information, support services, reparation and compensation, supporting reconciliation, putting in place programs to prevent victimization and preventing re-victimization. - Section 3(b)
3. Promote cooperation between all government departments, organizations and agencies involved in working with victims of crime.

Section 4(2)(h) provides that a vulnerable victim is entitled to contact his/her family or any primary care giver.

Section 4(3)⁵⁶ provides for the reference to Victim and Witness Protection Agency established the Witness Protection Act of 2006.

3.2 CASE STUDY

Case study

1. Nairobi High Court Misc. Civil Appeal 15 of 2009

Shabir Ali Jusab Versus Anaar Osman Amri and the A.G.

In the matter of an application of return of an abducted male minor, Z, to the jurisdiction of the High Court of Justice, Family Division UK.

Facts

Z (Pseudonym) is a minor British national by birth was abducted from UK to Kenya by the first respondent without the knowledge of the applicant, whose marriage had not been dissolved.

The applicant attempted to repatriate the minor from Kenya with no success. Divorce proceedings had been filed. Applicant filed proceedings in UK family Division of the High court for the return of Z. The court ordered Z to be in a ward of the court and to returned forthwith to England and Wales. The orders were disobeyed by the first respondent.

A motion was filed in the High Court to enforce the said order under Section,4(1), (3), 6(1) and 6(3), 10(1), and (5), 13(1), 22, 76, 81, 87(1), 88, 114(f) and (g) and 115 of the Children Act and under several provisions of the Civil Procedure Act and inherent powers of the court.

Z was of a British nationality and considering the several provisions of the Children Act, particularly Section 43 of the Children Act 2001, the child having spent half of his infancy in the UK till he was brought to Kenya by the first respondent, and pursuant to Section 6(1) which provides that the child should live with and be cared by his parents,

⁵⁶ Victim Protection Act Section 4(3) - Where in the opinion of the court or a police officer there is sufficient reason to believe that a victim is likely to suffer intimidation or retaliation from the accused, offender or any agent of the accused or offender, the Board shall immediately refer the victim to the Witness and Victim Protection Agency established under the Witness Protection Act, 2006.

and Section 13 (1) which provides protection from any form of exploitation including abduction. It was held and that the child should be returned to the UK in the best interest of the child such that the UK court decides the outstanding custody issues between applicant and the first respondent. On appeal, the Court held that the best interest of Z was not to be extradite to him U.K, since Z was of tender age and needed to be under the custody of the mother in Kenya. The mentioned scenario underscores the rigors courts go through to determine the best interest of the child.

2. Nairobi high Court Civil appeal no. 40 of 2010, James Otieno Oluoch versus Joyce Baraza Ambuya

Facts

The children's court ordered the appellant to maintain the child in the proceedings to pay a sum of Kshs 10,000/- per month to the respondent for the upkeep of the child. The appellant was disputing paternity of the child but DNA showed he was the father. The court considered the provisions of section 24 and 25 of the Children Act as read with the provisions of Article 53(1) (e) of the Constitution which inter alia states that every child has a right to parental care and protection, which includes equal responsibility of the mother and the father to provide for a child whether they are married or not. The court maintained that the children's court did not misapprehend the law in ordering the father to maintain the minor. The court further held that where the provisions of the Children Act contravene the provisions of the Constitution, those provisions of the Constitution are supreme. The application was dismissed.

3.3 REFERENCES

The Basic Education Act No 14 of 2013.

The Borstal Institutions Act Cap 92.

The Children Act No.8 of 2001.

The Community Service Orders Act No. 10 of 1998.

The Constitution of Kenya 2010.

The Counter Trafficking in Person Act No. 8 of 2010.

The Law of Succession Act Cap 160.

The Marriage Act no 4 of 2014.

The National Police Service No. 11A of 2011.

The Penal Code Cap.63.

The Prisons Act Cap.90.

The Probation of Offenders Act Cap 64.

The Prohibition of Female Genital Mutilation Act No. 32 of 2011.

The Sexual Offences Act No. 53 of 2006.

United Nation Convention against Transnational Organized Crime (UNTOC)- 2000. *Protocol to Prevent, Suppress and Punish Trafficking in persons especially Women and Children Supplementing.*

Witness Protection Act No. 79.

PROCEDURE OF HANDLING CHILDREN IN NEED OF CARE AND PROTECTION

Duration	4 hours
Overview	This unit focuses on procedures in handling a child in need of care and protection.
Key Learning Outcomes	By the end of this unit the participant should be able to: a) Define a child in need of care and protection. b) Identify a child in need of care and protection. c) Apply the right procedures in rescuing children who are in need of care and protection. d) Apply different placement options available for children. e) Identify the role of the Juvenile Justice Agencies in handling Children in Need of Care and Protection f) Identify different categories of child victims. g) Apply various protection measures outlined in the Children Act, Victim of Offences Act, Sexual Offences Act and other statutes.
Preparation/Learning activities	Request participants to share in two to three minutes some of their experiences in dealing with children in need of care and protection.
Materials	Flip chart and markers, laptop and projector
Session type	Lecture, discussion, role-play and case studies



Explain to the participants that there are different procedures to be undertaken in relation to these children at different agencies. It must be noted that by virtue of Section 38 of the Children Act which provides for the functions of the Director of Children Services, the children officer has a very central role to play in all these cases. It is necessary that each children officer internalizes those provisions.

Activity

On the flip chart, write the words *child in need of care and protection*.

Ask the participants to explain the meaning of a child in need of care and protection and write down their responses.

Ask the participants to indicate some instances where children are deemed to be in need of care and protection. Write down their responses.

Ask the participants to describe the procedures they would follow in handling a child need of care and protection.

Compare the participants answers with Article 53(1)(d) of the Kenyan Constitution which provides for protection of children from abuse, neglect, cultural practices, all forms of violence, inhumane treatment and punishment.



4.1 DEFINITION OF A CHILD IN NEED OF CARE AND PROTECTION

Explain to the participants that the Children Act of 2001 does not specifically define who a child in need of care and protection (CNCP) is but highlights 18 specific categories that may render a child to be deemed as one in need of care and protection. This is outlined in Section 119(1) of the Act. The section provides that such a child is one:

- a) who has no parent or guardian, or has been abandoned by his parent or guardian, or is destitute; or
- b) who is found begging or receiving alms; or
- c) who has no parent or the parent has been imprisoned; or
- d) whose parents or guardian find difficulty in parenting; or
- e) whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship; or
- f) who is truant or is falling into bad associations; or
- g) who is prevented from receiving education; or
- h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; or
- i) who is being kept in any premises which, in the opinion of a medical officer, are overcrowded, unsanitary or dangerous; or
- j) who is exposed to domestic violence; or
- k) who is pregnant; or
- l) who is terminally ill, or whose parent is terminally ill; or
- m) who is disabled and is being unlawfully confined or ill-treated; or
- n) who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography; or
- o) who is engaged in any work likely to harm his health, education, mental or moral development; or
- p) who is displaced as a consequence of war, civil disturbances or natural disasters; or
- q) who is exposed to any circumstances likely to interfere with his physical, mental and social development; or
- r) if any of the offences mentioned in the Third Schedule to this Act has been committed against him or if he is a member of the same household as a child against whom any such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child; or
- s) who is engaged in the use of, or trafficking of drugs or any other substance that may be declared harmful by the Minister responsible for Health.



Remind the participants that most children they will interact with, will fall into one or more of the above categories and need rescue and protection. It is important to explain to the participants that the powers for rescue are provided for in the following section.

4.2 RESCUE, REINTEGRATION, SUPERVISION

There are various interventions in the Children Act that ought to be discussed here.

4.2.1 Definition

Rescue means removing a child from a harmful situation/environment they are in and placing them in safe custody.

Reintegration is the action or process of integrating a child back into society. This is one of the roles of the Director of Children Services.

Supervision – A component of reintegration where the CCPO meets frequently with the child to monitor adherence to court orders and /or the issues agreed upon in the reintegration plan.

Activity

Ask the participants to discuss some of the players who may be involved in rescuing a child in need of protection.

Note that you should be able to explain that children in conflict with the law are also in need of care and protection.

Compare the participants' responses with the following information.



Once the CCPO has identified a child in need of care and protection based on Section 119 of the Children Act, the first step that such an officer should take is rescue to a place of safety. The power for rescue is provided for in the following sections of the Children Act:

Section 120(1) read with 120(3), rescue by an individual and authorized officer

Section 120(4), rescue without a warrant by an authorized officer Section 120(4), apprehension without a warrant by an authorized officer.

Section 120(12), rescue by CCI and local authority.

Section 128 (1), by warrant of arrest issued by the court on its own volition.

4.2.2 Authorized Officers

The following are officers and/or persons authorized to rescue a child in need of care and protection.

1. Police officer
2. An administration officer
3. A children officer
4. An approved officer (appointed by the Director)
5. A chief appointed under the Chiefs' Act
6. Any officer authorized by the Director under the Children Act
7. Labour officer
8. The community as provided by Section 120(1) of the Children Act



Inform the participants that:

The authorized officer and/or person may rescue the child without delay and bring the child before a children officer who may present the child before the court. The child may also appear to the children's officer who shall bring the child before the Children's Court (Section 120(4));

A child in need of care and protection may take refuge in a place of safety (Section 120 (2)); and that a case record sheet should be filled and submitted to court.

All categories of children are handled by various Justice Actors depending on the needs of the child. For each of these children, a protection and care file shall be opened by the children office and any other officer handling the child. It must be ensured that all the information entered is accurate and exhaustive to make sure that they are monitored. Possible actions that can be taken by an authorized officer and/or person when rescuing the various categories of children in need of care and protection include:

- i) **An abandoned child** — The officer should report to the police because the offence of abandoning a child is criminal in nature. A protection and care file shall be opened at the police station and at the children office to ensure that the child's details are filled in as thoroughly and exhaustively as possible. After which the child should

be referred to a place of safety.

- ii) **A lost child** — depending on the age of the child, or if home can be established, an authorized officer especially a children's officer can organize for his/her immediate re-integration.
- iii) **Neglected Child** — depending on the circumstances the child can either be rescued and taken to a place of safety or the parents summoned by an authorized officer and if possible prosecuted or referred for further intervention.
- iv) **A child who has been abused-** There are different forms abuse, physical, emotional and psychological. Physical abuse can be said to be severe in cases of defilement. Rescue the child and refer for urgent medical attention prior to arresting the suspect and prosecution.
- v) **Truancy/delinquency** – such a case should be reported to an authorized officer especially children's officer for counselling. A commitment may be made by the child through a written promise, or referred to other agencies for further management.
- vi) **A child who is pregnant** – The child should be rescued and taken to a place of safety if need be. The authorized officer, especially a children officer should immediately ensure that the child gets the necessary medical reports and other documentation for arrest and prosecution of the culprit. Such a child also requires counselling services. Where the case is of two children, and the girl got pregnant, then both children shall have protection and care files opened and taken through counselling sessions.
- vii) **Child marriage** — The child should be rescued from such a marriage and be placed in safe custody. Prosecution of the culprit should also commence under the relevant legislation such as the Sexual Offences Act.
- viii) **Trafficking** — Due to the fact that this is a criminal offence, trafficking should be immediately reported to the police and the child referred to a place of safety, investigations as to the origin of the child for possible reunification with the family, arrest and prosecution of the culprits should be undertaken.
- ix) **The child offender** – The child shall be held at a child protection unit and a charge sheet shall be filled in by a Police Officer who shall ensure that the details of the child and the charges are indicated. The prosecutor shall ensure that all alternative dispute resolution mechanisms have been explored. The court shall assign a legal representative for the child and shall not allow the case to proceed without one.

4.3 CHILDREN ACCOMPANYING MOTHERS TO PRISON AS CHILDREN IN NEED OF CARE AND PROTECTION

There is need for strict accountability of the dependent child of an expectant mother or a child accompanying the mother to prison. Best practice reveals that the prison authorities should have accountability of all children in prison through the trial court and the same be pronounced as a mandatory legal requirement measurable through the daily returns.

4.3.1. Unborn Children

Unborn children in contact with the law are currently invisible in the justice system. The Constitution recognizes that life begins at conception hence there is need to take care of these children as those in need of care and protection. It is proposed that during the trial process:

1. The court should take cognizance of this unborn child by opening a Protection and Care (P&C) file in order to keep a record of the unborn child.
2. The court should also order for special treatment and care for the mother and the unborn child while undergoing trial.
3. Antenatal and postnatal care be accorded to the expectant mother while in prison.
4. Children officer to submit monthly reports on the progress until the child is born.
5. The expectant mother to be taken to hospital for delivery.
6. The child to be registered after birth.

4.3.2. Children under 4 years

It is proposed that during the pretrial, trial and post-trial process:

1. The court should take cognisance of these children by opening a Protection and Care (P&C) file in court to aid the court keep track of each child's development for children accompanying parents or guardians in prison.
2. Order for special diet for the nursing mother and the child as provided for under domestic and international law. Refer to Rule 48 of the Bangkok Rules.
3. Access to medical services should be facilitated.
4. The children officer to submit monthly reports on the progress until the child is born, lives with and is processed out of the prison facility.
5. Upon attainment of the age 4 years the prison should conduct an individual assessment on the best interest of the child.
6. Removal of the child from prison should be undertaken with sensitivity only when an alternative care has been identified giving primary consideration to the family. The procedure should be clearly documented. See Rule 52 of the Bangkok Rules.
7. The children officer should be present during removal, document and a submit report to court.

4.4 CHILDREN SEPARATED FROM THEIR PARENTS (MOTHERS) AS THEIR MOTHERS SERVE CUSTODIAL SENTENCES

Once it comes to the attention of the court through the children officer, an advocate or the accused person that a woman facing trial has left (a) child(ren) at home the court should:

1. open a Protection and Care (P&C) file for the said child(ren).
2. order that the children officer brings the child(ren) to court for further orders.
3. order that the child(ren) be committed to a children institution or relative for care and protection.
4. order that the children's officer submits periodic reports on the child(ren)'s progress.

4.5 THE ROLE OF THE JUVENILE JUSTICE AGENCIES IN HANDLING CHILDREN IN NEED OF CARE AND PROTECTION

There are several institutions that are mandated to handle children in need of care and protection. These include the Department of Children's Services (DCS), the Court, the County Government, the Office of the Director of Public Prosecutions (ODPP), the National Police Service (NPS), the Probation and Aftercare Service and the Charitable Children's Institutions (CCIs). Their roles are prescribed in the Children Act. Any authorized officer upon apprehending a child in need of care and protection may take the child to a Children's Court.

Activity



Divide the participants into four groups and allocate each group a JJA. Ask each group to discuss the role of the JJA allocated to them in handling children in need of care and protection to court.

4.5.1 The National Police Service

The role of the National Police Service in handling of children in need of care and protection includes:

1. rescuing children in need of care and protection;
2. recording a report of all cases regarding children in need of care and protection in the occurrence book (OB);

3. investigating on cases reported;
4. ensuring the Children Protection Unit is functional;
5. escorting victims of sexual offences or other mistreatment to the hospital for examination and treatment;
6. filling a Protection and Care form for all children in contact with the law and in this case those who fall under Section 119 of the Children Act for the children officer to take the child to court; and
7. notifying the parent or the guardian or the children officer of the rescue.

4.5.2. The Office of the Director of Public Prosecutions

The role of the Office of the Director of Public Prosecutions (ODPP) in handling of children in need of care and protection includes:

1. upholding the privacy of the victim by ensuring their identity is withheld by use of initials in the charge sheet.
2. Proposing alternative dispute resolution mechanisms for the child such as diversion.
3. applying to the court for the opening of a Protection and Care file for the child(ren).
4. encouraging the use of descriptive aids where appropriate to assist the child in testifying.
5. ensuring the best interest of the child are upheld at all times.
6. endeavouring to hold pretrial session with the child victim and witness.
7. applying for an order for provision of psychosocial support for victims and witnesses on a case to case basis.

4.5.3. The Department of Children's Services

The Department of Children's Services role in the handling of children in contact with the law include:

1. rescuing children in need of care and protection with the assistance of the police.
2. filling in case record sheet for reported cases.
3. conducting social inquiries investigations on reported cases.
4. applying to the court for committal of a child to a CCI.
5. reuniting a child with parents or guardians.
6. reintegrating a child back to the community.
7. making appropriate referrals such as counselling.
8. mediating family disputes where children in need of care and protection are involved.
9. tracing children in need of care and protection and/ or their kin.
10. filling the P&C form.

4.5.4. The Court

The courts, and more essentially the Children's Court, is also a key driver in ensuring access to justice of children in need of care and protection. Having the jurisdiction, the courts roles include:

1. hearing all children matters and issuing appropriate orders,
2. providing child friendly holding facilities for children brought to court,
3. ensuring the cases are heard in camera,
4. conducting relevant tests to establish if the child is capable of giving evidence,
5. calling for social inquiry reports from Children Officers and Probation Officers,
6. ensuring children cases are heard and dispensed efficiently and expeditiously,
7. ensuring child victim(s) give(s) evidence immediately the plea is taken,
8. using child friendly language at all times when handling children,
9. appointing an interpreter and sign language expert where the child needs one.

4.6. CHILD VICTIM

Activity



In pairs, ask the participants to discuss what they understand to be a child victim.

4.6.1 Definition of child victim

Activity



Ask the participants to list down categories of child victims. Let the participants say how they would deal with the different categories. Allocate this task 5 minutes.

Ask the participants to discuss the protective measures they would take in relation to the different types of child victims. Allocate this task 10 minutes.

In the Children Act there is no specific definition of a child victim. However, under section 2(1) of the Victim Protection Act of 2014, a victim means any natural person who suffers injury, loss or damage as a consequence of an offence.

Child victims have been outlined in the international instruments but for the purpose of this session, Section 119 of the Children Act has been relied on to identify the various categories. Further, Section 127 of the Children Act provides for general penalty for exposing a child to need of care and protection. Part 4 of the Victim Protection Act 2014 provides a section for all the categories of child victims.

Compare the participants' responses with the following points on categories of child victims.

4.6.2 Categories of Child Victims and Protective Measures Under the Children Act, Penal Code and Sexual Offences Act

In this manual, the term child victim refers to the category of children who come into contact with the law because:

1. their rights have been violated.
2. they are victims of crime.
3. they are witnesses to crime.

The categories of children are provided for under the Children Act as follows:

A child exposed to harmful traditional practices as indicated in Section 119 (h)

Examples of such practices are:

- a) female genital mutilation,
- b) early marriages that may lead to a stop of the child's education, and
- c) harmful cultural practices such exposure and involvement in *moranism*, tattooing, cattle rustling, inheritance of properties leading to early marriages, and other gender discriminatory customs.

There are protective measures in place in safeguarding the rights and safety of these children. They are:

- i) Article 2(4) of the Constitution provides that any law including customary law which is inconsistent with the Constitution is invalid. This makes customs allowing early marriages, female genital mutilation and other harmful cultural practices unconstitutional.
- ii) Section 14 of the Children Act makes early marriages and harmful cultural practices an offence.

- iii) Section 127 of the Children Act provides for penalty against any person who exposes a child under his care to harmful practices.
- iv) The court can order nullification of a child marriage under Articles 2(4), and 53(1)(d) of the Constitution and Section 125 (g) of the Children Act.

A child who has been sexually abused Section 119 (1)(n)

Section 119(r) applies that “if any of the offences mentioned in the Third Schedule to this Act has been committed against him/her or if he/she is a member of the same household as a child against whom any such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child”. This includes a child who is a victim of sexual abuse as stated in Section 119(n) “a child who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography,” or “a child who is pregnant”, Section 119 (k).

Protective measures in place in safeguarding the rights and safety of these children include:

The Penal Code under Section 122A and Section 36 of the Sexual Offences Act which now provides for a process called DNA sampling. This is a procedure which is carried out to gather evidence, where an alleged perpetrator has committed a serious offence including sexual assault. It entails a senior police officer above the rank of an inspector of police in conjunction with a medical practitioner taking, saliva, blood, hair, or fingernails from a suspect in order to match with those of a victim. Under Section 35 of the Sexual Offences Act the court may also order for such procedure to be carried out in sexual offences cases. It is an important scientific procedure which the police are encouraged to apply in respect of child sexual assault victims.

It is important that when a child who is a victim of sexual assault is taken to police station, she or he is attended to with speed, evidence be taken promptly without waste of time. That is why CPUs are necessary. Otherwise more often evidence is lost at this stage. The Sexual Offences Act provides for specific offences and penalties from Section 5 to 15.

A child who is a victim or a witness

The Act also provides for vulnerable children in Section 31 of the Sexual Offences Act where a person may be found to be a vulnerable witness for the reason that he/she:

- a) is the alleged victim in the proceedings pending before the court;
- b) is a child; or
- c) is a person with mental disability(ies);

A witness may be declared vulnerable on account of:

- a) age;
- b) intellectual, psychological or physical impairment;
- c) trauma;
- d) cultural differences;
- e) the possibility of intimidation;
- f) race;
- g) religion;
- h) language;
- i) the relationship of the witness to any party to the proceedings;
- j) the nature of the subject matter of the evidence; or
- k) any other factor the court considers relevant.
 - i) The police who are the first among JJAs to come in to contact with the child, must act accordingly.
 - ii) The victim is a CNCP under Section 119(1)(n), and the court must open a P&C file for the child together with that of that of the offender. The P&C file will ensure that the JJAs investigate the welfare of the victim and whether he/she ought to be declared a vulnerable witness.

- iii) Another protection measure available is that of testifying through an intermediary.
- iv) Additionally, under Section 35(2), (3), (4) and (5) a victim of sexual violence is entitled to treatment and counselling at government expense.

A child subjected to labour and economic exploitation Section 119 (1)(o)

This is a child who is engaged in any work likely to harm his health, education, mental or moral development; or children subjected to labour and economic exploitation contrary to Section 10 of the Children Act.

Examples of these are children are used:

- a) for picking the cash crops,
- b) selling Illicit brews,
- c) as vendors,
- d) to work in mines such as gold mines,
- e) as household workers,
- f) or as commercial sex workers.

Protective measures in place in safeguarding the rights and safety of these children include:

1. Article 53(1)(d) of the Constitution of Kenya provides for protection of children against hazardous or exploitative labour.
2. Section 127(1)(b) of the Children Act prohibits any act or omission that will make a child a CNCP. There is a sentence of Kshs 200,000 or 5 years' imprisonment or both.
3. Section 10(4) of the Children Act provides that Cabinet Secretary may make rules and regulations for children above 16years to avoid economic exploitation.
4. Section 20 of the Children Act provides for a penalty of Kshs 50,000/= fine, or 1 year imprisonment or both for contravention of sec. 10.

A child who is displaced as a consequence of war, civil disturbances or natural disasters Section 119(1)(p)

As read with Section 10(2) of the Children Act which provides that no child shall take part in hostilities or be recruited in armed conflicts, and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law.

Examples of such include:

- a) internally displaced children due to community conflict, political conflict, war;
- b) children affected by floods, landslides, and other natural calamities; and
- c) children affected by the famine, drought.

Protective measures in place in safeguarding the rights and safety of these children is included in Section 127 of the Children Act that provides for the penalties for persons who are involved in cruelty or neglect of children.

Special Category of Children

Section 119(1) (m) a child who is disabled and is being unlawfully confined or ill-treated, as read with Section 12 which provides for children with physical or mentally disabilities. Section 119(1)(c) provides for a child whose parent has been imprisoned. This also provided for specifically in the African Charter on the Rights and Welfare of the Child (ACRWC) at Article13.

4.6.3 Rights and responsibilities with regard to the protection of child victims under Victim Protection Act of 2014

The Victim of Protection Act provides that:

1. Any person charged with a duty of assisting a victim shall undertake preliminary assessment of every victim and file a report within 24 hours of the report of the offence and should classify the victim as either general victim or vulnerable victim.
2. The details of the victim should include the name, age, complexion and ethnicity.
3. Any person dealing with vulnerable victims shall ensure that the victim is secured from further harm. If the security is not guaranteed they shall be moved to places of safety or relatives where appropriate.
4. A court in its own or under the request of the prosecution or a victim officer, may declare a victim to be vulnerable on accounts of age, dependency to the accused, trauma disability, cultural differences, religious differences, gender, language health status or offence committed against them. And after such declaration, a representative is appointed in respect to such victim.
5. If the vulnerable victim is a child, ensure the best interest of the child is paramount in consideration of all rights accorded in the Children Act.
6. Where a police officer, DPP or any public officer finds it that there is vulnerable child victim and it appears it would not be prudent to place him or her with the parent or guardian or care giver, the child shall be committed in a place of safety until a court decides on the matter.
7. A child victim held in any institution shall be accorded all the rights in the Children Act.

4.7 PROCEDURE IN HANDLING CHILDREN IN NEED OF CARE AND PROTECTION - PROVIDED FOR UNDER SS 120 TO 126 CA



Explain to the participants that the different agencies undertake different procedures in relation to these children. It must therefore be noted that Section 38 of the Children Act provides for the functions of the Director of Children Services, which includes appointing children's officers who have a very central role to play in all these cases. It is necessary that each children's officer internalizes those provisions.

4.7.1 General procedures under section 120(1) of the Children Act

Section 120(1) states that "Any person who has reasonable cause to believe that a child is in need of care and protection may report the matter to the nearest authorized officer".



Discuss the procedures applicable in handling children in need of care and protection.

The following are procedures that are followed when handling children in need of care and protection.

Step 1: Any CCI or authorized officer who receives the report of a child in need of care and protection should notify the police immediately.

Step 2: The authorized officers should fill in the case record sheet immediately the child is brought to their attention or rescued by the officer. The next course of action will depend on the type of case, needs of the child and risks.

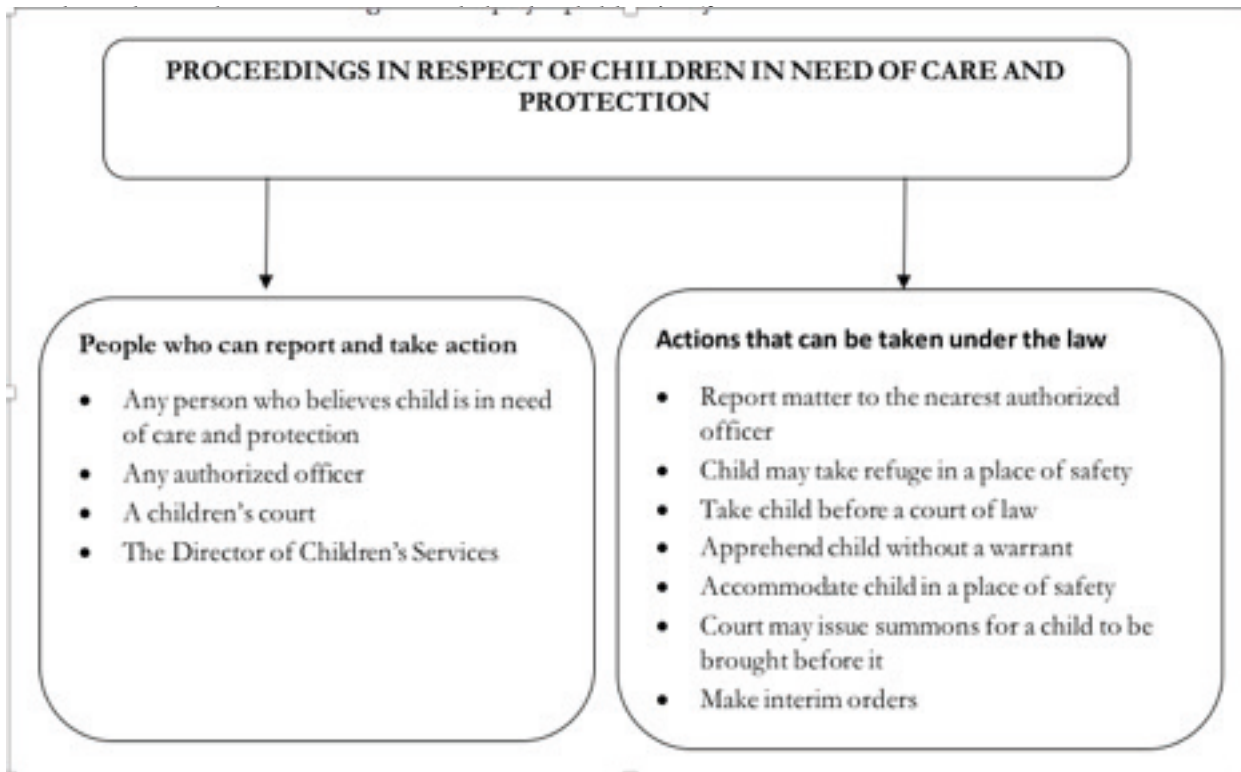
Step 3: Once a child has been rescued, the authorized officer should hold the child in a place of safety. A place of safety means any institution such as rescue centres, charitable institutions, hospital, an inhabitant who is willing to take temporary care of the child.

Step 4: The children's officer shall submit a protection and care form with details of the circumstances of the rescue. Where an initial report has not been submitted, the magistrate may seek for a report from the person who brought the child to court and a further report from the authorized officer for clarification of any matter the court deems necessary.

Step 5: The court guided by further investigation by the children officer will issue such orders as it may deem appropriate guided by the best interest of the child.

Note

1. Where the child is rescued, the child can be taken to the rescue centres directly or to a place where the child or any person can call for assistance for the child in need of care and protection.
2. The magistrate should call for the child's protection and care file where the child has been brought from a rescue centre or children's home. It is important for the magistrate to verify that all the information submitted is accurate



PROCEEDINGS IN RESPECT OF CHILDREN IN NEED OF CARE AND PROTECTION

Actions that can be taken under the law

- Report matter to the nearest authorized officer
- Child may take refuge in a place of safety
- Take child before a court of law
- Apprehend child without a warrant
- Accommodate child in a place of safety
- Court may issue summons for a child to be brought before it
- Make interim orders

People who can report and take action

- Any person who believes child is in need of care and protection
- Any authorized officer
- A children's court
- The Director of Children's Services

4.7.2 Procedure at Police Station

1. A child is rescued and a report is booked in the occurrence book(OB) by the officers manning the Children Protection Unit(CPU).
2. The children's officer is informed of the rescue and a case sheet is prepared.
3. If a child is a victim of crime or has health problems he/she is escorted to hospital by the officer manning the CPU. Counselling services are also sought at the health centre where need be.
4. If the child for any reason has to spent more time at the police station, they are held in separate holding units based on their sex.
5. The children are treated with dignity and compassion as stipulated in Article 53(2) of the Constitution and Section 4 of the Children Act.
6. The children are protected from discrimination, their views respected, given information and parents involved. (Article 12, 13 of UNCRC, Article 18(3) ACRWC, Section 4(4) of the Children Act, and 5th Schedule of Child Offender Rules)

4.7.3 Children Protection Unit

This is a unit at the police station where children in contact with the law including those need of care and protection are received upon rescue and held temporarily. It is different from police cells and its functions include accommodation and catering service to the children housed there. There are separate cubicles depending on gender and age.

Where there is a CPU, children in need of care and protection are normally handled by specially trained officers or officers at the Gender Desks situated at the police stations.

1. Immediately children are brought to the station the children's officer is notified.
2. Children once brought to the CPU either by a CCPO or the public, are searched, to remove any object that they can use to harm themselves or others.
3. After a thorough search, the child will be bathed and fed and then placed in their cubicles in the CPU.
4. The children's statements are recorded in a friendly atmosphere in the presence of the children's officer.
5. Children in need of protection should not be kept at the Police station for a period exceeding 24 hours except by the order of a court of law.
6. Police officers liaise closely with the children's officer in the locality to ensure safe handling after appearing in court of law.
7. If no offence has been committed the child will be handed back to the parent/guardians/relatives or placed with children's officer and recorded in a CPU register.

4.7.4. Procedure at the court level

The courts' main preoccupation in this instance is to safeguard the child's interests.

1. The child in need of care and protection should be held in separate facilities and not the court cells.
2. The matter should be instituted in court using a P&C form and not a charge sheet as a mode of information.
3. The initial interview of the child by magistrates generally should ascertain the feelings and attitude of the child and the circumstances of the case.
4. In instances where the case has to proceed to a full hearing the process should be inquisitorial as opposed to adversarial. The court may ask for a report on any issue from any relevant persons during trial as provided for in Section 125(1) of the Children Act.
5. The court should request for a social inquiry report to be availed by a children's officer or a probation officer before committal orders are made if the case does not proceed to hearing.
6. The court under Section 125(2) if satisfied that the child brought before it is in need of care and protection, issue care and protection orders.

7. The court may of its own volition or upon application by the ODPP or a victim officer declare a witness a vulnerable witness.
8. The court will consider age, trauma, intellectual, psychological or physical impairment, cultural differences, possibility of intimidation, race, religion, language, relationship of witness to any party to proceedings, the nature of subject matter and any other factor.

Protective measures in place in safeguarding the rights and safety of these children include:

1. Witness using a witness protection box.
2. Using an intermediary in cases where the child is very young.
3. An intermediary conveying the import of question to witness.
4. Parent or guardian through the prosecutor informing the court if the witness is stressed or fatigued.
5. Proceedings taking place in camera.
6. Prohibiting the publication of identity of the victim.

In addition, the court should observe the following rights when dealing with a child witness:

1. Right to Privacy/Confidentiality Article 53(1)(ii) of the Constitution.
2. The Economic Social Council Resolution 27/2004, Article 27.
3. Respect for the views of the Child (UNCRC Article 12)
4. Protection from hardship during the justice process Article 50(2), Section 186 of the Children Act.
5. The Economic Social Council resolution 27/2004 Article 31.

4.8 PLACEMENT OPTIONS

Clarify to participants that some of the placement options that an authorized officer may undertake after the initial assessment may include:

1. Reuniting the child with parents or guardians,
2. Charitable Children Institutions,
3. Rescue Centres,
4. Referral to hospital
5. Community care structures where they exist
6. Committal to a fit person
7. Foster
8. Adoption

Note: There are other support services that rescued children can access to facilitate their protection and safety. These services are found at the Children Protection Centres and Child Helpline 166.

4.8.1 Children Protection Centres (CPC)

Kenyan Standards of Practices for Child Protection Centres 2010 defines CPC as a one stop shop placed within a community to serve as a hub of information and service for children. This is a place where children at risk of violence, exploitation, neglect, abuse and separation from family receive integrated protection services such as rescue, legal aid, reintegration in families, individual case assessment, counselling and referral to other services. The CPC provides space where children are encouraged to talk about their concerns and parents receive information on their duties and responsibilities. In Kenya, CPCs are located in Malindi, Nakuru, Kakamega, Siaya, Busia and Garissa. Their policy measures to integrate the CPCs with children's officers in the field so that all children officers serve as a one stop shop for children in need of care and protection.

4.8.2 Child Helpline 116

This is a toll-free telephone line that links children in need of care and protection with essential services. Children and adults can call the line anytime to report cases of child abuse, seek information on child rights and child protection. They can also acquire counselling services. Child helpline 116 is a service of the department of children services in collaboration with Childline Kenya.

Some of the cases that have been reported include child neglect, physical abuse, sexual abuse, FGM, child labour, child trafficking among others.

4.9. CASE LAW (PRECEDENTS)

4.9.1. Case No. 1 (Child Rescued from Child Marriage)

Court; Nyahururu Cr. case; 1371/2009

The accused person hailed from the Turkana community where the custom of child-marriage is practiced. The girl he is said to have married was aged 15 years and a pupil at Ndongino primary school.

Action steps

1. P&C file number 149/09 is opened.
2. A children's officer's report is filed.
3. In light of the findings, the child is rescued and committed to St. Martin's CSA for counselling.
4. Mother of the victim Pauline Abeyo is charged with child neglect c/sec 127(b) of the Children Act. (Children, case no 5/09).
5. She is sentenced to a term on probation.
6. Other knowledgeable Turkana elders such as Pastor Samson Ekeno of the Apostolic Church and Timothy Lokori are invited to create awareness among their folks and support the victim's family.
7. The accused is convicted in the criminal trial.
8. The court orders for a victim impact statement from the probation officer before sentencing of the accused. The accused is sentenced to pay a fine of 150,000/= or 3 years' imprisonment and subjected to aftercare supervision by the probation department.

Activity



Have a plenary session where participants discuss the takeaways from the above case law.

4.9.2. Case No. 2; D.K v Republic [2017] eKlr (Child Neglect)

Note: The name and residence of the child has been left out

In The High Court of Kenya at Nanyuki Criminal Appeal No. 61 Of 2017

D K [Appellant] Versus Republic [Respondent]

Facts of the Case

This was an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court Criminal Case No. 1048 of 2016 on 24th March 2017). D.K had been charged with the offence of causing a child to be in need of care and protection contrary to Section 127(1)(b) of the Children Act and the particulars of the charge were as follows:

“D.K: On the 5th day of September 2016 at [particulars withheld], within Nyeri County being a guardian neglected your duties to take care of the said child namely A. M. which led to her being defiled by STANLEY KARANJA thereby causing her to be a child in need of care and protection.”

He was convicted and sentenced to serve two years’ imprisonment by the Chief Magistrate at Nanyuki. He filed an appeal to the High Court. A nine-year-old child A.M. on the 5th day of September 2016 had been left in the care of the appellant D.K, a house help in that house. On that particular day A. M. and D.K were the only two people in the house. The other members of the household had travelled. On that night the D.K left A. M. in the house alone. She returned to the house at 9 p.m. accompanied by a man. When they arrived at the home the man sent the appellant D.K to go and buy meat. A. M. was left in the house with that man. A. M. in evidence stated that the man proceeded to defile her. After defiling her he left. The appellant arrived at home at 10 p.m. She found A. M. crying. When A.M. explained to her why she is crying the appellant ignored her and told her to go to sleep. Although A. M. complained that she had a stomach-ache the appellant threatened her with a knife if she was to tell anyone what had taken place. It was not until the following day on the arrival of the aunt to A. M. that A. M. was taken to hospital and was confirmed to have been defiled.

Held; the child possibly will suffer lifelong emotional injuries from the act which was allowed by the appellant. The man sexually assaulted a nine-year old girl with the connivance of the appellant. Appellant’s appeal against sentence is denied and dismissed. D.K to serve two years’ imprisonment.

Recommended action steps

1. D.K the house help is charged with child neglect c/sec127 (1) (b) of the Children Act.
2. The court orders for a pre-bail report by probation officer and investigation by the police.
3. A protection and care file is immediately opened for the child victim A.M.
4. Child is rescued and committed to a rescue centre for counselling by the department of children’s services.
5. A report on counselling done to the child is filed back in court in the protection and care file for further orders.
6. D.K is convicted in the criminal trial.
7. Court orders for pre-sentence report from the probation officer and pre-sentence submissions by the DPP.

Activity



Have a plenary session where participants discuss the takeaways from the above case law

8. The accused is sentenced to a two-year custodial sentence which is upheld on appeal by the high court.

4.9.3. Case No.3 - Defilement

Bernard Odongo Okutu v Republic [2018] eKLR

In The High Court of Kenya at Siaya criminal Appeal No 10 Of 2017 Bernard Odongo Okutu [Appellant] Versus Republic [Respondent]

Facts of the Case

The Appellant - **BENARD ODONGO OKUTU** was charged with the offence of Defilement contrary to **Section 8 (1) as read with 8 (3) of the Sexual Offences Act No. 3 of 2006**, and an **Alternative Charge:** of Committing an Indecent Act with a child contrary to **Section 11 (1) of the Sexual Offences Act No. 3 of 2006**.

The facts as per the charge sheet respectively are that, **BENARD ODONGO OKUTU:** on 8th day of October, 2016 at [particulars withheld] Primary school in [particulars withheld] Sub-County within Siaya County, intentionally caused his penis to penetrate the vagina of **J A**, a child aged **13 years**. Aggrieved by the judgment, conviction and sentence of 20 years’ imprisonment, the appellant filed a Petition of Appeal.

Held; Courts shall no longer be hamstringing by requirements of corroboration where the victim of a sexual offence is a child of tender years if it is satisfied that the child is truthful” And on the provisions of 124 of the Evidence Act in

respect to evidence of a child in sexual offences to state that it believed the child was telling the truth. Appellant's appeal against conviction and sentence dismissed and the judgment of the trial court upheld.

Recommended action steps

1. Child victim is taken to hospital for treatment, filling of form P3 and medical evaluation.
2. Protection and care file is opened for the child.
3. Child taken for counselling.
4. Suspect teacher arraigned in court and criminal charges registered against him.
5. Teachers Service Commission is notified for necessary disciplinary action against the accused.
6. Note to ensure names of the child victim both in charge sheet and witness statements are not disclosed.
7. Do not put mobile phone numbers for witnesses in statements supplied to accused to avoid witness tampering and interference.
8. Court orders protection for a victim if from its findings, the victim and witnesses require protection. Prosecution can also liaise directly with Witness Protection Agency.
9. Victim impact statement is called for.
10. If necessary, the subject transferred to another school to protect her from interference and stigma.

Activity

Have a plenary session where participants discuss the takeaways from the above case law.



Learning points

1. Prosecution has to establish the ingredients that is age and penetration.

4.9.4. Case No. 4:

P O O (A Minor) v Director of Public Prosecutions & another [2017] eKLR

High Court of Homa Bay Constitutional Petition No.1 of 2017 between P O O (A Minor) [Petitioner] and Director Of Public Prosecutions [1st Respondent], Senior Resident Magistrate Mbita Law Courts [2nd Respondent].

Facts of the Case

The background to this matter is that the petitioner was arrested on 14th February 2016 and charged at Mbita Senior Resident Magistrate criminal case no.7 of 2016 with the offence of defilement contrary to Section 8(1) as read with 8(4) of the Sexual Offences Act. He pleaded not guilty to the charges and the matter proceeded to hearing. Consequently, the petitioner told his advocate that at the time of the alleged offence he was 16 years of age, whereupon the advocate made an application for the age assessment report on 17th November 2016. The petitioner claims that he had informed the trial court on 15th March 2016 that he was a minor being held in a prison for adults and although the trial magistrate directed that he be held at Magunga Police Station so as to be escorted to hospital for age assessment, the order was not complied with nor did the trial court follow up on the issue but no age assessment report was presented. On the children's service week, an advocate was appointed by the SPM Mbita for the petitioner; this clearly shows that the magistrate considered the petitioner a minor, bearing in mind that the petitioner's age was yet to be assessed. It begs the question that who was in charge of furnishing the court with age assessment report of the petitioner.

The court commenced the trial without taking in to account the fact that the petitioner was not represented, even after noting that he alleged to be a minor and making an order that an age assessment report to be furnished by the 1st respondent. Moreover, there is no evidence indicating that the 2nd Respondent assigned the children's officer to locate the petitioner's adult relatives in order to assist him.

Held; Petitioner's right to a fair trial were grossly violated. Article 53(1)(f) of the Constitution of Kenya provides that "Every child has the right not to be detained, except as a last resort, and when detained, to be held – (i) for the shortest appropriate period of time (ii) separate from adults and in conditions that take account of the child's sex and age. The court ought to have called for a pre-bail report so as to assess whether he could benefit from free bond. The petitioner is entitled to damages for violation of his rights and a conservative figure of Kshs 200,000/- is adequate.

Recommended action steps

1. Rescue the children and ensure they are safe.
2. Child victims are taken to hospital for treatment, filling of form P3 and medical evaluation.
3. Child subject should also be taken to hospital for filling of P3 and establishing of age.
4. The file to be forwarded to the ODPP for directions. Diversion can be recommended and a recommendation for psychosocial support for both children can also be made.
5. Where it is established that both were minors in a "Romeo and Juliet relationship" and no element of force of coercion was used a Protection and Care (P&C) file is opened for both children.
6. Court orders children taken for counselling.
7. Investigate with the help of children's officer who the parents and guardians of the minors are and whether there was child neglect.
8. To ensure names of the child victim both in charge sheet and witness statements are not disclosed.

4.10. CASE STUDIES

4.10.1. Case study 1

Keziah is a baby girl born of poor peasant parents with six other children. When Keziah is born, her parents agree to give her up for adoption. She is committed by the court to a charitable institution to await adoption. After three months, a prospective adopter turns up and starts fostering the baby. She stays with Keziah for a wonderful two years during which the child thrives. She starts the process of legal adoption but the process is slow. Meanwhile Keziah's parents start asking for their child back. Keziah's adoptive mother is reluctant as she fears that Keziah will not be taken care of well if allowed to go back home.

How can Keziah's right be protected?

Keziah is a CNCP under Section 119(d) of the Children Act from the start that's how she ends up being committed to a CCI. There must have been an order under Section 147(1) of the Children Act. See also Section 147(4)(a) and (c).

The matter must be taken back to court for review of the care or committal order.

Note the wording of Section 147(1) the powers of the Director are derived from the care/committal order issued by court. Any action taken without reference to court appears to be contrary to the law.

1. Keziah has the right to parental love and care under Section 6(1) of the Children Act and her parents want her back. The court to hear all the parties and determine the same. The evidence to include Children's Officer Report (COR) on whether the circumstances that led to her being CNCP have changed.
2. The matter to be determined in the best interests of the child.
3. The rights and duties of the parents under Section 23 of the Children Act to be considered.
4. The court to make appropriate orders.

Challenges

1. Children's officer's misapprehension of the laws Section 147 and the powers of the Director.
2. The procedure of fostering.
3. Children's officer giving the child for fostering for too long without starting the adoption process. The law of adoption is clear.
4. The adoptive parent has no rights over Keziah as adoption has not taken place.
5. Keziah's home environment.

6. Lack of understanding of the law by the CCI management on the requirements of the law on fostering. The child is committed till he is 18. The order does not authorize the CCI to release the child to anyone else.
7. Long procedures of adoption.

How can the JJA's be involved?

1. Children officer to do review report on the child and take the file back to court.
2. Court to hear whatever new evidence there is in circumstances and to determine whether the child is still CNCP and make appropriate orders.

What are the challenges if any?

1. Misapprehension of the law by the children's officer and giving wrong advice.
2. The long adoption procedures.

4.10.2. Case study 2

Lawino is a Standard 8 child aged fifteen years at Bidii School. She is the first born in a family of 12. Her parents are poor peasant farmers. Next door to Lawino is Musomo a boy aged seventeen years who has dropped out of school and is now a mechanic. They befriend each other and soon Lawino conceives, upon being confronted by her mother Lawino admits that she is pregnant and that the father is Musomo. She declares that they wish to get married. Musomo and his family when confronted by Lawino's parents confirm that they wish to take Lawino as a wife.

Analysis of the case

This case falls in the category of cases that may result in the discrimination of the boy child considering its circumstances and the ages of the two children. The JJAs must act carefully.

The role of JJA'S play in this case.

The police

1. There is no indication the case is reported to police.
2. If it is reported they receive the report, liaise with the children officer, parents of both children, the children's lawyer and interview the two children.
3. Conduct proper investigation.
4. Conduct proper assessment of the children.
5. Seek directions from the ODPP.

Note that an offence has been committed and criminal charges may be instituted. However, in the best interest of both minors, diversion would be the best option. This can be done by doing the following.

1. Open a Protection and Care (P&C) file for the minors.
2. Inform a children's officer who will prepare COR on both children.
3. Rescue the girl/placement.
4. Consider options for the baby when born.
5. Consider educational options for the girl.

The courts

1. Receive the case
2. Deal with the two as CNCs.
3. Receive and act on COR.
4. Placement and supervision for girl to protect her from early marriage.
5. Section 114 orders an appropriate supervision orders for the boy as well.
6. If the boy is charged with defilement as is generally the case, an order for PBR be made at the plea stage and he be

released on bond at the earliest even on bail supervision.

7. P&C files be opened for both the complainant and the subject accused and CORs be called for.
8. A lawyer be allocated to the subject accused.
9. Where the court makes a finding of guilt a POR and COR be called for.
10. The boy can be placed on probation supervision, committed to YCTC, or Borstal Institution.

Challenges

1. The parents of the boy may insist that he be charged with defilement (dilemma can be two children consented to have sex with each other).
2. The girl may refuse to testify or give evidence that will not support the charge.
3. The role of the parents in the case vide Section 23 (2)(a) as read with Section 127 (1)(b). They could be held liable for making their children CNCs c/s119(1)(g), that is a child who is prevented from receiving education and (k) a child who is pregnant, respectively.

4.10.3. Case study 3

Masumbuko has lived in the streets for the last two years. His parents who live in Jericho last saw him when they ran into him on the streets by mistake. His father is a drunk who assaults his wife and children. During a swoop to rid the city of street children Masumbuko is arrested and taken to the children's court. There he is very defiant and vows never to go back home because of the violence there. He abuses the court staff and the magistrate when they try talking to him.

The role of JJA'S play in this case

The Police

1. Having apprehended the child inform children's officer, interview him, trace the parents, take him to hospital for examination.
2. Open P&C file.
3. Apprehend the father for neglect, investigate, and take them to court.
4. Investigate the allegation of assault on the other children and their mother.

Children Officer

1. Conduct COR.
2. Report on the state of the other children at home and make appropriate recommendations.
3. Identify a place of safety and advise court accordingly.
4. Network with other stakeholders to find an appropriate solution.

The Courts

1. Order for COR and home visit report.
2. Place the child in temporary custody.
3. Make appropriate orders under Section 114 of the Children Act including counselling for the subject and the family.
4. Father may be charged with assault and/or neglect under Section 127 of the Children Act by the ODPP.
5. Where the father is found guilty he may be placed on probation supervision together with rehabilitation for alcohol abuse. This may assist in the family reintegration.

Challenges

1. Inadequate resources to carry out objective social inquiry.
2. Resistance from the child and the significant others to change.

3. Poor coordination on the part of stakeholders.
4. Lack of place of safety in the area.
5. Lack of specialized referral agencies.

4.10.4. Case study 4

Amelia is a five-year-old foreign child at a high-class nursery school in Nairobi. She has a twin brother who is in the same class and an older sister in Standard 2. Her class teacher has noted that whereas her sister and brother are always well dressed and happy, Amelia looks shabby and always seems hungry.

The teacher gets even more concerned when Amelia arrives in school with what looks like bruises. She quietly documents the incidents and with the help of another teacher starts an investigation. She learns that before Amelia's parents came to Kenya they had been charged with abusing Amelia in a London court. This was after neighbours lodged a claim with Child Services. They were acquitted of those charges. The teacher is in a dilemma on what to do though she is convinced that Amelia is being abused.

Things get worse when Amelia arrives in school with big burn on her back. On being asked what happened she says her mummy burnt her.

Required action

1. Teacher may report to police or children's officer or any authorized officer who should handle the child as any other CNCP.
2. Children's officer or authorized officer will talk to the child first, assess and establish the immediate needs of the child.
3. Take care of the immediate needs which may include medical attention that is physical and psychological.
4. Report the matter to the police.
5. Get a place of safety for the child, maybe a CCI or rescue centre.
6. Police investigate & arrest the perpetrators.
7. The ODPP prefers charges under the Children Act and the Penal Code and the perpetrators are charged before court.
8. P&C file opened for the child and social inquiry reports are prepared and submitted.
9. The child is temporarily committed to an institution as a child in need of care and protection through an order of the court.
10. Matter is determined in court.
11. Probation may provide report on the parents while children's officer may provide a report on welfare of the children.
12. The challenge which the JJAs are likely to face in Amelia's case is that the parents may try to compromise JJAs at any level.

4.11. Role Play

4.11.1 Case study

Activity



Ask the participants to volunteer for various roles as explained in 4.11. 1. Case study. Let them take turns and role-play the case study. Ask the person who plays the role of Kasyoki to plead guilty. The rest of the class should observe and note down their comments. Debrief the exercise by plenary session of the emerging issues.

Kasyoki is 12 years old. His parents are alive but very poor. He started being truant while in Grade 2 and eventually dropped out of school. The neighbours view him as a nuisance. He steals chicken and other small things. Recently, he was found stealing a neighbour's phone at the market place. He was arrested by the village elder, escorted to the police station and charged in court.

Conducting the role play activity

1. Have volunteers to act the different roles such as Kasyoki, Kasyoki's parents, some neighbours.
2. Identify the JJAs involved and their roles in the case study, for example:
3. Police to receive report and arrest, investigate.
4. The matter is forwarded to the ODPP who consider Pre Charge diversion by dint of his age and the support structures around him. Where possible compensation should be provided for the victim. The Prosecution, Children Officer, Probation Officer, Police, child and his representative, parents to have a meeting and discuss on an appropriate option that would cater to the child's needs. If diversion fails, the matter to proceed to court.
5. Ensure the court is set up with all the players that is the magistrate, children's officer, police, prosecutor and witnesses.
6. Demonstrate the child friendliness of the court.
7. All procedures for handling a child in conflict with the law be followed.

4.12. REFERENCES

The African Charter on the Rights and Welfare of the Child (ACRWC) 1999.

The Economic Social Council Resolutions 27/2004.

The Employment Act No 11 of 2007.

The Evidence Act Chapter 80.

The Children Act No. 8 of 2001.

The Constitution of Kenya 2010.

The Criminal Procedure Code Chapter 75.

The Penal Code Chapter 63.

The Sexual Offences Act No 3 of 2006.

United Nations Conventions on the Rights of the Child (UNCRC) 1989.

PROCEDURES OF HANDLING A CHILD IN CONFLICT WITH THE LAW

Duration	6 hours
Overview	This unit deals with the procedures in handling a child in conflict with the law.
Key Learning Outcomes	By the end of this unit the participant should be able to: a) Understand who child in conflict with the law is. b) Apply the procedures of handling a child in conflict with the law in relation to arrest, reception, detention, investigation, pretrial, trial findings, execution of orders/sentences, and post-trial. c) Explain the concept of diversion. d) Explain levels of diversion. e) Identify categories of children who qualify for diversion. f) Apply the concept of diversion. g) Apply the concept of plea bargaining.
Preparation/ Learning Activities	Request participants to share in two to three minutes some of their experiences in dealing with children in conflict with the law.
Materials	Flip chart and markers, laptop and projector
Session type	Lecture, discussion and case studies

Activity



1. On the flip chart, write the words 'child in conflict with the law'.
2. Ask the participants to define these words. Write down their responses.
3. Ask the participants to indicate instances where children are in conflict with the law. Write down their responses.
4. Ask the participants to describe the procedures they would follow in handling a child in conflict with the law in relation to arrest, reception, detention, investigation, pretrial, trial, findings and orders, execution of orders and post-trial.

5.1 DEFINITION OF CHILDREN IN CONFLICT WITH THE LAW

A child in conflict with the law is a child who is suspected, accused or who is found guilty of having committed a criminal offence or who is in violation of the law.

A child is considered to be in conflict with the law, when he has committed an act or omission that amounts to a cognizable offence under the Penal Code or any other law in force.

Section 14 of the Penal Code provides for criminal liability as follows:

1. Section 14 (1) - A person under the age of eight years is not criminally responsible for any act or omission.
2. Section 14 (2) - A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.
3. Section 14 (3) - A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

5.2 PROCEDURES OF HANDLING A CHILD IN CONFLICT WITH THE LAW

The police is the first juvenile justice agency to come into contact with children in conflict with the law. The procedures of handling a child in conflict with the law in relation to apprehension, reception, detention, investigation, pretrial, trial, findings and orders or execution of orders/sentences and post-trial are listed as follows:

5.2.1 Apprehension

Apprehension in simple terms means lawfully depriving a person of his or her constitutional right to liberty and movement when in conflict with the law.

Activity



Ask the participants to indicate who may apprehend a child in conflict with the law and write down their responses.

Persons who can apprehend a child



Explain to the participants the persons who may apprehend a child as stipulated in Sections 21-42 of the Criminal Procedure Code (CPC).

- a) Police officer
1. Police officers should liaise with the DPP for directions when handling investigations involving children.
 2. Section 29 of CPC notes that any police officer may apprehend a child without warrant.
 3. Section 30 of CPC gives ward commanders special powers of arrest by himself or any other person directed by him to arrest.
 4. The ward commanders have a duty to determine whether or not to grant police bond to a child held on suspicion of commission of a crime. Police should consult probation officers to get social reports prior to releasing an apprehended child on police bond.
 5. A police officer making an apprehension without a warrant shall, without unnecessary delay, send police file to the DPP for evaluation.
 6. If the ODPP is satisfied that the case meets the evidentiary threshold, the arrested/apprehended child is arraigned before a magistrate having jurisdiction in the case.

Section 33 of CPC provides for how to best process the exit of an apprehended child by police officers.

A police officer making a warrant shall take an apprehended child before a court having jurisdiction in the case or before an officer in charge of a police station.

At the time of apprehension/arrest in case the accused person has a dependent child or is expectant the apprehending/arresting officer shall capture the same in the charge sheet and bring it to the attention of the children's officer. The ODPP should also be notified to enable him exercise his discretion whether or not to charge or refer case for diversion.

- b) Private Person
1. A private person, under Section 34 of CPC, may apprehend any person who in his view commits a cognizable offence or who he reasonably suspects of having committed a felony.
 2. Persons found committing an offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or persons authorized by him.
 3. Disposal of an apprehended child by a private person under Section 35 of CPC.

4. A private person apprehending/arresting another person without a warrant shall without unnecessary delay, hand over the person so apprehended/arrested to a police officer, or in the absence of a police officer shall take that person to the nearest police station.
5. If there is reason to believe that the person comes under Section 29 (Arrest by police officer without warrant), a police officer shall re-arrest him.
6. If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which the officer has a reason to believe to be false, he shall be dealt with under Section 32.
7. If there is no sufficient reason to believe the apprehended/arrested person has committed an offence, he shall at once be released.

c) Magistrate

1. A magistrate under Section 39 of CPC may at any time apprehend/arrest or direct the apprehension/arrest in his presence, within the local limits of his jurisdiction, of any person for whose apprehend/arrest he is competent to issue a warrant.



Discuss with the participants the circumstances under which a child is arrested with or without a warrant and he/she cannot be released immediately before being brought to court by the police. Write down their responses on a flip chart.

5.2.2 Rights of an apprehended child

This is provided for under Article 49 of the Constitution that states an arrested person has the right:

- a) To be informed promptly, in language that the person understands, of–
 - i) the reason for the arrest;
 - ii) the right to remain silent; and
 - iii) the consequences of not remaining silent;
- b) To communicate with an advocate, and other persons whose assistance is necessary;
- c) Not to be compelled to make any confession or admission that could be used in evidence against the person;
- d) To be held separately from persons who are serving a sentence;
- e) To be brought before a court as soon as reasonably possible, but not later than–
 - i) Twenty-four hours after being arrested; or
 - ii) If the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- f) To be released on bond or bail, on reasonable conditions, pending a charge, unless there are compelling reasons not to be released;
- g) A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

The child being a person also enjoys these rights

Specific rights of a child in conflict with the law under Article 53(1)(f) and 53(2) in the Constitution provide that every child has the right 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.

A child's best interests are of paramount importance in every matter concerning the child. The above provisions, in consonance with International Conventions, now give greater certainty that a child should be detained as a measure of last resort and all efforts should be made to avoid incarceration.

5.2.3 Procedures at the police station

Activity



Ask the participants to brainstorm in groups on the steps to follow during the reception of children at the police station. Write down their responses on the flip chart.

1. Reception at the police station

- a) The child is received either at a children's desk or Child Protection Unit (CPU) and handled separately from adults. All the information is recorded in the Occurrence Book(OB).
- b) A charge sheet should not be registered in court without the consent of the DPP.
- c) The general principles namely, best interest of the child, child participation, involvement of the parent or guardian, privacy and confidentiality to apply at all times. The specific sections under Schedule Five of the Children Act apply.
- d) The parents and children's officer to be informed of the apprehension of the child immediately.

2. Detention at the police station

- a) Detention may take place at this stage depending on the type of the offence allegedly committed.
- b) The police should immediately inform the DPP through the nearest ODPP regional or county office.
- c) The ward commander of the police station should inform the parents, guardian or the children's officer.
- d) Reasons for detention should be explained to the child in a language he understands in the presence of a parent, guardian or children's officer.
- e) The child is to be held for a maximum period of 24 hours unless extension is granted by the order of the court refer to Article 49 of the Constitution.
- f) While under detention at the police station, the child should be treated with dignity and compassion in line with Article 53(2) of the Constitution and Section 4(1) of the Children Act.
- g) Child is to be protected from discrimination.
- h) Views of the child are to be respected.
- i) Right to information should be accorded.
- j) Where there are CPUs, the child should be attended to by trained police officers.
- k) Interview to take place in the presence of the children's officer, parent or an advocate of the child in a friendly manner.
- l) Placement should be done in separate cubicles in CPUs away from adults to avoid prejudicing the child's interest. It is now a constitutional requirement that a breach of law led to appropriate sanctions and on violation of the child's rights.
- m) The ward commanders may grant bail and release the child to parent or guardian-at this stage
- n) A female child shall, while detained, be conveyed or while waiting at the Police station be under the care of a female officer.

5.2.4 Investigations

Investigation is the process of inquiry that helps police to uncover the author of a crime in order to apprehend or if no crime committed, release. The safeguards enunciated above apply:

- a) The child must be informed fully about the possible charges he will face.
- b) The child is entitled to an advocate.

- c) The child should not be forced to confess or self-incriminate.
- d) The child must be supplied with copies of charge sheet, witness statements and other documentary evidence by the prosecution.
- e) The child should be released on bond while awaiting the outcome of the investigations unless there are compelling reasons why the child cannot be so released.
- f) Pursuant to Article 157(4) of the Children Act, the DPP has powers to direct the IG to investigate any information or allegation of criminal conduct and the IG shall comply.
- g) In sexual offences cases collection of samples for DNA sampling should be done within 72 hours for preservation of evidence.
- h) After investigations are complete, the police file is forwarded to the DPP for making a decision whether a child should be charged, released, or transferred into another youth welfare program.

Note: The general principle that will apply during investigations is that the best interests of the child are of paramount importance.

The role of the ODPP during investigations

The ODPP has a role to play right from the time a child gets into contact with the justice system. The ODPP guides police during investigations, peruses police files for evidence sufficiency, decides whether or not to charge the child or to refer case for diversion.

At the point of receiving the file from the police, the prosecutor reviews the police file and makes recommendations for diversion, or trial.

1. Where diversion is recommended the matter is resolved conclusively without a recourse to judicial proceedings.
2. Where the DPP initiates plea bargain negotiations, DPP involves the legal representative of the offender, a plea bargain agreement is drafted, executed and filed in court.

5.3 THE TRIAL PROCESS

5.3.1 Rights of the minor during the trial process



Explain to the participants the rights that children are entitled to during trial process.

The rights of the child during a trial process are:

1. Children are entitled to the rights and freedoms irrespective of their age as envisaged in the Bill of Rights Chapter IV Article 53 of the Constitution.
2. The Constitution addresses the unique requirements of children.
3. Section 73 of the Children Act confers jurisdiction to the Children's Court to hear and determine cases in which a child is charged with a criminal offence except for murder or where the child is charged jointly with an adult.
4. Application of the following principles contained in the Constitution and the Children's Act, ensures protection of the children involved in the Juvenile Justice System during the trial process.
 - a) Age assessment should be done before commencement of the trial process for both children in conflict with the law and for child victim in case there is a child subject and a child victim. Any child witnesses must also undergo age assessment to enable the court put in place measures to protect them owing to their vulnerability as children.
 - b) The child is remanded at a Children's Remand Home. However, detention should be the last option. (Article 53 (1)(f) of the Constitution)

- c) The court may grant legal representation to an unrepresented child Section 77 (1) of the Children Act. Legal assistance is to be provided by the government when the child is unable to obtain one.
- d) The child shall be promptly and directly informed of the charges against him. (Article 50(2) of the Constitution, ACRWC, Article 19 (c) Economic and Social Council resolution 27/2004)
- e) The child shall be presumed innocent until proven guilty by a competent court. (Bill of Rights in the Kenyan Constitution Article 50 (2)(a))
- f) The child has a right to expeditious trial. (Article 50(2)(e) of the Constitution)
- g) The child shall not be compelled to give testimony or confess guilt.
- h) The child has a right to a free interpreter.
- i) The child has a right to appeal if found guilty, First to the High Court and then to the Court of Appeal.
- j) Child's privacy shall be respected. (The Children Act, UNCRC and ACRWC)
- k) Children with disabilities have a right to special care and dignified treatment.
- l) Best interest of the child principle shall be the primary consideration in all decisions.
- m) Child Participation principle must be applied at all stages to ensure that children are active participants in all decisions affecting them.
- n) Reasonable and affordable bail to be granted in all offences. Where a child cannot afford bail, pre- bail report from the probation officer will be called for by the trial magistrate to inform assessment of appropriate bail.
- o) Efforts should be put towards avoiding separation of the child from a parent as much as possible.
- p) Reconciliations should be encouraged by the court to divert children charged in court under Section 176 of the CPC where the child is charged with a misdemeanour or in offences of personal nature. The court may permit diversion of criminal cases against child subjects under Section 87(a), 89(5) and 204 of the CPC following an application in court by the DPP to have a criminal case against a child withdrawn.
- q) Use of restorative justice through forgiveness and reconciliation between the child and victims of their crime is encouraged for all juvenile justice actors to enhance rehabilitation and reintegration. Juvenile justice actors in Kenya's criminal justice system have different mandates conferred either by statute or the constitution but they are all interconnected in so far as protection of children is concerned. No one agency can on its own safeguard the interests of children within the juvenile justice system hence the need for inter-agency collaboration and coordination for successful reform, rehabilitation and reintegration of child subjects into the community.

Activity



Ask the participants to write down and discuss in groups the steps to follow during the trial process of children. Write down their responses on a flip chart.

5.3.2 Procedures to be followed during trial process

The procedures to be followed in the trial process include the following:

1. Escort to court

- a) Separation of children from adults should be maintained during transportation from the police station to the court.
- b) A police officer should accompany the child offender to court. In case the child offender is female she should be escorted by a female police officer.
- c) A charge sheet and bio-data form of the child to accompany the child to court.

2. The role of the ODPP in court

At the point of taking plea:

- a) The ODPP shall apply to court to appoint a legal representative for the suspect in case she or he doesn't have one.

- b) At the point of taking plea, the prosecution records the plea as pronounced by the court.
- c) The ODPP should liaise with the police and probation officer to ascertain whether any compelling grounds exist as to why bail/bond should not be granted.
- d) The ODDP records the bail and bond terms and in case of breach of the terms, makes an application for review of bail/bond terms.
- e) Ensures that the legal representative is supplied with the charge sheet, witness statements and all documentary evidence that the prosecution intends to rely on before trial

3. In the courtroom

The child shall be tried by a children's court except for the offence of murder or any other offence where the child is charged together with a person or persons of or above the age of 18 years.

During this stage:

- a) The child shall have his privacy fully respected at all stages of the proceedings.
- b) Where the age of the child is not apparent, the court shall make an order for age assessment by a medical practitioner.
- c) Age assessment reports and medical reports should be properly filled and signed by the authors.
- d) The court setting must be child friendly.
- e) A probation officer and a children's officer should attend court to take note of any court orders requiring production of social enquiry reports.
- f) An interpreter should be present if the child does not understand the language.
- g) The charge is read and explained to the child in a language he understands.
- h) Legal representation should be provided by the state if the subject does not have one.
- i) In the case of plea of guilty.
 - i) If the child pleads guilty to the charge, the facts of the case shall be read out to the child in a language he understands.
 - ii) If the child accepts the facts of the case as correct, the court will enter a plea of guilty. The child through their legal representative shall be given an opportunity to mitigate. After mitigation the court shall call for probation and children's officers' reports. After noting the pre-sentence reports the court shall make final orders in accordance with Section 191 of the Children Act.
- j) In the case of plea of not guilty.
- k) If a child pleads not guilty to the charges, the court will enter a plea of not guilty

4. Bail and bond

Article 49(1)(h) gives an arrested person the right to be released on bail or bond, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

a) Bail and bond at the police station

At the police station, a suspect may be released on cash bail, with or without sureties, or personal (free) bond or cognizance. The police standing orders require the officer in charge on the security of cash bail, as a general rule unless the officer has good grounds for believing that the arrested person will not attend court when required to do so.

b) Bail and bond at the court

Upon plea taking and a plea of not guilty has been entered, the magistrate proceeds to pronounce the bail and bond terms.

- i) Depending on the offence that the minor has been charged with the court may proceed to issue a free bond, cash bail or bond terms.
- ii) The prosecution may object to the bail and bond terms being granted to the accused person if they have reason to believe that the minor is likely to abscond or interfere with witnesses, or be in danger if set free.

- iii) The court may call for a pre-bail or bond report from the probation officer which guides the court as to whether or not the minor should be granted bail or bond.
- iv) Upon receipt of the report and having considered the report, the court may proceed to deny or grant the minor the bail or bond.
- v) The prosecutor records the bail and bond terms and upon breach applies for cancellation of bail and/or bond.
- vi) The court is also required to call for a social inquiry report from the children's officer.

5. Hearing

The process followed during this stage includes:

- a) The proceedings are to be heard in camera.
 - b) A hearing date for the case is given immediately after a plea of not guilty is entered.
 - c) Witnesses summons are issued.
 - d) At the close of the prosecution case, if the child has a case to answer, the child is put to his or her defence and Section 211 of CPC is explained.
 - e) The child is heard in his or her defence.
 - f) The child is given an opportunity to submit on the evidence.
 - g) At the close of the hearing, the court shall consider the evidence on record.
 - h) The trial magistrate shall write judgment based on the evidence on record and enter finding of guilt or innocence
- Note** Section 189 of the Children Act, prohibits use of term 'conviction' where the court needs clarifications on certain factors, a probation officer's and children's officer's report should be called for.
- i) If the court makes a finding of guilt, the court will make final orders in accordance with Section 191 of Children's Act. The term 'sentence' is prohibited under the Children Act.
 - j) If there are any welfare cases arising, the court will make orders in accordance with Section 114 of Children Act.

6. Judgment and final orders



Explain to the participants that the rationale for care at the point of determination of the case and granting of final orders is due to their special status in regard to physical, emotional and mental development. Children are a unique category of person's hence specific protection measures and treatment options for those in conflict with the law.

During judgment:

- i) The magistrate or judge avoids use of term "conviction" and instead uses "found guilty as charged".
- ii) Social inquiry report by probation and children's officers is mandatory before sentence any time a court is considering placing the offender on a non-custodial sentence.
- iii) Use of the section 4 in Probation of Offenders Act that provides for placement on probation orders without conviction is considered.
- iv) No child shall be ordered to imprisonment or to be placed in detention camp in accordance with section 190 of the Children Act.
- v) No child shall be sentenced to death.
- vi) No child under the age of 10 years shall be ordered by children's court to be sent to a rehabilitation school.
- vii) Section 191 of the Children Act provides a range of treatment option that may be imposed by the court upon a finding of guilty as charged being entered.
- viii) No child shall be subjected to corporal punishment.
- ix) The pre-sentence report by the probation officer to include the aspect of restorative justice such as forgiveness, reconciliation and a focus on symbolic form of restitution.

Note: A child found guilty may be sent to a Borstal institution, Youth Correctional Training Centre, Rehabilitation School or a Probation Hostel.

7. Execution of orders and posttrial procedures

The orders that can be given by a court following the hearing/trial process include:

- a) Probation orders,
- b) Community Service orders,
- c) Supervision orders,
- d) Committal order for the child to a fit person for supervision.

The procedures to be followed after orders have been issued by the court include:

- a) Receiving the child from court by the guardian, probation officer, community service officer or children's officer.
- b) Escorting the child from the court to the place of committal by the probation officer, community service officer or the children's officer if the parent/guardians are not present in court.
- c) Commencement of supervision of the order is commenced.
- d) Preparation and submission of progress reports to the court by the CCPO to inform on compliance with the order.
- e) Application for and/or issuance of a warrant of arrest, additional order in accordance to section 144 of the Children Act, or variation of orders in accordance with section 8(1)(2)(3)(a)(b)(i)(ii) of the Probation of Offenders Act and Section 6 (1)(2)(a)(b)(3)(4) of the Community Service Orders Act.

Activity



Ask the participants to discuss in groups what they think are procedures to follow during the execution of Borstal orders and procedures in relation to children. Write down their responses on a flip chart.



Explain to the participants what post institutional supervision entails.

8. Post institutional supervision

Post institutional supervision include:

- a) Release of the child from rehabilitation schools Section 54(2) of the Children Act where the Director shall appoint a fit person to undertake supervision.
- b) Section 52 of the Children Act provides for grant of leave of absence by the Director from the rehabilitation school.
- c) Borstal Act under Section 29 provides for release from the Borstal institution on license before expiry of the committal period.
- d) Transfer of children from one institution to another.

The procedures to be followed are:

- a) A notice to be served to the probation or children's officer who recommended institutionalization in advance to informing them of their leave.
- b) The child to be escorted from the Borstal Institutions by the probation or children's officer who recommended the committal.
- c) Application of a warrant for arrest in case the child does not report to the children officer or probation officer within.
- d) Submission of progress reports to the institution and the court every three months.

5.4. DIVERSION

5.4.1 Concept of diversion

Diversion involves removal of a case from the criminal justice system and frequently redirecting it to be dealt with by community support services. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice proceedings on the child for instance the stigma of conviction and sentencing.

Diversion therefore:

1. Encourages the child offender to take responsibility for his unlawful acts.
2. Prevents the stigmatization of a child offender and other adverse consequences that could flow from subjection to the criminal justice system.
3. Promotes reconciliation between the child offender and the person or community affected by his unlawful acts.
4. Promotes the reintegration into the community.
5. Prevents criminal contamination of children which may occur if they are detained at the police station and during the trial process.
6. It reduces congestion in children's remand facilities before determination of their matters.
7. Reduces case backlog and unnecessary delays of juvenile cases in the justice system.

5.4.2 Eligibility for diversion

Activity



Ask the participants to write down some of the conditions under which a child is eligible for diversion. Write down their responses on a flip chart.

Key principles that guide diversion

The United Nations Standard Minimum Rules (UNSMRs) for the Administration of Juvenile Justice (Beijing Rules) is an international legal instrument that forms part of Kenyan law by dint of the Constitution of Kenya which stipulates that International law shall form part of the laws of Kenya. Rule 11.3 of the Beijing Rules lays down conditions under which a child is eligible for diversion.

It explains that a child is eligible for diversion if:

- i) The offence which the child is suspected of, or charged with is a misdemeanour as stated in (Rules 11.1- 11.4 Beijing Rules).
- ii) There is sufficient evidence to support a charge.
- iii) The child has not previously been convicted of an offence.
- iv) The child voluntarily acknowledges responsibility for the offence explained in the commentary on Rule 11.3 of the Beijing Rules which underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in diversion process.
- v) The child consents to the diversion.
- vi) The offence which the suspect has committed or charged with is not a capital offence.
- vii) The child is a first or second offender as opposed to a habitual offender.

Activity



Ask the participants to discuss diversion as well as the range of options available on diversion.

5.4.3 Diversion in practice

In Kenya, jurisdiction to hear and determine criminal cases is vested with the judiciary which exercises judicial authority. The Director of Public Prosecutions is mandated to exercise state powers of prosecutions. Diversion need not necessarily be limited to petty cases or misdemeanours.

Explain to the participants that in criminal cases application request for diversion may be made by an interested person including a child offender through their representative, a children's officer, the police, a judicial officer or the victim or the victim's representative. Diversion can be considered at any time from arrest to close of the prosecution case. In making the decision to divert the ODPP may rely on reports from the children's officer and probation officer. Regard must be accorded to the views of the victims and the police.

At the court level after an appropriate application by the prosecutor, the Children's Court under Section 4 of the Children Act and Article 53(1)(f) of the Constitution, will make a decision.

Diversion occurs where the ODPP after careful consideration decides to deal with the case by way of diversion or where parties request the prosecution that they wish to have the matter dealt with by way of diversion.

Precharge decision on diversion

1. A public prosecutor may decide to divert a case before the same is registered in court.
2. The prosecutor, parents, children's officer, probation officer, the child offender and their legal representative meet to discuss and a suitable diversion option can be recommended.
3. The views of the victim and the investigating officer are sought.
4. The public prosecutor prepares a written agreement which sets out the conditions of diversion.

Post-charge decision on diversion

A public prosecutor may also decide to divert a case after a charge is filed in court, the public prosecutor may apply to defer the plea and seek a future mention date.

- i) The prosecutor makes an application for a further mention so that the views of the parties concerned can be heard.
- ii) The Prosecutor, parents, children officer, probation officer the child offender and their legal representative meet to discuss and a suitable diversion option can be recommended.
- iii) During the process, the public prosecutor prepares a written agreement which sets out the conditions of diversion.
- iv) The court can permit withdrawal of a case for diversion for children charged in court , for example: reconciliation under Section 176 CPC where the child is charged with offences of personal nature. The court can also permit withdrawal of a case for diversion in a case involving a child before it where the prosecutor makes an application under Section 87(a), 89 and 204 of the CPC, before full trial. At this level use of restorative justice through forgiveness and reconciliation between the child and victims of their crimes is encouraged. Rehabilitation and reintegration in liaison with the probation officer and children's officer is necessary.

Implementation of diversion options

Once the Director of Public Prosecutions makes the decision not to charge and have case dealt with through diversion there are different government agencies which can implement the various diversion options. These agencies include:

1. The Department of Children Services
2. The Probation and Aftercare Services
3. The National Police Service
4. Non-Government Organizations
5. International and regional organizations
6. Community Based Organizations

Modes of diversion

Rule 11.4 of the Beijing Rules recommends the provision of viable alternatives to juvenile justice processing in the form of community based diversion. The following are the range of options available for diversion.

1. The child may be cautioned.
2. The child may be required to tender an apology to the person he has wronged.
3. The child may be required to pay compensation to the person he has wronged.
4. The child may be required to perform some service or benefit to the person he has wronged or the community.

5.5 PLEA BARGAINING

Plea bargain is entrenched in section 137A to 137O⁵⁷55 of the Criminal Procedure Code. The purpose is to narrow down issues in a case to reach a just outcome within the shortest time including a possibility of reaching an agreement on an acceptable plea of guilty and recommendations of sentencing. However, plea bargaining shall not apply to offences under the Sexual Offences Act, and offences of genocide, war crimes and crimes against humanity.

The guidelines set out processes by which a public prosecutor may negotiate with the offender or his/her legal representative or vice versa. The prosecutor must ensure that the charge or charges have been registered before entering into plea bargaining negotiations.

Plea bargain avoids exposing the child to a lengthy trial process detrimental to their best interest. The views of a child victim are also considered in the process. The plea bargaining process is enumerated in the Plea Bargaining Rules and the ODPP Plea Bargaining Guidelines in the appendices section.

Revision exercise

1. With examples, distinguish diversion from care and protection activities.
2. You have been asked to assess a child for eligibility for diversion. Explain the criteria you would use.
3. The child is to be transferred from one institution to another. Describe the precautions you will take to make the transition smooth.
4. What are some of the posttrial procedures that you would be involved in as a CCPO?
5. Discuss the roles of the JJAs in every step of the pretrial process for a child in conflict with the law.

5.6 CASE STUDIES

Case Study 1

P O O (A Minor) v Director of Public Prosecutions & another [2017] eKLR

High Court Of Homa Bay Constitutional Petition No.1 of 2017 between P O O (A Minor) [Petitioner] and Director of Public Prosecutions [1st Respondent], Senior Resident Magistrate Mbita Law Courts [2nd Respondent]

Facts of the Case

The background to this matter is that the petitioner was arrested on 14th February 2016 and charged at Mbita Senior Resident Magistrate Court criminal case no. 7 of 2016 with the offence of defilement contrary to Section 8(1) as read with 8(4) of the Sexual Offences Act. He pleaded not guilty to the charges and the matter proceeded to hearing. Consequently, the petitioner told his advocate that at the time of the alleged offence he was 16 years of age, whereupon the advocate made an application for the age assessment report on 17th November 2016. The petitioner claims that he had informed the trial court on 15th March 2016 that he was a minor being held in a prison for adults and although the trial magistrate directed that he be held at Magunga Police Station so as to be escorted to hospital for age assessment, the order was not complied with nor did the trial court follow up on the issue. However, no age assessment report was presented. During the children's service week, an advocate was appointed by the SPM Mbita for the petitioner; this clearly shows that the magistrate considered the petitioner a minor, bearing in mind that the petitioner's age was yet to be assessed. It begs the question that who was in charge of furnishing the court with age assessment report of the petitioner.

⁵⁷ 137(A) Plea Agreement negotiation to 137(O) Rules under this subpart

The court commenced the trial without taking in to account the fact that the petitioner was not represented, even after noting that he alleged to be a minor and making an order that an age assessment report to be furnished by the 1st respondent. Moreover, there is no evidence indicating that the 2nd respondent assigned the children's officer to locate the petitioner's adult relatives in order to assist him.

The Court Held; Petitioner's right to a fair trial were grossly violated. Article 53(1) (f) of the Constitution of Kenya provides that "Every child has the right not to be detained, except as a last resort, and when detained, to be held – (i) for the shortest appropriate period of time (ii) separate from adults and in conditions that take account of the child's sex and age. The court ought to have called for a pre-bail report so as to assess whether he could benefit from free bond. The petitioner is entitled to damages for violation of his rights and a conservative figure of Ksh200,000/- is adequate.

Learning Points

1. Child subject should also be taken to hospital for filling of P3 and establishing of age.
2. The subject is held separately from adults. Detention should be a last resort.
3. Diversion could apply for both the children where it is established that both were minors in a "Romeo and Juliet relationship" and no element of force or coercion was used and the children are taken for counselling.
4. Investigate with the help of children officer who the parents and guardians of the minors are and whether there was child neglect.
5. Legal representation should be provided for the child in conflict with the law.
6. Cases involving minors should be prioritized.
7. The proceedings should be conducted in a language that the minor understands.
8. Ensure names of both the children are not disclosed.

Case Study 2

Kariuki is a 15-year-old boy. The headmaster at Bidii Primary School notices a change in his behaviour as Kariuki becomes rude and is constantly in fights with other students. One day Kariuki was involved in an altercation with Mwenda and he hit Mwenda. Mwenda lost two teeth and was rushed to hospital and his parents reported the matter to Karibu Police Station. A P3 form was filled and Kariuki was arrested.

Kariuki's Home Environment

Kariuki's father had recently passed away and his mother is constantly in a depressed mood and abusive. This has forced him to spend his time with a gang (Vijana Sugu) who are of bad behaviour.

Roles of JJA's in the case

Police

1. The police receive the case as reported then they liaise with the children's officer, both parents and interview the two children.
2. Conduct proper investigation and have the P3 filled.
3. The file is forwarded to the DPP for perusal and directions.
4. Protection and Care forms are filled.

The ODPP

1. Analyse the evidence presented and consider whether to divert the case or prefer criminal charges against Kariuki.
2. If diversion is considered, it commences in consultation with the Children Officer and the Probation Officer in identifying the best option and the ODPP Diversion Policy and Guidelines guide the prosecution counsel.

Judiciary

1. A P&C file is opened for both the subject and the victim to address their welfare.
2. A separate criminal file is opened for the criminal offence if diversion fails and the prosecutor decides to proceed to full trial.
3. A lawyer is allocated to the subject in case of a criminal trial.
4. The subject takes plea and an application for bail and bond is considered. A pre-bail report may be called for to assist the court in its finding.
5. Detention should be a last resort and in a facility away from adults. The court shall take all reasonable steps to ensure that in case the subject has to be detained, it should be for the shortest time possible.
6. The trial commences without undue delay.
7. Where the court makes a finding of guilt, a probation officer's report and children's officer's report be called for.
8. The boy can be placed on probation supervision, committed to YCTC, or Borstal institution.

5.7 REFERENCES

Organization of African Unity (OAU). (1990), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49, Addis Ababa.

Republic of Kenya. (2018), *Criminal Procedure Bench Book*, Judiciary, Nairobi.

Republic of Kenya. (2004), *Criminal Appeal No. 239 of 2004 (Kazungu Kasungu Kasiwa Mkunzo & Another versus Republic)*, National Council for Law Reporting, Nairobi.

Republic of Kenya. (2003), *High Court Criminal Application No. 60 of 2005 Peter Nakoide Emase versus Republic*, National Council for Law Reporting, Nairobi.

Republic of Kenya. (2005), *Kisumu Court of appeal Criminal Appeal No. 257 of 2003 (O. O. N (minor) versus Republic)*, National Council for Law Reporting, Nairobi.

Republic of Kenya. (2003), *Nairobi High Court Criminal case Number 236/2003 Republic versus Susan Akoth Opiyo*, National Council for Law Reporting, Nairobi.

Republic of Kenya. (2019), *Plea Bargain Guidelines*, Office of the Director of Public Prosecutions, Nairobi.

Republic of Kenya. (2018), *Probation of Offenders Act Chapter 64*, National Council for Law Reporting, Nairobi.

Republic of Kenya. (2019), *Public Prosecution Diversion Guidelines*, Office of the Director of Public Prosecutions, Nairobi.

Republic of Kenya. (2017). *Sustaining Judiciary Transformation, a Service Delivery Agenda, 2017-2021*. Jomo Kenyatta Foundation, Nairobi.

Republic of Kenya. (1963), *The Borstal Institutions Act Chapter 92*, Government Printer, Nairobi.

Republic of Kenya. (2001), *The Children Act No. 8 of 2001*, Government Printer, Nairobi.

Republic of Kenya. (1998), *The Community Service Order Act No.10 of 1998*. Government Printer, Nairobi.

Republic of Kenya. (2010), *The Constitution of Kenya 2010*, Government Printer, Nairobi

Republic of Kenya. (2018), *The Criminal Procedure Code, Chapter 75*, National Council for Law Reporting, Nairobi.

Republic of Kenya. (2018), *The Penal Code, Chapter 63*, National Council for Law Reporting, Nairobi.

Republic of Kenya. (2018), *The Prisons Act Chapter 90*, National Council for Law Reporting, Nairobi.

United Nations. (1985), *Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*, New York.

INTRODUCTION TO CASE MANAGEMENT

Duration	4 hours
Overview	This is a brief introduction to the key concepts relating to case management.
Key learning outcomes	By the end of this unit the participant should be able to: Define case management. Demonstrate the importance of case management. Employ the categories of social work in respect to case management. Use case management at different levels.
Preparation/Learning Activities	The trainer will ask each participant to describe the terms they use to define a child/case (probationer, child, suspect, accused person, prisoner) in the context of their work. Similarly, the participants to define the names used to describe the case worker (Probation, children, police and magistrate) 'One offender, many CCPOs.'
Materials	Flip chart and markers, laptop and projector
Session type	Lecture, discussion and case study

6.1 THE CONCEPT OF CASE MANAGEMENT

Case management can be described as a set of logical steps and processes that CCPOs engage in order to ensure that a child receives needed services in a protective effective and cost effective manner.

6.2 THE IMPORTANCE OF CASE MANAGEMENT

Case management is important in the day to day handling of children and their matters as it:

1. Enables the CCPO as a case manager to properly identify assess and formulate a child's needs.
2. Ensures that a child is able to access services from the difference agencies as is necessary.
3. Enables the CCPO as a case manager to apply professional knowledge and skills.
4. Ensures that the child is treated as an individual.
5. Helps recognize potentials in the child and the community.

6.3 CATEGORIES OF CASE MANAGEMENT

6.3.1 Casework management

Casework management is a method of providing services whereby a professional social worker in this case the Child Care Protection Officer (CCPO) collaboratively assesses the needs of the child and the child's family, when appropriate, and arranges, coordinates, monitors, evaluates, and advocates for a package of multiple services to meet the specific child's complex needs.

It requires the CCPO to develop and maintain a therapeutic relationship with the child, which may include linking the child with systems that provide him or her with needed services, resources, and opportunities.

6.3.1.1 Principles of Casework

The principles of social casework were propounded by Felix Biestek an American catholic priest who contributed immensely to the development of the social work profession. They are definitive statements that govern the working relationship between the caseworker and the client. The seven essential casework principles are:

1. **Individualization:** The recognition of each client is a unique individual. Each child has an inherent need and rights as a human being that must be recognized and protected. Thus every child must be treated as an individual and not just as a typical member of a category or group.
2. **Purposeful expression of feeling:** The recognition of the client's need to express his feelings freely, especially his negative feelings which must be listened to purposefully without discouragement or condemnation. The client must not be denied the chance to wilfully express his/her feelings, fears, hopes among other things which are important emotional ingredients to any significant relationship. A denial of a child's right to purposefully express himself/herself is a refusal to help the child.
3. **Controlled emotional involvement:** This is the worker's sensitivity to the client's feelings, an understanding of the meaning of these feelings, and a purposeful, appropriate response. The worker's response is not only verbal; it is also nonverbal. The worker becomes "involved" emotionally by sensing and responding to feelings. The involvement is "controlled" by the self-discipline of the worker, the purpose of the case, and other factors.
4. **Acceptance:** The worker perceives and deals with the client as he really is, including his strengths and weaknesses, his positive and negative feelings, his constructive and destructive attitudes and behaviour, while maintaining and communicating a sense of the client's instinctive dignity and personal worth. This however does not mean approval of the client's actions but rather recognizing the self-worth of the client. The same principle should be accorded a child by a worker.
5. **Non-judgmental attitude:** The non-judgmental attitude is based on the belief that social work does not include assigning guilt or innocence. If the client fears blame and judgment, he/she will not talk about himself. Praise and approval, are examples of a judgmental attitude. Blame and praise may have the same effect on a client: to hide a part of himself so as not to be judged.
6. **Client self-determination:** The recognition of the right and the need of the client to have freedom in making his own choices and decisions in the social work process. The worker does not take responsibility for the client, does not persuade in a controlling way, and does not manipulate the client to make decisions to conform to the worker's preferences. However, the child's right to self-determination may be limited by their capacity for decision-making or by law or mandate of the agency working with him.
7. **Confidentiality:** Confidentiality is the preservation of private information concerning the client, which is disclosed within the professional relationship, or is received from other sources in the course of working with a client. The client's right to confidentiality is not absolute. There are situations in which another right or duty is greater than the client's right to confidentiality. This may be broken by law or agency mandate or risk to other people as the case may be.

6.3.1.2 Types of casework

School visit

This is a strategy for service delivery from which methods of intervention are designed to achieve a wider variety of outcomes. School visit programs are aimed to:

1. Establish relationship with peers and teachers.
2. Evaluate and rate performance.
3. Pursue admission and readmission.
4. Intervene in terms of financial and psychological support.
5. Form support systems.

6. Guide, advice and offer therapy.
7. Identify talents, interest and hobbies.

Home visit

Home visit is a strategy in case management which aims to launch a number of interventions designed to achieve a variety of outcomes such as:

1. Verification of information collected in initial interviews.
2. Assess the home situation thus family networks within and without.
3. Assess the resources within the family.
4. Identify support systems.
5. Improve family knowledge, attitude and behaviour regarding the offender.

Homework assignments

The behaviours that offenders are engaged in are usually played out in the child's social environment. The CCPO assesses the child in relation to his/her environment and determines the influence of this environment in perpetuating the child's delinquent behavior. The environment in this case may be the family, the peer group, the school or the community. Homework assignment is a central aspect of case assignments with children in care settings in the community.

Homework assignments allow the children to practice skills they are learning while on rehabilitation within their environment.

Steps to giving homework

1. The CCPO explains the concept of *homework* by explaining to the child that this is a special project that they have to carry out during the period of their rehabilitation. Since most children relate to the term homework with academic related school activities, the CCPO should take care not to make the child feel like this is just another school assignment. A friendlier term such as project and activity among others can be used.
2. The CCPO and the child agree on the problem or challenging area.
3. The CCPO helps the child to explore his problematic behaviour vis-a-vis the environment in which the child interacts with.
4. The CCPO follows up on assignments given and creating opportunities for family therapy.
5. When coming up with homework assignment it is important that the activity is directly related to the behaviour that needs modification. The assignment should be given immediately that behaviour has been discussed to that the child makes a direct connection. It is important that the child is involved in deciding what the homework will be and where it will be carried out. This in a way reinforces the child's strengths and helps him/her to positively embrace the assignment.
6. The rule of the thumb is to always begin with simple tasks that the child can complete and move on to the more challenging tasks, for example when dealing with a child who takes drugs, the CCPO may start by asking the child to record the times when the urge to use a drug comes to him or her.
7. The CCPO should give the child instructive guidance on how they will go about the homework as well as the time frame.
8. When the CPPO and the child meet, the homework is reviewed in terms of how it was undertaken, how the child felt while doing it and the outcomes.
9. The CPPO should positively reinforce the child for the effort and encourage them to keep practicing those skills.

Office visit/Contact

Office visits is a key technique in casework. An office visit or contact is whereby the CCPO gives the child offender an appointment to visit the office during supervision. A session is held between the CPPO and the child and it may take the following structure.

1. The session begins with a mood check in. This helps the child get in touch with what they are feeling at the time.

2. The session may also recap issues addressed in the previous visit.

The following are the main components of a session when the child makes an office visit/contact.

- a) Homework review: If there was any task that the child was given to undertake during the previous visit, then this is reviewed. The child also explains to the CCPO the last conduct.
- b) Agenda setting: This involves identifying topics that will be addressed during the session. Collaboration between the CCPO and the child is important in agenda setting.
- c) Session content: This entails processing or talking about the issues that were set in the agenda. The generic counselling skills are used during this session. The CCPO ensures that they address the child's thoughts, feelings and behaviours.
- d) Conclusion session: This is carried out by summarizing the issues that have been discussed, giving other homework assignments and getting feedback from the child on how session was like for them.

Family therapy

Family therapy plays a critical role in the development of juvenile delinquent behaviour including drug abuse. The shortcomings noticed in individual intervention/therapy and approaches in addressing anti-social behaviour have driven attention to family based approaches. Family therapy is a casework management/rehabilitation model designed to address the problems that influence the manner in which the individuals perceive and manage their relationships.

The family is the key system in which children/youths and their parents/guardians are expected to provide love, structure and psycho-social adjustment to one another. The ways in which the family can influence behaviour of a child into delinquent conduct include:

1. Failure to form adequate parent-child attachment.
2. Exposing children to violence at home.
3. Excessive conflict.
4. Inadequate child socialization and parenting skills.
5. Dysfunctional style and interaction.

The key principles underlined in the application of family therapy are:

1. Understanding the identified family problems within the systems context.
2. Understanding the family's positives and systems strengths and use those as levers for change.
3. Encourage responsible behaviour and discourage irresponsible behaviour among family members.
4. Keep interventions present oriented and action oriented targeting specific and well defined problems.
5. Target sequences of behaviours that contribute to the identified problems.
6. Keep intervention appropriate to the development level and needs of young family members.
7. Require daily or weekly intervention-based efforts from family members.
8. Continuously evaluate the effectiveness of the interventions from multiple perspectives.
9. Promote case management generation beyond the treatment to long term maintenance of therapeutic change.

Implementing of case management should however be pegged on:

1. an initial assessment, and
2. a treatment plan.

6.3.2 Group work

Group work is a method of generic social work that is concerned with addressing the social problems of children and adolescents in a group setting. In this method, CCPO identifies children with a similar problem and puts them together to work on this common issue.

Certain problems especially those involving social skills, empathy, and interaction are best dealt with in a group setting. Groups are also used to facilitate discussion, to provide support, and also to help deal with disorders. By putting children together in a group, they can see that their behaviour, feelings and thoughts are not strange or weird. It also allows children to see the impact of their behaviour on other children.

The group is a natural setting for most children and adolescents. Younger children for example, engage in play groups where they are able to try out different roles. Most social learning activities take place by observing others and the results of their actions. Group work provides children and adolescents with the therapeutic environment where they can work through their interpersonal problems and learn coping skills from each other.

6.3.2.1 Criteria to use to ensure inclusion

Some of the criteria used to ensure inclusion of the right category of clients include:

1. Age
2. Gender
3. Presenting problem
4. Personality
5. Group size (6-8)
6. Group purpose
7. Venue
8. Time frame
9. Group type (Open or closed)

6.3.2.2 The role of the CCPO in group work

The officer plays very vital roles while engaging in group work case management. The roles played include being the:

1. Protector;
2. Supporter;
3. Facilitator;
4. Role model;
5. Therapist; and the
6. Teacher

6.3.3 Community work

Community work can be defined as a method of intervention whereby individuals, groups, and organizations engage in planned action to influence social problems for example: juvenile delinquency, child abuse, drug abuse among others.

It is concerned with the enrichment, development and or change of social institutions and involves two major related processes. These are:

1. planning which involves identifying problem areas and formulating solutions, and
2. organizing community members around the issues affecting children in their community and devising the strategies necessary to effect action.

Community participation in various aspects of the correctional and rehabilitative process builds a bridge between the community and the offenders. As a result, community attitude towards offenders begin changing and supportive connections are being formed that are more conducive to the offender's rehabilitation.

6.3.3.1 The role of the CCPO in community work

Community work as a process is part of generic social work. The CCPO in this regard serves as the community worker. The CCPO plays the following roles and functions.

1. Trainer

The CCPO is a person who, through professional training and field education, has the requisite values, attitudes, knowledge and skills to work autonomously, or with a team, in a juvenile justice agency or program intended to promote, relieve or restore the social functioning of children, families, social groups or larger communities.

As a social worker therefore, they need good technical skills to be able to get well along with people. Most of the community work has to do with changing systems and many times, the system resists change. The resistance usually comes in the form of anger or hostility from people who are going to be affected by the change. The case worker therefore needs to be able to systematically apply a relevant body of knowledge which is guided by social work values.

2. Teacher

The CCPO plays the role of a teacher. They believe in the need to increase capacity. He or she has an obligation to:

- a) Utilize all available skills and knowledge to promote the wellbeing of individuals, groups and communities.
- b) Give children all knowledge and information and skills which will assist them to maximize their human potential.

One way of doing this is through the creation and encouragement of local leadership in children activities, that is, teaching people that they too can be leaders in matters affecting children and adolescents. When children or the community have been empowered, they can confront authorities and ask for their rights, for instance, to resources.

3. Catalyst

A Child Care and Protection Officer (CCPO) plays the role of a catalyst. A catalyst is a person who stimulates others to take action for example, sensitizing children and families on the effects of drug abuse and Juvenile delinquency.

4. Organizer

A CCPO works with the community to start a community organization by:

- a) Finding common community problems that are vital and need to be addressed.
- b) Bringing together people who may not know each other or working to create a sense of community that can become the basis of organizing.
- c) Trying to target initial actions so that they keep people interested and active. Then gradually they enlarge people's vision of what is possible and thereby get the community active on a range of issues.

5. Facilitator

The CCPO is a facilitator. He or she does so by helping people to start on solving a problem. Too often, a community initiative can fail if there is no facilitator who keeps it going and ensures it follows through and this is what the case worker does. The case worker plays the linking role of bridging the gap between the organization, its members and the community.

6. Welfare

A professional practitioner in the field of welfare and community work is concerned to promote the worth and wellbeing of all children regardless of racial origin, sex, age, social status or other individual differences.

The professional behaviour and practice of the case worker is aimed at maximizing the human potential and worth of all persons. Conduct opposed to the full recognition of human dignity and wellbeing for all persons within the worker's professional practice shall be considered improper and unacceptable to the profession.

CCPOs are concerned with issues of social justice and equity for children including access to quality services and the opportunity for maximum child participation in service delivery.

The CCPO believes that:

- a) Every human being regardless of race, tribe, sex, beliefs and social economic status has a right to maximize his/her potential provided it does not infringe upon the rights of others.

- b) Every society has an obligation to provide for and deal equitably with all its members and make extra provision for those persons who by reasons of disability or misfortune are disadvantaged.

As a practitioner within complex social structures, the CCPO has an obligation to safeguard the human value of all persons encountered in practice.

6.4 CASE MANAGEMENT LEVELS

Case management is practiced at various levels within the juvenile justice system.



Discussion: Ask the participants to discuss in groups what they think are the processes that take place in each of the stages that a child may go through in the juvenile justice system in Kenya. They can use Figure 6.1.

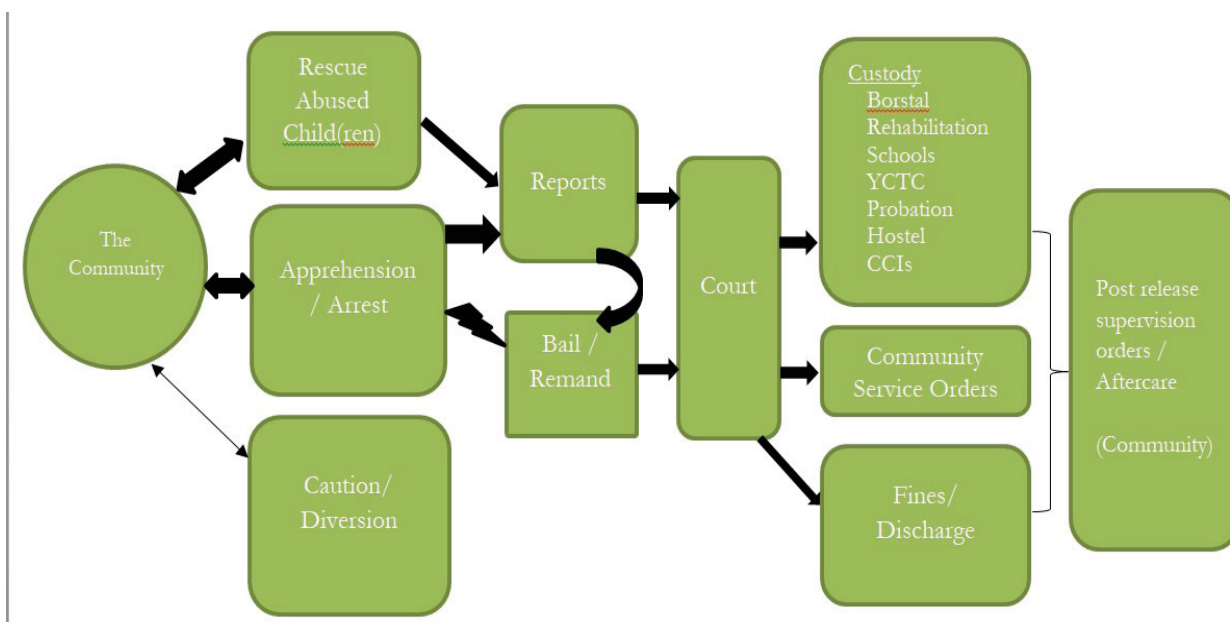


Figure 6.1 Case management levels

6.4.1 Case management in police stations

At the stages of apprehension, rescue, reception, detention, and other processing of child cases, police should engage in a variety of activities.

Activity

The following are some of the activities that should be carried out in a police station. Ask the participants to arrange them in the right sequence.

Child offenders

- i) Document and keep records collected on the child.
- ii) Communicate with the parent/guardian/lawyer
- iii) Inform the children officer



Child witnesses

- i) Record statement and pretrial counselling
- ii) Facilitating witnesses

- iii) Child in need of care and protection
- iv) Document and keep records collected on the child.
- v) Prepare the child for court.
- vi) Communicate with the parent/guardian/lawyer.
- vii) Inform the children officer immediately.
- viii) Identify immediate needs of the child and attend to the needs.
- ix) Prepare the child for the next course of action for example: diversion, court process or reconciliation.
- x) Receiving complaints from members of the public about children in need of care and protection.
- xi) Share the information on the child where necessary.
- xii) Provide care that is emotional, mental, medical and basic needs.
- xiii) Share information about the child with the other police station where necessary.

Child victim

- i) Escort the child to hospital for treatment if need be.
- ii) Prepare relevant documentation for use by the medical doctor such as a P3.
- iii) Recover the exhibits such as blood stained clothes.
- iv) Provide care that is emotional, mental, medical and basic needs.
- v) Share information about the child with the other police station where necessary.

6.4.2. Case management at court level

Activity

The following are some of the activities that should be carried out in a court.

Ask the participants to arrange them in the right sequence. Determine the next course of action e.g. calling for Children's Officer's Report (COR) to decide to detain the child appropriately.

Child offenders

- a) Find counsel/legal support for the child.
- b) Identify any immediate needs of the child and attend to the needs.
- c) Interview the child.
- d) Ensure that trial goes on in a child friendly environment.
- e) Prepare the child for court process.
- f) Communicate with the probation office.



Child witness

- a) Identify any immediate needs of the child and attend to the needs.
- b) Interview the child.
- c) Prepare the child for court process.

6.4.3. Case management by the ODPP

The following are some of the activities that should be carried out in a court led by the prosecution counsel.

Child in need of care and protection

- a) Prepare the child for court which involves pretrial counselling.
- b) Protect the child.
- c) Quick determination of children's matters.
- d) Receive the child.
- e) POR committal orders
- f) Referral
- g) Review/decide proper court orders- within the courts residual powers

Child victim

- a) Issuing of committal orders to safeguard the safety of the child in a Charitable Children Institution
- b) Identify the immediate needs of the child and attend to the needs of the child.
- c) Avoiding undue delay
- d) Quick determination of the case where a child is a victim

Ask the participants to arrange them in the right sequence. Determine the next course of action for example calling for COR to decide to detain the child appropriately.

Activity

- a) The following are some of the activities that should be carried out in a court.
- b) Ask the participants to arrange them in right sequence. Determine the next course of action, for example calling for COR to decide to detain the child appropriately.

Child offenders

- a) Consider alternative forms of dispensing justice, for example plea-bargain/diversion
- b) Monitoring the case reviews

Child witness

- a) Conducting a pretrial conference to prepare the child for the courtroom environment
- b) Counselling
- c) Advise and give directives for conclusive investigation
- d) Facilitation
- e) Recommending the appointment of an intermediary where a child is not able to give evidence
- f) Advise and give directives for conclusive investigation
- g) Facilitation
- h) Recommending the appointment of an intermediary where a child is not able to give evidence

Child victim

- a) Evaluation of the evidence to ensure that evidence against perpetrator is watertight
- b) Opposing bail applications where security of the victim is not guaranteed/where perpetrator is likely to interfere with the witness
- c) Receiving complaints on matters involving children which have not been addressed



6.4.4. Case management by the probation service and the children's service

There are several activities that take place once a child has been taken to the probation office/children's office.

Activity

The following are some of the activities that should be carried out by probation or the children's officers. Ask the participants to arrange them in right sequence.

Child offenders

- a) Supervision of the child offender in the community.
- b) Committal to institutions
- c) Developing ITP monitoring compliance
- d) Ensuring contact
- e) Assessment Home visits
- f) Interviews
- g) Prepare the report
- h) Preparing the child for committal
- i) Presenting the reports
- j) Referral
- k. Reviews
- l) Social enquires



Child in need of care and protection

- a) Interviews
- b) Prepare the report
- c) Preparing the child for committal
- d) Presenting the reports
- e) Referral
- f) Review

Child victim

- a) Interviews
- b) Prepare the report
- c) Preparing the child for committal
- d) Presenting the reports
- e) Referral
- f) Review

6.4.5. Case management at institutional setting stations

Case management in the institutions is driven by the relevant objective for each institution. Nevertheless, the ultimate aim is to secure an overall rehabilitation and reintegration of the child in case of a child offender or restoration of harmony in relation to children in need of care and protection. There are marked similarities with case management in community setting save for the fact that supervision, care or overall rehabilitation is taking place in the institution.

The delivery of case management revolves around developing treatment or supervision plans and executing them. The treatment plan should allow usage of appropriate skills necessary to ameliorate the circumstances of the child. However, issues of health, basic needs and rights are supposed to be imbedded in the services to be provided. Lastly, reintegration in the community which is the wholesome treatment accorded and the desired resettlement in the community must involve staff in the institution and those in the community. In some institutions, there are committees or boards which determine release conditions/licenses after advice from the CCPO's environmental adjustment reports.

6.4.6. Case management in emergencies

Emergencies are humanitarian crises that can frequently overwhelm the resources and capacity of affected communities and societies to cope, and therefore require urgent action.

Examples of emergencies

The emergencies can be:

1. Natural disasters which are floods, droughts, famine and pandemics.
2. Manmade which are violence, terrorist attacks, wars and political clashes among others.

Categories of emergencies

The emergencies can further be categorized into:

1. sudden or rapid onset emergencies; and
2. chronic emergencies that develop gradually but may continue for years.

Rationale for case management during emergencies

During emergencies the following things may happen.

1. Children's vulnerability is heightened.
2. Increased cases of child abuse and violence towards children.
3. Children are exposed to traumatic events.
4. There are competing priorities and children needs may not be among them.
5. Child protection systems and case management processes are often forgotten.
6. Existing systems and structures are typically weakened by the impact of the emergency.
7. Emergencies call for the establishment of new systems and mechanisms of responding to children needs.

Steps to case management in emergencies

1. Establish vulnerability and eligibility criteria

Assessing the situation to tease out which children have become more vulnerable as a result of the emergency. Take into account things such as age, sex and disability amongst other factors.

The CCPO needs to liaise with stakeholders so as to agree on a shared criterion to define who is a vulnerable child in the given context.

Take the details of the child.

2. Assess risk levels

CCPOs should understand risk and its cumulative nature in order to prioritize between cases in need of more intense and less intense interventions. The following are examples of risk levels.

- a) High risk: This means that a child needs urgent medical attention, is likely to be seriously harmed or injured, or subjected to immediate and on-going sexual abuse, or be permanently disabled, trafficked or die if left in his/her present circumstances without protective intervention.
- b) Medium risk – This means that a child is likely to suffer some degree of harm without an effective protective intervention plan. Intervention is warranted. However, there is no evidence that the child is at risk of imminent serious injury or death.

- c) Low risk – This means that the home is safe for children. However, there are concerns about the potential for a child to be at risk if services are not provided to prevent the need for protective intervention.

3. Case planning

Since the child is in an emergency situation the case planning should start immediately and not take more than 2 weeks. This plan should be based on the assessment and should describe what should happen to meet the identified needs, who should do it, and when the actions should take place. It should also include a plan for routine monitoring of the child's situation, with frequency depending on the risk level and the needs of the child. The case plan should consider: immediate, short-term, medium term and long-term actions.

Addressing child protection risks often requires a family-centred approach that identifies the needs and capacities of the family and works to strengthen the family's capacity to protect and care for the child. It is crucial that the CCPO does not raise the expectations of the child/family that they will be able to receive services and support that are not actually available.

4. Implementing the case plan

The CCPO should work with the child, the family, the community and any service providers to ensure the child receives the appropriate services.

The CCPO may provide direct services according to need, for example advocacy, psychosocial support, tele health. Using child friendly communication, providing advice on daily challenges, and being a resource for the family are key ways that CCPOs can develop a positive relationship with the family. These routine interactions are a unique form of psychosocial support, which can contribute to the entire family's wellbeing when done correctly.

Safe and confidential system for collecting, storing and sharing information on the children and families affected by the emergency.

5. Follow up and review

This is done so as to make sure that the case plan is being implemented and that it continues to be relevant and meet the child's needs. Follow up involves checking that a child and their family are receiving appropriate services and support to meet their needs, as outlined in the case plan, and checking that their situation is stable and progressing positively in line with the case plan.

Follow up can be made through:

- a) Meetings with the child and/or family, face to face or virtually.
- b) Home visits.
- c) Ad hoc home visits - these can be particularly important for following up the situation in the home and are useful when the home environment is volatile or levels of care are low.
- d) Phone calls and/or Teleconference
- e) Confirmation from relevant service provider that the child who was referred to their service actually received the service.
- f) Informal community-based follow-up, for example: contacting the child's teacher if they are involved in supporting the child as part of the case plan, or follow-up through community groups.

6. Case closure

Most often cases are closed when the goals of the child and family, as outlined in the case plan, have been met, the child is safe from harm, their care and well-being is being supported, and there are no additional concerns. Other reasons that may lead to cases being closed are:

- 1. The family/child no longer want support and there are no grounds for going against their wishes provided this is safe for the child.
- 2. The child is turns 18 years old.
- 3. The child dies.

Case management procedures require that the closure of the case be authorised by a manager. This ensures that cases are not closed prematurely.

6.5 CASE STUDY

Participants to undertake a group activity based on the following case study. Let them critique the case study based on the key principles of case management.

Sara and Juma

Sara and Juma are aged 17 years old and 14 years old respectively. They are victims of post-election violence and live in Mashimoni slum. They lost both parents during the violence and lost contact of their relatives. Sarah was subjected to sexual abuse during the violence at the IDP camp. Currently, Sara engages in cloth-washing as a means of livelihood and in the evening she joins Margaret aged 27 years in her commercial sex work. Sara has to pay a percentage of her gains per client to Margaret. On the other hand, Juma collects scrap metals and waste papers which he sells cheaply to middlemen who eventually sell to dealers at higher prices.

The two children had very deep determination to excel in education and eventually get well-paying jobs. This determination dawns on them when they see other children play and go to school, a need which perhaps would have been realized if their parents were alive.

Sara had been arrested for loitering with immoral intent while Juma was arrested for dealing with suspected stolen goods.

Revision exercise

- a) What are the activities that should take place in case management?
- b) Explain how each of the following institutions plays their role in case management.
 - i) The Courts
 - ii) The Police
 - iii) Children Services
 - iv) Probation Services
 - v) Corrective institutions such as the Borstal and YCTC which are under Prisons
 - vi) The Charitable Children Institutions
- c) What are some of the roles to be played by a CCPO in the following three categories of social work?
 - i) Individual casework
 - ii) Group work and
 - iii) Community work

6.6 REFERENCES

Child Protection Working Group. (2014). Inter-Agency Guidelines for Case Management and Child Protection. Geneva: CPWG. Retrieved from http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf

Department of Children's Services and JICA. 2008. *The Handbook for Volunteer Children Officers*.

Department of Children's Services and JICA. 2008. *National Standards and Regulation for Statutory Children's Institutions*.

Felix P. Biestek, the Casework Relationship (12th Edition), *British Journal of Social Work*, 38, no. 4, 2008: pp. 820-822.

Kenya National Bureau of Statistics. 2012. Statistical Abstract 2012.: Nairobi.

Mullan, Bob. 1997. Modern Social Work in Search of a Soul: Felix Biestek: In the Service of Others. International Scholars Publications: San Francisco

Probation and Aftercare Services. 1994. The National Standards Manual. UNICEF 2011 Kenya Statistics. Retrieved from http://www.unicef.org/infobycountry/kenya_statistics.html

UNICEF and Republic of Kenya. 2007 *Review of Progress Towards the World Fit for Children + 5 Goals in Kenya*.

UNICEF and Republic of Kenya. 2010 *Violence: Against Children in Kenya: Findings from a 2010 National Survey*.

ALTERNATIVE CARE FOR CHILDREN

Duration	4 hours
Overview	This unit focuses on alternative care for children and its procedures.
Key Learning Outcomes	By the end of this unit the participant should be able to: a) Understand the alternative care options available. b) Apply the provisions of the law to alternative care arrangements. c) Apply the correct procedures when dealing with the alternative care options. d) Identify the roles of the JJAs involved.
Preparation/ Learning Activities	Request participants to share in two to three minutes some of their experiences in dealing with alternative care arrangements.
Materials	Flip chart and markers, laptop and projector
Session Type	Lecture, discussion and activity

7.1 DEFINITION OF ALTERNATIVE CARE FOR CHILDREN

Alternative care for children is a formal or informal arrangement whereby a child is looked after outside the parental home either by decision of either a judicial or administrative authority or a duly accredited body or at the initiative of the child, his/her parents or primary caregiver in the absence of parents. Forms of Alternative Care of children in Kenya comprise of:

- a) Adoption
- b) Foster care
- c) Guardianship
- d) Kafaalah
- e) Kinship
- f) Supported independent living
- g) Child-headed household

7.2 INTERNATIONAL, REGIONAL AND NATIONAL POLICY AND LEGAL FRAMEWORK ON ALTERNATIVE CARE SYSTEM

Policies and laws are the backbone of any national alternative care system and are crucial to the provision of child welfare services. Kenya has a comprehensive legislation framework, which shapes and guides the implementation and monitoring of alternative care services.

As the primary duty-bearer, the Government of Kenya is responsible for the execution and oversight of the legislative and policy framework.

7.2.1 National policies and legislation in Kenya

7.2.1.1. Constitution of Kenya

The current constitution introduced significant changes in the administration of child care and protection in Kenya. While the former constitution made no mention of the rights of a child as a specific category of rights, the current constitution has a number of articles that specifically address the issue of children.

Article 21 on the implementation of rights and fundamental freedoms requires all State organs and all public officers to address the needs of vulnerable groups within society, including children. This entails constitutional obligation on the State primarily to be responsible for the needs of children⁵⁸ and in this case children in need of alternative care.

Article 53 provides for the rights of every child 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. This provision has direct implication for alternative care and protection of children.

Article 14 (Citizenship by birth) provides that a child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth⁵⁹. This ensures that no child misses out on the obligation of the Government of Kenya to protect him/her on the excuse that the child is not Kenyan in order to access the rights guaranteed by the Constitution.

Article 43 Economic and Social Rights (3) obligates the State to provide appropriate social security to people who are unable to support themselves and their dependents. This enables poor households to access government social assistance and prevent children being separated from their families due to poverty and lack of basic services. Further legislation and programs are required to operationalize this provision and make it effective.

7.2.1.2. The Children Act

The Act has elaborate provisions for institutions and substantive provisions on the care and protection of children in Kenya.

a) Part VIII - Guardianship

The provisions relating to guardianship relate to the appointment of guardians and circumstances in which certain people may be appointed as guardians of a child. Provisions are also made regarding the revocation of guardianship orders, among other things.

b) Part XI -Foster care placement

The definition of “foster care placement” is given in Section 2 of the Children Act where it is defined as “placement of a child with a person who is not the child’s parent, relative or guardian and who is willing to undertake the care and maintenance of the child”.

The Children Act also provides for the procedures that apply when placing children in foster care. This part is supplemented by detailed provisions in the Fourth Schedule to the Act. The Chief Justice is empowered to make amendments to the Schedule for the forms and detailed procedure applicable in foster care placement.

c. (Part XII) Adoption - Section 154-183 inclusive) has legal provisions for adoption

7.2.1.3. Subsidiary legislation guiding operations of the Children Act

i) Charitable Children’s Institutions Regulations

These rules have elaborate provisions for the management of CCIs. However, there is no mention of the procedures for the entry and exit of children from such institutions. The family-based care and protection of children would require that CCIs are properly regulated with respect to how they accept and exit children from their facilities.

ii) Adoption Regulations

The current rules make provisions for the entire process of adoption and the institutions involved including the

⁵⁸ Constitution Article 21(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.

⁵⁹ Constitution Art14(4)

Adoption Committee and Adoption Societies.

ii) Guardianship Rules

These rules are contained in Section 112⁵⁸ of the Children Act. They mainly provide for the procedures applicable in the judicial process and the forms to be used by people seeking to be appointed as guardians and for revocation of guardianship.

iii) Foster Care Placement Rules

These are contained in the Fourth Schedule the Children Act and basically make further provision for foster care and elaborate on the provisions of the Act.

7.2.1.4 National Children Policy

The goal of this policy is to realize and safeguard the rights and welfare of the child. The policy acts as a regulatory framework to coordinate the many related policies and legislations that are geared towards the promotion of children's rights.

7.2.1.5. National Social Protection Policy

The policy defines social protection in Kenya and states that the paramount goal of social protection is to ensure that all Kenyans live in dignity and exploit their human capabilities for their own social and economic development. The policy which is currently being reviewed builds on existing social protection initiatives such as

1. School feeding programs;
2. Orphans and vulnerable children programs;
3. Older persons cash transfer programs and;
4. Youth enterprise fund among others.

7.2.1.6. Comprehensive National Health Policy Framework

In response to the role of the health sector outlined in the Bill of Rights of the Constitution, this framework aims to attain the right to health. It focuses on strategies that will enable rights-holders, including children who are not living with their parents, to enjoy the highest possible level of health care.

7.2.1.7. Counter-Trafficking in Persons Act

This Act is intended to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime, particularly its protocol to prevent, suppress and punish trafficking in persons, especially women and children, and to provide for the offences related to trafficking in persons. It criminalizes trafficking in persons, which in some instances may be characterized by the pretence to adopt, foster or put a child under guardianship.

7.2.2 International legal framework

The Government of Kenya is accountable to the underlying principles and rights outlined in the following instruments.

7.2.2.1. UN Convention on the Rights of the Child (UNCRC)

The UNCRC promotes the care and protection of children within their families as well as addressing the protection and well-being of children deprived of parental care or who are at risk of being separated from their parents.

The following principles in the UNCRC are particularly crucial for the provision of alternative care services in Kenya.

1. **Respecting local care and protection practices:** Article 5⁵⁹ upholds the responsibilities, rights and duties of parents, or where applicable, extended family or community members as provided for by local custom and the evolving capacity of the child.
2. **Prevention of family separation:** Article 9 clearly stipulates States should ensure that the child remains in the care of his/her family and prevent the unnecessary separation of children from their families, unless deemed in their best interests. If the child is separated due to reasons deemed appropriate by respective authorities, the child should have regular contact with his/her family.
3. **Family reunification:** Article 10 specifies that if the child becomes separated from his/her family, all efforts should be made by the authorities to "expeditiously and humanely" reunify the child with his/ her family.

4. **Emphasis on family-based alternative care:** Article 20 asserts that if the child is temporarily or permanently deprived of his/her family environment, then they should be provided with a range of alternative care services in line with the child's upbringing, situation and cultural background.
5. **Protecting the child from abuse:** Articles 19 and 34 stipulate the responsibilities of States and respective authorities in protecting children from all forms of abuse, exploitation, maltreatment and neglect while in the care of their parents or any other person.
6. **Provision of support services and protection mechanisms:** Article 19 upholds the principle of ensuring that families are provided with appropriate supportive services to appropriately care for their children and protect them from abuse.
7. **Care planning and monitoring of children in care:** Article 25 upholds the right of a child in care to be under good care planning and regularly monitored by respective authorities.
8. **Adoption:** Article 21 asserts that the national adoption system must be based on the best interests of the child, that adoption is authorised only by competent authorities, and that Inter Country adoption can be pursued if no suitable arrangements can be made domestically and children enjoy safeguards equivalent to those for children adopted within the country.
9. **Kafaalah:** Article 20 (3) lists Kafaalah of Islamic law as one of alternative care for a child temporarily or permanently deprived of his/her family environment. This is listed alongside foster placement, adoption and institutional care.
10. **Care and protection of refugee children:** Article 22 stipulates that States must ensure that all refugee children are provided with appropriate protection and humanitarian assistance, including family tracing and reunification. If the child is unable to be reunified, he/she shall be accorded with the same alternative care protection provided for other children, as set out in Article 20.
11. **Care and protection of children with disabilities:** Article 23 recognizes the right of children with disabilities to special care and supportive services.

7.2.2.2 African Charter on the Rights and Welfare of the Child

The ACRWC upholds all of the principles of the UNCRC, with a strong emphasis on ensuring that the “family is the natural unit” and “every child should be entitled to the enjoyment of parental care and protection care”.

The following articles reinforce the principles.

1. Non-discrimination (Article 3)
2. Best interest of the child (Article 4)
3. Survival and development (Article 5)
4. Handicapped children (Article 13)
5. Protection of the family (Article 18)
6. Parental care and protection (Article 19)
7. Parental responsibilities (Article 20)
8. Refugee children (Article 23)
9. Adoption (Article 24)
10. Separation from parents (Article 25)

International Guidelines for the Alternative Care of Children

While the UNCRC provides the underlying principles, these International Guidelines for the Alternative Care of Children (henceforth referred to in this document as UN Guidelines) set out more detailed orientations for policy and practice with the intention of enhancing the implementation of the UNCRC in regards to alternative care.

The UN Guidelines are non-binding. However, they are recognized by governments and authorities as a UN-approved document and has been referenced by the Committee on the Rights of the Child in its Concluding Observations on States' compliance with the UNCRC. The Guidelines have also been used as a key reference document for the

development of alternative care standards and policies throughout east and southern Africa, for example Ethiopia, Namibia, Rwanda, Swaziland, Uganda and Zambia). The UN Guidelines underpin the development and implementation of these guidelines for Kenya.

The UN Guidelines are structured around two core principles that are crucial in implementing and monitoring a national alternative care system:

Principle of necessity (Paragraphs 32-56)

Ensuring that children are not unnecessarily separated from their families and discouraging unwarranted recourse to alternative care by:

1. Consulting with family and child.
2. Upgrading family support and family reintegration services to support families in meeting their parental responsibilities, promoting the rights of the child and addressing root causes of abandonment.
3. Preventing avoidable relinquishment.
4. Stopping unwarranted removal.
5. Addressing negative societal factors.
6. Ensuring effective gate-keeping.
7. Regulating private care providers.

Principle of suitability/appropriateness (Paragraphs 57–167)

If alternative care is deemed appropriate, authorities should ensure that the care option meets minimum standards, such as those relating to: human resources, conditions of facilities, access to basic services, contact with parents/family and protection from violence, abuse and exploitation. Additionally, a range of alternative care services should be available to meet the specific needs of each child. The care option for each child should be selected on a case-by-case basis, based on a care plan suited to his/her characteristics and situation, and provision should promote appropriate long-term solutions.

The following principles, as outlined in the UN Guidelines⁶⁰, inform these Guidelines and the provision of alternative care services in Kenya.

1. The four main principles of the UNCRC – best interests of the child, non-discrimination, participation and survival and development – should be key in all alternative care arrangements.
2. Family is the fundamental group in society that provides the care and protection for children and all efforts need to be in place to support and nurture families to uphold this primary responsibility. This includes ensuring provision of family support, and tracing and reintegration services.
3. All alternative care placements should take into account the importance of placing the child as close as possible to his/her usual place of residence. This will enable continued contact between the child and his/her family and possible family reunification, and will minimize disruption to the child's education and well-being, as long as the contact is in the best interests of the child.
4. The primary priority for all alternative care placements, both formal and informal, is provision of a stable, loving and protective home for the child, with permanency as the long-term goal.
5. Participation and well-being of the child should be at the centre of all decision-making and he/she should be safeguarded from abuse, violence and exploitation.
6. Poverty should never be the driving factor or primary justification for removing a child from his/her family and placing him/her in alternative care.
7. Removal of a child from his/her family should be seen as a last resort and should be temporary and carefully

⁶⁰ Principles are taken from the Guidelines for the Alternative Care of Children (United Nations, 2010). These international Guidelines are intended to enhance the implementation of the UNCRC and provide guidance to national alternative care policies and directives

monitored.

8. A child outside of parental care or in alternative care should be afforded all basic human rights, as stipulated in the Constitution of Kenya and The Children Act, 2001.
9. Siblings should be kept together during removal and placement in alternative care, except where this is deemed to be unsafe or not in the best interests of the siblings.
10. Proper gatekeeping measures should be in place to ensure that placement is appropriate to the child's individual needs.
11. Informal care arrangements should be recognized and supported in line with the best interests and cultural heritage of the child.
12. All children in alternative care should be under the protection of a legal guardian or the relevant public body or authority.
13. Provision of alternative care should never be carried out under the primary purpose of advancing the caregiver and providers' religious, political or economic goals.
14. Use of institutional care should be limited, provided under strict standards and regulations, and children under three years should be placed in family-based care settings, not institutional care.
15. Coordination, information-sharing and cooperation among all Government and non-government.

The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption.

The objectives of this convention are to:

- i) Establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for their fundamental rights recognized in international law;
- ii) Establish a system of cooperation amongst contracting states to ensure that those safeguards are respected and thereby prevent the abduction, sale or trafficking of children;
- iii) Ensure the recognition of adoptions made in accordance with the Convention in contracting states.

Kenya is now a state party to The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption adopted on 10th May 1993 and effected in Kenya from 1st June 2007.

7.3 DOCUMENTATION AND REPORTING IN ALTERNATIVE CARE

7.3.1. Documentation in alternative care

Documentation required for adoption in case of an abandoned child is:

1. Police letters or Letter from the chief
2. Admission letter into a CCI
3. Committal order
4. Foster care agreement
5. Certificate to declare a child free for adoption
6. Consent from the administrator of the CCI

Documentation required for adoption in case of mother offered child:

1. The necessary consents
2. Admission letter into the CCI
3. Committal order
4. Foster care agreement Form

5. Certificate to Declare a Child Free for Adoption
6. Consent from the administrator of the CCI

Documentations required in foster care

1. Care order to a CCI
2. Assessment forms from DCS
3. Foster care certificate of registration from DCS
4. Form 5: Care plan
5. A foster care order
6. Form 1: An undertaking form

7.3.2 Foster Care Report

The following information, among others, shall be included in the foster care reports:

- i) Date of admission and committal to the institution, if applicable;
- ii) Date of placement in foster care;
- iii) Reason for foster placement;
- iv) Name, age and gender of child;
- v) Name, age, and gender of foster parent(s);
- vi) Kin relationship of the child, if known;
- vii) Any special needs of the child;
- viii) Location of the foster placement;
- ix) Number of renewals of foster care placement.

7.4 ADOPTION

Adoption is the establishment of a new and permanent legal relationship between the child and his/her adoptive parent(s). This means the complete severance of the legal relationship between a child and his/her biological parent(s) and birth family. It is a permanent care solution and because of its permanent nature it is not only considered as alternative care but also as a permanent solution for a child who cannot be with his/her biological parents. Adoption should only be considered after reasonable efforts have been made to determine that a child cannot remain within his or her family of origin, or cannot be cared for by members of the family.

7.4.1 Main steps in adoption

1. Declaration of a child as free for adoption by a registered adoption society in Kenya as per Section 156⁶¹ of the Children Act. The child should be at least 6 weeks old.
2. Assessment of prospective adoptive parents by a registered adoption society in Kenya as per Section 157⁶² of the Children Act. An updated list of adoption societies authorized in Kenya is available at the adoption secretariat of the National Adoption Committee.
3. Placement of child with applicant(s).
4. Three months mandatory bonding period within the Republic of Kenya as per Section 157 of the Children Act.
5. Filing of adoption application before High Court; this can be by an advocate of the High Court or by the applicant in person.

⁶¹ Section 156 of the Children Act – Preliminaries for the pre-requisites for Adoption

⁶² Section 157 of the Children Act – Children who may be adopted

Note: Jurisdiction on adoption matters lies with the High Court Section 154⁶³ of the Children Act.

7.4.2 The Adoption Court Process

The following are the adoption court process steps.

1. Appointment of guardian *ad litem*.
2. Hearing (includes reviewing by the court of adoption society assessment reports and freeing certificates, guardian *ad litem* report, Department of Children Services - Director report (for the latter refer to Section 78 of the Children Act), review of consents and other relevant documents filed).
3. Final adoption orders with or without conditions.
4. Issuance of Adoption Certificate by the Registrar General who maintains the Adopted Children's Register as per Section 169 of the Children Act.
5. Issuance of birth certificate by Civil Registrar.

7.4.3 Adoption Applicants

7.4.3.1 Persons who may adopt

The following states persons who can adopt.

1. A sole applicant or jointly two spouses where each or one of them is at least 25 years old and at least 21 years older than the child.
2. A relative of the child.
3. The mother or father of the child.

7.4.3.2 The following cannot adopt a child unless the court is satisfied there are special circumstances for an adoption order to be made.

1. A sole male applicant in respect of a female child.
2. A sole female applicant in respect of a male child.
3. An applicant or joint applicants who has or both have attained 65 years.
4. A sole foreign female applicant.

7.4.3.3 The followings are precluded from adopting by the law

1. A person who is not of sound mind.
2. A person who has been charged or convicted previously of a child abuse offence.
3. Is a homosexual.
4. Joint applicants if not married to each other.
5. A sole foreign male applicant.

7.4.4 Adoption consents

The following are consents required in adoption as per Section 158 (4) of the Children Act.

1. The consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
2. In the case of a child born out of wedlock whose mother is a child, with the consent of the parents or guardian of the mother of the child.
3. In the case of a child born out of wedlock whose father has acquired parental responsibility in respect of the child under the provisions of the Children Act, with the consent of the father.

⁶³ Section 154 of the Children Act - Power to make adoption orders

4. On the application of one of the spouses, with the consent of the other spouse.
5. In the case of two spouses who are not Kenyan citizens and who are not resident in Kenya, with the consent of the court of competent jurisdiction or of a government authority situated in the country where both or one of the spouses is ordinarily resident, permitting the spouses to adopt a foreign child.
6. In the case of a child who has attained the age of 14 years, with the consent of the child.

Note to CCPO: The Children Act, in Section 159 provides for the court to dispense with the consents in Section 158 under certain considerations.

7.4.5 Adoption committee

7.4.5.1 The Central Authority

For the purposes of paragraph (1) of Article 6 of The Hague Convention, the Adoption Committee is designated to be the Central Authority in Kenya and shall discharge all such duties and perform such functions as are required to be carried under the Act and further specified herein.

7.4.5.2 Membership of the Adoption Committee

1. The Adoption Committee shall comprise of ten (10) members set out in the Ninth Schedule of the Children Act.
2. The members appointed by the minister under paragraph (b) of the Ninth Schedule to the Children Act shall be appointed by gazette notice.
3. The members appointed under paragraphs (c) to (f) of the Ninth Schedule to the Children Act shall be appointed by letter from the organizations referred to in those paragraphs.

7.4.5.3 Officials of the Adoption Committee

1. The Adoption Committee shall appoint one of its members to serve as chairperson for a period of three years, and such an appointment may be renewed for one more term.
2. The Director of Children's Services shall be the secretary of the Adoption Committee.
3. For the purposes of better carrying out of the provisions of the Children Act, the Director shall provide such number of public officers as may be necessary, to constitute a unit to be known as the Adoption Secretariat, for the proper and efficient exercise of the functions of the Adoption Committee.

7.4.6 Adoption Societies

7.4.6.1 Eligibility and application for registration

Every organization that seeks to provide a combination of or all of the following specific services in relation to adoptions shall, in addition to the functions specified under Section 177(7) of the Act, require and apply to be registered as an adoption society:

1. Identifying children for adoption and arranging an adoption; or
2. Securing consent to termination of parental rights and to adoption; or
3. Carrying out or verifying and preparing home studies and reporting on prospective adoptive parents or children; or
4. Arranging for and making placement prior to adoption; or
5. Evaluating, advising, or counselling children, birth parents or adoptive families, placing children for adoption, making a determination of a child's best interests and of the appropriateness of an adoptive placement.
6. Monitoring and supervising cases after children have been placed with prospective adoptive parents until final adoption.
7. Assuming custody of children and providing childcare, counselling or any other social service when necessary because of a disruption pending alternative placement.

7.5 FOSTER CARE

Foster care is the temporary placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child. Foster care in Kenya is conducted through Charitable Children Institutions, Sub County Children Offices or Court. A foster parent's registration certificate is valid for 12 months and thereafter, the parent has to be assessed by a children's officer before being renewed for an additional 12 months. A child in Kenya stays in foster care for a maximum of 3 years.

7.5.1 Foster Care Applicants

7.5.1.1 Persons who may foster (sec 147-153 inclusive)

Under Section 148 of the Children Act, the following are identified as persons who may foster a child.

1. A married couple
2. A single woman aged above 25 years (but may not foster a male child).
3. A single man aged above 25 years (but may not foster a female child).

Single persons are precluded from fostering children of a gender opposite to theirs. Section 148(3) states that no person shall be appointed to be a foster parent unless he or she is resident in Kenya or has been a resident in the country for a period of at least twelve months.

Foster care placement rules are detailed under the Fourth Schedule of the Children Act which consists of the Foster Care Placement Rules, an application to foster a child, prospective foster parent record, form of undertaking, and certificate of registration as a foster parent. Form 5 is the Foster Child Care Record which also sets out the format for the report to be made to the Director Children's Services within a month of effecting each foster care placement.

Being under foster care affords a child temporary care, over a period of time without change to the child's biological parental legal status. This could be during difficulties in the child's natural family. The child is not permanently separated from his or her natural family neither does he/she acquire any rights of inheritance in the fostering family.

This is meant to ensure that during these times of difficulties, the fostered child enjoys the care of a substitute family while still hoping to reunite with their own family when the crisis is over. Ideally, foster care services are provided to children who may not be required to be adopted perhaps because the difficult situations they are found to be in may be temporary.

In any case, foster care ceases with the attainment of the age of majority - Section 147(4) of the Children Act. Under Section 147(1) a child is fostered on the strength of a care order committing him or her to a charitable children's home or committal to a rehabilitation school. In the current legislation therefore, there is no provision for a foster care order. The Director Children's Services has been given jurisdiction in fostering. He signs the relevant documents, monitors individual placements and maintains records.

7.6 GUARDIANSHIP

Guardian means a person who, appointed by will or deed by a parent of the child or by an order of the court, assumes parental responsibility for the child upon the death of the parent of the child, either alone or in conjunction with the surviving parent of the child, or the father of a child born out of wedlock (who has acquired parental responsibility for the child). Provisions for guardianship are to be found in Part VIII (Section 102-117 inclusive) of the Children Act. Proceedings on matters of guardianship fall under the children's courts (Section 73).

7.6.1 Appointment of guardian by deed or will

A parent can appoint a guardian by will or by deed to act with the surviving parent under Section 104(1) of the Children Act. He/she may appoint a guardian for the person of the child or only in respect of the estate. In the latter case, the guardian need not have actual custody of the child but has responsibilities regarding administration and safeguarding of his estate, producing accounts or inventory of the estate as may be required on Section 102(5).

To have effect (refer to Section 104(3)) where a guardian is appointed by deed, the deed must be dated and signed by the person making it. If the appointment is by will, the will must be executed or made in accordance with the relevant provision of the succession Act. Either can be revoked if the will or codicil is revoked as prescribed. Under these provisions (section 103) on the death of the father or mother of the child, the mother or father respectively, if surviving, shall be the guardian of the child. The surviving parent shall be the guardian alone or with any guardian appointed by the deceased parent.

7.6.2 Appointment of a guardian by court

The court may appoint a guardian:

1. Where an appointed guardian refuses to act.
2. Where the surviving parent objects to the guardian appointed by the deceased parent.
3. In addition, a court may under Section 105 of Children Act, appoint a guardian when parents of a child are no longer living, cannot be found and there is no one with parental responsibility over the child, or if the child is displaced as a consequence of war, civil disturbances or natural disasters.

The court can bring to an end an appointment of a guardian (Section 106(6)) on the application of:

1. A concerned child with the leave of court.
2. Any parent or guardian.
3. A relative of the child.

It may also do so in the course of any proceedings if the court considers it should be brought to an end even though no application is made.

7.6.3 Further provisions on guardianship

Extension of guardianship past the age of majority (Section 107)

The application can be made by:

1. The child,
2. Any parent or guardian,
3. A relative of the Child, and
4. The Director, Department of Children's Services.

7.6.4 Disputes between guardians (Section 108)

Guardianship is in addition covered by general rules and regulations of the Chief Justice for Part III, Part VIII and Part XIII of Children Act 2001 prepared under legal notice No 77. Form 6 is an affidavit of fitness of a guardian and Form 7 contains verifying affidavit of fitness of a guardian. As seen from the specific provisions, guardianship is particularly relevant to succession planning. It is useful for parents to have an opportunity and a say in the management of their estate and care of their children in the unfortunate incident of their demise.

Adoptive parents and in particular single ones are encouraged to identify a legal guardian. However, guardianship as envisaged under this part is not very popular yet it could pre-empt many issues that disadvantage orphans. These issues arise after the death of the parents and where there is no identifiable person to take charge even where the parents are well to do.

7.7 KINSHIP CARE

Informal kinship care is a private arrangement within the family environment whereby the child looked after on a temporary or long-term basis by his/her extended family from either the maternal or paternal side, without being ordered by an administrative or judicial authority. The family members include grandparents, aunts, uncles, older siblings and first cousins.

It is the most common form of alternative care.

Formal kinship care works the same as above but with an order by an external administrative or judicial authority.

Categories of children who may benefit from kinship care are: Orphaned, abandoned, children with special needs, neglected children, children separated during emergencies, children of imprisoned parents, children living and working on the streets.

7.7.1 Benefits of kinship care to children

It is the most culturally appropriate and understood form of alternative care as it is based on community mechanisms and processes. Kinship care allows children to retain their cultural, religious and linguistic links with their family and community. Kinship care instils a sense of identity and self-esteem in a child and ensures continuity and stability. The child is also likely to experience less distress after the death of parents or after separation because the child is placed with people he might be familiar with. In this form of care arrangement, the child might experience few placements and avoids being institutionalized.

7.7.2 Risks associated with kinship care

Most of this care method is unregulated (informal) and not supported by government or external agencies; lack of monitoring coupled with the family's inability to access support services may lead to children experiencing abuse, violence, neglect and exploitation. The family where the child is placed may be the only one willing to take the child, rather than being the most suitable.

7.7.3 International and national legal framework on kinship care

- i) UNCRC Article 5-acknowledges the role and responsibility of members of the extended family or community in caring for children.
- ii) UN Guidelines on alternative care for children-recognizes kinship care as one of the alternative care options for children deprived of parental care.
- iii) ACRWC-Does not reference kinship care.
- iv) Children Act- does not acknowledge or reference kinship care.

ACTIVITY



Ask participants to mention some of the mechanisms that can be put in place to strengthen kinship care in Kenya.

7.8 KAFALAH

Kafalah refers to the Islamic mode of alternative care in which a person or family voluntarily commits himself/herself to sponsor and care for an orphan or any other child deprived of family care. The individual or family sponsors the child to meet its basic needs for health, education, protection and maintenance. (Reference: Guidelines for Alternative Family Care for Children in Kenya)

7.8.1 Legal frameworks supporting Kafaalah

UNCRC (Article 20) states that “A child temporarily or permanently deprived of his/her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.” State parties shall in accordance with their National Laws ensure alternative care for such a child. Such care includes, inter alia, foster placement, *kafaalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.

UN Guidelines for Alternative Care. The care and protection of orphaned and vulnerable Muslim children in Kenya is guided by the interpretations of Islamic law (*Sharia*).

The person or family taking a child under *Kafaalah* is known as the *kafil*. The child remains under this kind of arrangement until the child is able to support him/herself. The concept of adoption is known as *tabanni* and is considered *haram* (forbidden) under Islamic law. It is prohibited in order to safeguard the biological lineage and not to confuse biological parentage.

Non-biological child is not entitled to any inheritance although the child can benefit from the estate of the deceased *kafil* through a bequeath (*wasiyya*).

Attributions of children placed under *kafaalah* should always be to their true biological children and not to the *kafil*. If the identity of the child is unknown, then the child should be given a general attribution that originates with the child. The *kafil* sponsors the child in order to meet their basic needs for health, protection, education and maintenance. Islamic law therefore considers *kafaalah* as a model of alternative care for children.

7.8.2 Eligibility to be a Kafil

Individuals or couples are eligible to be the *kafil* of a child if they meet the following qualifications:

1. Must be Muslims.
2. Married couple provided one is able to care for the child placed under them.
3. The *kafil* must have attained the age of majority (although Islamic law does not specify a minimum age for a prospective *kafil*).
4. Preferably an extended family member (under Islamic law, the preference is for the orphaned child to be placed with extended family members).
5. A single man or single woman may be eligible subject to the laws of Kenya.
6. Should have the capacity to provide for the child in line with the laws of Kenya.

7.8.3 Eligibility of a child under Kafaalah

A child can qualify for Kafaalah when:

1. A child is an orphan and is in need of care and protection. (In Islam, an orphan is a child without a father and below the age of puberty. If the mother has died, he/she is not an orphan but may still need alternative care.
2. The child is separated from the family due to natural or manmade disasters.
3. The child is raised in an environment that is contrary to the best interest of the child.
4. The parents of a child are divorced and are unable to take up their parental responsibilities (in the absence of other members of the extended family).

7.9 CHILD-HEADED HOUSEHOLDS

A child-headed household is one in which a child or children assumes the primary responsibility for the day-to-day running of the household, providing and caring for those within the household. The children in the household may or may not be related.

A supported child-headed household is a form of family-based care in which children are looked after by another child, with support offered by the local community and/or by external agents.

In Kenya, it is recommended that a child heading a child-headed household should be more than fourteen years old. Children in a CHH headed by a child who is less than fourteen years old should be rescued and placed in another form of family-based care where there is an adult.

7.9.1 Key recommendations to support CHHs

Similar to kinship care, CHHs are an informal care arrangement that needs more formalized interventions and monitoring. There are some recommendations to ensure proper care and protection of CHHs. The age of the primary responsible child (head) shall not be less than 14 years and may be up to 18 years but an extension can be granted until 21 years taking into consideration the evolving capacities of different ages.

One of the biggest challenges in supporting CHHs is identifying them and assessing their needs. They are often the “invisible” family group in many communities. It is therefore vital for the DCS to strengthen community structures to help identify and register CHHs. The registry of CHHs can be recorded and held in the Chief’s office. Community structures shall include: OVC committees, Chiefs, VCOs, CHWs, clan-based structures and community-based organizations.

The DCS, in collaboration with community leaders, Chiefs and civil society partners, shall work together to make services available and to strengthen community capacity to protect and support these non-traditional family groups.

7.9.2 Strengthen Communities to Identify and Support Child-Headed Households

Communities can be strengthened by:

- a) Build the capacity of Department of Children Services (DCS) staff to understand CHHs and ways in which they can work with community-based mechanisms to monitor and support them.
- b) Strengthen the capacity of the community to provide targeted support to CHHs within the existing community resources and structures.
- c) Community structures shall identify households in need of specific support and help determine what type of support is needed and how it shall be provided.
- d) The DCS, in partnership with community and civil society partners, shall scale up targeted
- e) The DCS shall establish and maintain a comprehensive database on all children for the purposes of planning, follow up and other important initiatives in the best interests of children.
- f) The DCS shall utilize and train Community Health Workers (CHW) and other community-based volunteers to serve as adult mentors for the CHHs.
- g) The DCS, county governments and other partners including media shall initiate awareness-raising campaigns to reduce the stigma and isolation associated with CHHs and call for support of children in CHHs.
- h) Throughout all decision-making processes, the DCS and partners shall consult, empower and involve the children of the household.

7.10 SUPPORTED INDEPENDENT LIVING

Supported independent living refers to arrangements in which a young person is supported in her/his own home, a group home, hostel, or other form of accommodation, to become independent. Support/social workers are available as needed and at planned intervals to offer assistance and support but not to provide supervision. Assistance may include time-keeping, budgeting, cooking, job seeking, counselling, vocational training and parenting.

Supported independent living programmes aim to better prepare and support the young person in making a smooth transition from out-of-home care, living and working on the streets or being outside of family care to independence

and adulthood

7.10.1 Children or young people in need of supported independent living

The following groups of children are particularly vulnerable and may be in need of supported independent living arrangements.

- a) Children living and working on the streets.
- b) Children affected by armed conflict.
- c) Children on the move (child migrants and child labourers).
- d) Children living/exiting in institutional care, rehabilitation centres, probation hostels or borstal institutions (in particular children who have lived in these places for long period of time or experienced multiple placements).
- e) Victims of child trafficking.
- f) Refugee and internally-displaced children.
- g) Children with special needs, for example those with mental or physical disabilities.
- h) Child mothers.

7.10.2 Consideration for supported independent living

A multi-disciplinary team shall conduct an assessment to assess the situation and needs of the child, with full participation and involvement of the child. The assessment shall cover issues related to family relations, education, health and the psychological well-being of the child. Following the assessment, an individual care plan for the child shall be in place.

Supported independent living is appropriate in situations, as determined by the assessment, for a child who:

- a) Is between 15-21 years of age.
- b) Is unable or no longer eligible to live in a CCI, foster care or other out-of-home placement and where reunification, adoption, *kafaalah*, guardianship or placement with extended family members is not an option.
- c) Is living on the streets and placement in alternative care and reunification, adoption, guardianship, *kafaalah* or kinship care is not an option.
- d) Wishes to live independently and does not want to be in a family environment
- e) Was placed in a family environment such as kinship or foster care but was unable to cope with the living arrangement.
- f) Because of recent or past trauma, separation and distress is unable to live within a family environment for example child soldiers, children living on the streets, children on the move, child labourers among others.
- g) Does not express or display psychological or physical disturbances which make independent living dangerous to themselves and others.
- h) Has demonstrated a level of maturity, making an independent living arrangement possible.

7.10.3 Assistance and support services

For a maximum period of 24-36 months, the DCS, in collaboration with alternative care providers and civil society partners, shall make the following support arrangements for the young person:

1. A children's officer or partner organization social worker shall assess the young person to determine his/her needs and appropriate package of services.
2. Facilitate access to a Children's Officer or partner organization social worker for a period of up to 36 months.
3. CCIs and other alternative care providers shall realign their resources to facilitate supporting independent living arrangements.
4. Provide stable accommodation by making living arrangements in a group home, residential treatment centres, boarding homes or hostels, shelters, semi-supervised apartments or other forms of accommodation.

5. Place children in safe independent living situations which are culturally appropriate and safety plans shall be developed to reduce the risk of sexual abuse and exploitation.
6. Where appropriate, reintegrate the young person into his/her family, community and other social networks by creating peer support schemes, for example, a network of young adults or community leaders in the young person's wider community may be selected to act as volunteer peer support.
7. Based on the assessment and child's situation, facilitate the development of skills and networking that the young person needs in order to successfully live independently by arranging:
 - a) Courses in independent living, such as financial budgeting, household chores, time management, hygiene and healthy lifestyles.
 - b) Courses in vocational training and literacy.
 - c) Micro-loans, business development and employment assistance.
 - d) Apprenticeships, attachments or internships.
 - e) Physical and sexual reproductive health services.
 - f) Premarital counselling and parenting skills.
 - g) Nutritional support.
 - h) Counselling, family therapy, mediation and crisis management.
 - i) Recreational and cultural activities.
 - j) Support services for children with special needs.
 - k) Assistance in attaining legal documentation.
 - l) Links to employment and information resource centres.
 - m) In collaboration with the Association of CCI in Kenya, facilitate the referral of care leavers to the Kenya Society of Careleavers.

7.11 DUTY BEARERS AND THEIR ROLES IN ALTERNATIVE CARE

FORM OF ALTERNATIVE CARE	DUTY BEARER	ROLE OF DUTY BEARER
Adoption	Judiciary	Hear and determine adoption applications.
		Appoint guardian ad litem.
		Issue adoption orders (High Court only).
		Issue court committals for abandoned children (Magistrate court).
	Adoption Committee	Formulate governing policy in matters of adoption.
		Consider and propose names of officers who may serve as guardian ad litem.
		Monitor adoption activities in the country.
		Effect liaison between adoption societies, the government and non-government organizations.
	Charitable Children Institutions	Offer custody to abandoned children.
		Assist in tracing of abandoned children's parents before they are declared free for adoption.
	Department of Children's Services	Compile and present court reports as envisaged under sec 78 of the Children Act.
		Provide secretariat to the adoption committee.
	Adoption Societies	Declare children free for adoption.
		Assess suitability of prospective adoptive parents.
		Place children with prospective adoptive parents.
	National Police Service	Record and investigate cases of abandoned children.
Carry out background checks on prospective adoptive parents.		
Registrar General	Issues adoption certificates.	
Civil Registrar	Issues birth certificates to adopted children.	
Lawyers	File adoption applications in High Court.	
Foster Care	Charitable Children's Homes	Offer accommodation to abandoned children.
		Liaise with DCS to place children in foster care.
	Department of Children's Services	Liaise with managers of CCIs to place children in foster care.
		Assess prospective foster parents.
		Monitor foster parents after placement with child.
		Identify assess, recruit and train a pool of foster parents in each county.
		Introduce and maintain a foster care register of potential foster parents in each sub county.
Complete a foster care agreement and foster parents' certificate of registration and any other document as spelt out in the Children Act.		
Judiciary	Issue orders allowing foster parents to travel with child out of the country.	
Guardianship	Department of Children's Services	Compile court reports.
		Assess prospective guardian and child.
	Judiciary	Issue guardianship orders.

Kafaalah	Department of Children's Services	Ensuring that the general welfare of the child is upheld within the laws of Kenya.
		Assessing the prospective kafail family.
		Facilitating tracing for children whose lineage is unknown.
		Monitoring the welfare of the child.
		Maintaining the Kafaalah register.
	Kadhi	Making final recommendation for Kafaalah.
		Protecting the child's inheritance from his/her biological parents.
		Protecting the property bequeathed to child by the kafail.
	Imam	Issuing a Kafaalah order in case of a dispute.
		Recommending the kafail or Kafaalah and signing and stamping the form.
Kafail	Supporting Department of Children's Services in monitoring the welfare of the child under Kafaalah.	
	Informing the DCS, local administrator and Imam of their intention to support and care for a child under Kafaalah and of any changes and concerns that may affect the appropriate care and protection of the child.	
Kinship care	Department of Children's Services	Assess the child and caregivers to determine the needs that must be addressed and the types of support services needed.
		Receive consent from family members prior to placement in order to minimize future tensions and family conflict.
		Prepare the child and family prior to placement through trainings and counselling.
		Ensure that the child's views are taken into account in making the decision by encouraging family members to meet with the child during the decision-making process.
		Encourage families to keep siblings together except where it is not in the siblings' best interests.
Probation	Maintain the child as close as possible to his/her usual place of residence and close family members in order to minimise disruption and facilitate reunification and reintegration with his/her parent(s).	
	Encourage caregiver to obtain proper legal documents such as child's birth certificates and parents' death certificates.	
Chiefs	Conduct periodic home visits and intervene when problems occur.	
	In cases of child offenders, liaise with family members through family group decision making to identify a suitable person to take care of the child.	
	In cases of female offenders, liaise with family members to identify a suitable person to take care of the child while the female offender undergoes rehabilitation.	
	Maintain kinship care registry in their offices.	
Child Protection Volunteers	Together with DCS monitor post placement of children.	
	Register and monitor kinship care placement.	
Family	Notify and voluntarily register the number of non-biological children under their care with the chiefs.	
	Kenya Prison Services	Liaise with DCS to place children of imprisoned mothers, aged 4 and above in appropriate care.
Supported Independent Living	Department of Children Services	Assess the young persons to determine his/her needs and appropriate package of services.
		Monitor the young persons' progress through periodic visits.
	Charitable Children Institutions	Maintain in each sub county children's office a registry of supported independent living arrangements and children who have successfully transitioned out of supported independent living.
		Realign their resources to facilitate supporting independent living arrangement
Probation and Aftercare Services		

Child Headed Households	Chiefs	Identify and register child headed households
		Protect inheritance and property for children in CHHs
		Ensure children in CHH attend school
	DCS	Support CHH access proper legal documentation for all members of CHH such as birth registration.
		Together with chiefs protect property of CHH.
		Enrol CHH members in social protection programs.
		Together with the AG appoint a legal guardian, adult or public body to act as a guardian to the household.
	Community leaders	Identify Households in need of specific support and help determine what type of support and help is needed and how it can be accessed.

Revision exercise

1. Briefly describe the following terms:
 - a) Adoption,
 - b) Foster care,
 - c) Guardianship
 - d) Kinship care,
 - e) Supported independent living,
 - f) Kafaalah and
 - g) Child headed household.
1. Describe the legal procedures for each Alternative Care arrangement.
2. Identify the qualifications for the prospective applicant in each of the alternative care arrangement.
3. Outline the process of freeing a child for adoption.
4. Identify the role of each JJA in the forms of alternative care described above.

7.12 REFERENCES

The Adoption Regulations.

The African Charter on the Rights and the Welfare of the Child (ACRWC)-1999.

The Children Act.

The Constitution of Kenya.

The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption 1993.

The Law on Children – A Case Digest Vol. 1, Clan 2007.

The Medical Practitioners and Dentists Act Cap. 253.

United Nations Convention on Rights of the Child (UNCRC)-1989

THROUGH-CARE PROCEDURES FOR CHILDREN STATUTORY INSTITUTIONS

Duration	2 hours
Overview	This session focuses on the responsibility and legal role of each JJA in Throughcare, from the moment that a child is committed to a statutory institution to the period of aftercare.
Key Learning Outcome	By the end of this unit participants should be able to: <ul style="list-style-type: none"> a) Define throughcare. b) Describe various statutory institutions responsible for throughcare. c) Explain the special procedure of throughcare. d) Apply the prescribed throughcare forms and documents.
Preparation/Learning Activities	Provide participants with soft copies of through care procedures before the lessons begin. Ask participants to share their experiences about using the guidelines.
Materials	Throughcare procedures, flip chart and markers, laptop and projector
Session Type	Group work, plenary sessions, mini lectures

8.1. THROUGH-CARE

Throughcare is the process of continuous supervision and support provided to the child in the juvenile justice system by means of institutional/community-based treatment and rehabilitation. It provides support from public and private sector in order to facilitate reintegration into the community.

8.2. STATUTORY INSTITUTIONS

Statutory institutions are government facilities for accommodation, care and rehabilitation of various categories of children. Statutory institutions are under the jurisdiction of different agencies.

8.2.1. Rehabilitation Schools

The Department of Children Services is responsible for Rehabilitation Schools which are established under Section 47(1) of the Children Act. Rehabilitation schools are facilities that provide accommodation, education, basic needs and other forms of rehabilitation to children. Children are committed to rehabilitation schools by the court through the recommendation of children's officers and probation officers. Children are committed to these institutions for a maximum period of three years. The institutions provide both formal and informal education. Children's officers and probation officers are mandated to commit children to rehabilitation schools.

8.2.2. Rescue centres

Rescue centres are also under the jurisdiction of DCS. They too are statutory children institutions that provide care and protection to vulnerable children facing abuse and difficult circumstances in the community. Children below one year to 17 years are committed to the rescue centres through a care order by court as applied by the children's officer. The

cases for rescue range from abandonment, lost and found, child marriage, victims of child trafficking, abused children among others.

8.2.3. Children remand homes

Children remand homes which are established under Section 50 of the Children Act are domiciled within DCS. They are places of temporary residence for children whose cases are pending in court either for care and protection or for matters related to being in conflict with the law..

8.2.4. Probation hostels

Probation and Aftercare Services is responsible for probation hostels. Probation hostels are established under Section 5(2) of the Probation of Offenders Act Cap 64. Probation hostels are residential homes which provide the young person with an opportunity to step back from peer influence, dysfunctional parenting, and other social pressures and take time to reflect on their thoughts, feelings and behaviours, come to terms with the role that these have played in their incarceration and be assisted by probation officers to put their life back together. All children being rehabilitated in probation hostels have to serve a probation order issued by a court. Only probation officers are legally mandated to recommend children for admission in probation hostels.

8.2.5. Borstal institutions

Borstal institutions are under Kenya Prisons Services. They are rehabilitation institutions for high risk youth aged between 15 to 17 years. There are three Borstal institutions. Two of these are for males while one is for females. Probation/Children's officers are the ones mandated to commit children to Borstal institutions.

8.2.6. Youth Corrective Training Centres (YCTC)

This is a centre which contains young offenders who have committed offences for the first time. The centre aims to deter the youth aged 17 to 21 years from further delinquent behaviour. The period of stay is four months. They also contain remandees who are 13 to 18 year olds.

8.2.7. Child Protection Units (CPUs)

The Kenya Police Service is mandated to operate CPUs. A CPU is a formalized, separate child friendly structure at the police station manned by trained child-friendly police officers and equipped for the protection and care of children.

It serves as a child holding facility for the shortest time possible that is 24hrs and acts as temporary protective holding facility for children during investigations. Article 53(f) of the Constitution states that children shall be held separate from adults and in conditions that take into account the child's sex and age.

The CPUs therefore act as temporary holding facilities for children while investigations are underway. The rights of children therein are therefore upheld as they are separated from adults and thus protected from coming into contact with adult suspects. The children are further held according to age, gender and individual needs.

8.3 THROUGH-CARE PROCEDURES

The procedures were developed in 2013 by the key Juvenile Justice Agencies (JJAs) namely; the Department of Children's Services (DCS), the National Police Service (NPS), the Judiciary, the Probation & Aftercare Service (PACS), and the Kenya Prisons Service (KPS).

8.3.1 Rationale for throughcare procedures

1. Ensure efficient clear pathway for children in statutory institutions;
2. Improve networking among the JJAs;
3. Address systemic gaps in throughcare;
4. Promote information sharing; and
5. Ensure children effective re-entry and aftercare supervision.

8.3.2 Issues addressed by the procedures

1. Committal of children to statutory institutions

The court has the mandate to issue committal orders for children who should be committed to statutory institutions. This is upon presentation of social enquiry report by either a probation officer or a children's officer. The court is expected to ensure that the relevant documents as per the specific institution are filled, signed and stamped. The court can make other orders related to the child's residence such as age, assessment and treatment.

2. Application and confirmation of a vacancy in an institution

Children's officers and probation officers are the CCPOs who are mandated to commit children to institutions. It is important to note that for probation hostels, it is only probation officers who are mandated to commit children there.

The probation or children's officer will attach a comprehensive social inquiry report to the application form.

- a) The medium of communication when applying for a vacancy will be letters and/or email.
- b) A telephone call may however be used to make a follow up on formal request for confirmation of a vacancy.
- c) All JJAs should use the prescribed application of a vacancy form.
- d) The DCS headquarters is responsible for confirming vacancies for rehabilitation schools.
- e) The managers of borstal institutions and probation hostels are responsible for confirmation of vacancies. They are required to use the prescribed forms for confirming vacancies.

8.4 COMMITTAL DOCUMENTS TO STATUTORY INSTITUTIONS

Each statutory institution has its unique documents that must be filled to accompany the child. It is important for the JJA to use the prescribed documents. The annex part of the procedure contains all these forms.

8.4.1 Reception centres

Children committed to rehabilitation school must pass through reception centres for assessment and classification. They spend three months in the classification centre. For classification centres, the following committal documents are used. The following documents are prepared by the probation/children's officer and must accompany the police officer who will be escorting the child to the reception centre.

1. A committal warrant
2. A copy of the confirmation of vacancy letter from Director DCS
3. A comprehensive probation officer's report
4. A comprehensive children officer's report
5. A report on age assessment from a medical officer or birth certificate
6. Case record sheet
7. Needs or Risk Assessment scale and Summary of needs risk factors

8.4.2 Rescue centres

The following committal documents must accompany the child to the children rescue centre:

1. A copy of the confirmation of vacancy letter from Director, DCS
2. A comprehensive children's officers report (Social inquiry report-CRC Form 1)
3. A committal warrant
4. A comprehensive medical assessment report in case the medical facility is the referral.
5. Case record sheet duly filled

NOTE: In cases of emergency, the manager should admit the child on a temporary basis. The committing officer should then proceed to make a formal application for a vacancy to the Director, DCS.

8.4.3 Probation hostels

The following committal documents should accompany the probationer to the hostel:

1. A comprehensive probation officer's report (POR)
2. A sealed court order duly signed by a judge or magistrate and the probationer's serial number indicated.
3. Probation Report 2
4. Probation Report 2A
5. Variation order and Notice to the offender (where necessary)
6. Individual Treatment Plan (Appendix 3)
7. Client Risk/Need assessment form
8. Probation Hostel admission form
9. Medical certificate from a Government Medical Practitioner.
10. A copy of the probationer's birth certificate (where available). This is important in cases of school placement.
11. Available school records for example result slips and report forms in cases where they need placement in schools.

8.4.4 Borstal institutions

The documents that the court, probation officers, children's officers, and police officers should have while escorting the child are as follows:

1. Committal warrant from the court
2. A comprehensive probation officer's report
3. A comprehensive children's officer's report
4. Age assessment (where the age is uncertain)
5. A certified copy of birth certificate
6. The duly filled and signed Initial or committal report to borstal

8.5 ESCORTING CHILDREN TO INSTITUTIONS

The National Police Service is responsible for escorting children to borstal institutions and reception centres. Police are also mandated to rescue children and take them to rescue centres and remand homes. Escorting children to courts for mentions and hearings of their cases is the responsibility of the police. When a child is committed to a probation hostel, it is the probation officer who is responsible for escorting that child to the hostel.

8.6 REPORTS

8.6.1 Reports expected from institutions

Once the child has been admitted in an institution, the manager of the institution is expected to orient that child on their stay. Three months after the child's stay, the manager then communicates to the field officers regarding the progress of the child.

Institutions send to the field a summary assessment report within three months of the probationer's admission. After the child has been in the institution for a period of six months, the institution prepares a progress report that informs the field officer about the programs that the child is undertaking. The report should where relevant indicate any changes

in the initial information known about the child, especially their place of eventual return. Each institution is expected to send at least two progress reports.

8.6.2 Reports expected from field officers

The goal of committing children to institutions is to protect them from dysfunctional situations and environments. While the child is in the institution, the field officer is expected to put mechanisms in place that will aid in the reintegration of the child. The environmental adjustment report is prepared after the field officer has received the first progress report. This is about the sixth month of the child's stay.

8.6.3 Reports provided during reintegration

When children are being reintegrated, the managers of institutions are expected to provide discharge summary reports or final reports. These reports focus on what the manager has been able to achieve in terms of rehabilitating the child. They explain to the field officer what other areas they should consider when resettling the child.

8.7 AFTERCARE

Aftercare means the whole range of services which may be provided to children in conflict with law to resettle back into the community upon release from various institutions. The period of aftercare depends on the institution. For probation hostels, borstal institutions and rehabilitation schools, the period of aftercare is two years. Probation/Children's officers are therefore required to make this recommendation in court so that the child is given a period of three years. This enables the child to spend one year in the institution and the other two years on aftercare.

8.8 REFERENCES

Government of Kenya. (2013). *Through Care & Aftercare Procedures for children in Statutory Institutions in Kenya*. Nairobi.

Republic of Kenya. *The Children Act No. 8 of 2001*. Government Printer. Kenya. Nairobi.

Republic of Kenya. *The Probation of Offenders Act Cap. 64*. Government Printer. Kenya. Nairobi.

UNICEF (2012). National Standards for best practices in Charitable Children's Institutions. *Standards and Regulation for Statutory Children's Institutions*. Government of Kenya. Nairobi.

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. (JDLs- Havana Rules) 1990.

REPORT WRITING IN JUVENILE JUSTICE AGENCIES

Duration	3 hours
Overview	This unit introduces participants to: 1. The legal foundations of reports within the JJAs 2. The practical aspects of report writing within the JJAs.
Key Learning Outcomes	By the end of this unit and participant should be able to: a) Define the term report. b) Describe the importance of report writing. c) Describe the characteristics of a good report. d) Explain various types of reports within the JJA and their legal foundations. e) Explain the preparation of different reports in the JJA.
Preparation/ Learning activities	Provision of soft copy of sample material
Materials	Flip charts and markers, sample reports, laptop and projector
Session type	Lecture, discussion, group work and sample report writing analysis.

9.1 INTRODUCTION TO REPORT WRITING

A report is a document, a statement or information prepared by a designated officer of the JJA for the purpose of assisting in delivery of justice, throughcare, rehabilitation, reintegration and supervision of a child within the community or in the institution. Reports prepared within the juvenile justice system include:

- a) Progress reports which include:
 - a) Social enquiry reports;
 - b) POR- Probation Officer's Report (Probation of Offenders Act)
 - c) CSOR- Community Service Order Report (Community Service Act)
 - d) COR – Children's Officer Report
 - e) Family Assessment Report
 - f) Psychological Assessment Report
 - g) Mental Assessment Report- Know when to request for referral
 - h) Age Assessment Report- know when to request for referral
 - i) Supervision Reports
- b) Environmental adjustment reports;
- c) Assessment and classification reports;
- d) Presentence reports, for example CPC, POA, CA, Sentencing Guide lines;
- e) Pre-bail reports, for example CPC, POA, CA, Bail and Bond;
- f) Final home reports;

- g) Psychological/psychiatric evaluations;
- h) Custody evaluation reports;
- i) Victim impact statements report, for example CPC, VPA.

It is important for the JJAs who write these reports to understand that they play the crucial role that evidence given in court cannot stand for seeing the offender in the light of the offence vis-à-vis the parameters set out by the law on the requirements of the report.

Those who request for the reports must also be aware of the purpose of the report and why the report must adhere to those parameters. They must be able to query the reports and understand their recommendations vis-a-vis the cases before them and request further information where necessary.

The social worker's expertise is what ought to be demonstrated in the quality of the report, and the ability to differentiate the required report and its full purpose.

9.1.1 Consumers of the Reports

The following parties will need the reports.

1. Juvenile Justice Agencies
 - a) Courts and other legal actors such as prosecution, legal counsel
 - b) All statutory institutions such as remand homes, borstal institutions, rehabilitation schools, charitable children institutions, probation hostels, rescue centres among others.
2. The child,
3. Social workers and psycho-social support officers,
4. Other stakeholders.

9.1.2 Sources of information

The list below shows where information for reports can be sourced from.

1. The child/children
2. Parents/guardians
3. Other family members
4. Teachers
5. Police
6. Neighbours/Community
7. Peers
8. Local administration, elders, Nyumba Kumi
9. Court records/other JJA records
10. Social workers or psychologists, faith leaders
11. Medical professionals
12. Child protection volunteers or community probation volunteers
13. NGOs or CBOs

9.1.3 Report format

This depends on the type of report being written. Each JJA has a different format for their reports. However, it is important to note that the rehabilitative and support objective must take precedence when preparing and sharing these reports.

9.1.4. Preparation in report writing

In the case of a report of a child in conflict with the law, one is expected to:

1. Read and understand the P&C form, proceedings, the judgments or sentence, court orders or rulings and mitigation.
2. Know what the agency requesting the report requires (Referral question).
3. Interview or collect data objectively through social inquiry.
4. Conference or consult with fellow colleagues or senior officers on the case before commencing writing.
5. Logically and using simple language write the report using the information generated and in accordance with your agency's format.

9.2 IMPORTANCE OF REPORTS

1. Reports are a compilation/generation of information on a child. They inform administrative purposes and decisions made by the JJAs including courts, committees, boards and other agencies regarding the child.
2. Reports promote good practice as they are also provided for in national and international instruments.
3. They ensure effective throughcare for children in institutions.
4. They contain necessary information for assessment and case formulation individual treatment planning.
5. Reports assist CCPO to seek appropriate refer services that are in the best interest of the child.
6. Reports are critical in monitoring and evaluating the impact of various services provided to the child at each stage of the justice chain.

9.3 CHARACTERISTICS OF A GOOD REPORT

A good report should:

1. Bear all relevant facts to the matter;
2. Be objective;
3. Be clear on purpose, define sources, stated findings;
4. Be factual;
5. Be clear and precise;
6. Have a logical flow;
7. Keep in mind the person(s) intended to read the report;
8. Simple language and;
9. Its recommendations should be congruent or in harmony with the content

9.4 KEY GUIDELINES ON CONTENT OF A GOOD REPORT

The Children Act is the central law when dealing with children and the child ought to be at the centre of the report. Section 76 provides a broad guideline on aspects that a person writing a Section 76. General principles with regard to proceedings in Children's Court

- (1) Subject to Section 4 where a court is considering whether or not to make one or more orders under this Act with respect to a child it shall not make the order or any other orders unless it considers that doing so would be more beneficial to the welfare of the child than making no order at all.
- (2) In any proceedings in which an issue on the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(3) Where the court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters—

- a) The ascertainable feelings and wishes of the child concerned with reference to the child's age and understanding;
- b) the child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child;
- c) the likely effect on the child of any change in circumstances;
- d) the child's age, sex, religious persuasion and cultural background;
- e) any harm the child may have suffered, or is at risk of suffering;
- f) the ability of the parent, or any other person in relation to whom the court considers the question to be relevant, to provide for and care for the child;
- g) the customs and practices of the community to which the child belongs;
- h) the child's exposure to, or use of drugs or other psychotropic substances and, in particular, whether the child is addicted to the same, and the ability of any person or institution to provide any special care or medical attention that may be required for the child;
- i) the range of powers available to the court under this Act.

(4) The court may, if it considers it imperative for the proper determination of any matter in issue before it, of its own motion or upon application, call any expert witness it shall deem appropriate to provide assistance to the court, and the expenses of any such witness shall be determined by the court and shall be defrayed out of moneys provided by Parliament.

Activity

Use the sample reports and ask participants to analyse the contents of report. The CCPOs should check to see whether reports have the following characteristics of a good report.

1. Source of information
2. Precision
3. Relevance
4. Objectivity of recommendations
5. Reader-orientation
6. Simple and unambiguous language
7. Clarity
8. Brevity
9. Grammatical accuracy



Samples (See the Appendix 8.1) - Social Inquiry Report (Probation/Children departments) - Pre-bail Report (probation) - Victim Impact Report (probation department)

9.5 TYPES OF REPORTS IN JUVENILE JUSTICE AGENCIES

Activity

Ask participants to respond to the following questions:

1. What kind of reports do you write?
2. To what extent do you think your reports meet the above criteria?



9.5.1 Social enquiry reports

1. **Purpose:** Gives information on the child, family background and the prevailing circumstances of the child. It includes information of whether parents are alive, siblings and their engagements or situation in life. It guides the agencies and the court in arriving at a suitable sentence for the child.
2. **Importance:** Its recommendations assist the court on whether to commit the child for community-based or institution-based treatment. It assesses the child's risks and needs which guide in developing treatment plan.
3. **Content:** It contains serial numbers, case referral source, contact address, personal details of the child, home particulars of the child, names and details of the child's parents and siblings, case history of the child type of case, needs and risks, family background, recommendations to children's court and name of the investigating officer.
4. **Writing method:** It should be done in a prose form and as prescribed by the JJA standards.

9.5.2. Progress reports

This report is generated by a statutory institution to the committing office.

1. **Purpose:** To update the committing office of the the child's progress following their admission to an institution and to take stock of any emerging issues that require the attention of the committing officer.
2. **Importance:** It addresses the information gap that may have been left out by the field officer when he/she was preparing the social enquiry report.
3. **Content:** Progress reports address the treatment plan, the programs that the child is undertaking while in an institution, the prospected place of reintegration and the reintegration needs that the child may have.

9.5.3 Environmental Adjustment Reports (Final Home Report)

This is a document prepared by children's officers or probation officers indicating the progress they have made in working with the child's environment. The reports are remitted to the institution where the child is admitted

1. **Purpose:** It gives an assessment of the situation at the home and community to which the child is to be released/reintegrated.
2. **Importance:** It gauges preparedness of the family/ community to receive the child once released. It helps assess the risk of recidivism.
3. **Content:** It contains the child's bio-data such as age, date of birth, gender whether the family is willing to accept the child upon release, home conditions, whether they will visit the child during their stay at the institution, family dynamics, means of livelihood, house conditions, sicknesses, addictions, friends, causes of delinquency, and conditions after release, prospect of education or employment after release.
4. **Format:** The Environmental Adjustment Reports are prepared using a standardized format as per the Throughcare procedures.

9.5.4 Risk Needs Assessment Reports

1. **Purpose:** Identify the risk, needs and responsive factors of the child in order to formulate a treatment plan.
2. **Importance:**
 - a) It provides a convenient record of factors to be reviewed before case classification.
 - b) It is used as a quantitative decision aid in case classification.
 - c) It assists in the appropriate allocation of available resources.
 - d) It is used for identifying treatment targets and monitoring each child's risk while under supervision and/or treatment.
 - e) It is used for making placement decision on various community and institutional settings.
 - f) It is utilized for assessing the likelihood of recidivism and for evaluating the effectiveness in the present treatment.
3. **Content:** Child's individual bio-data, physical appearance, family background, photos, physical address, special caution needed, court details, assessment & observation, admissions & discharge at current & previous institutions, number of previous contacts with justice agencies, relations, life history, criminogenic needs, possibility of recidivism, likelihood that the child could harm him/herself or the society, recommendations, observation & record sheets, case conference remarks and psychosocial reports if any. It also contains the level of risk (low,

medium and high).

4. **Writing method:** As prescribed in different JJAs individual report writing standards and other practice guidelines.

9.5.5 Pre-sentence reports

Purpose: Pre-sentence reports are meant to assist the court (the Subordinates court and High court) in assessing offender suitability for a specific sentence disposal and also to indicate appropriate remedial actions necessary to forestall re-offending. In preparing the pre-sentence report, the probation officer is guided by the following factors;

Importance: It assists the court to commit the child into an appropriate institution such as borstal institutions.

Pre-sentence reports content for a child should have the following:

- a) **The age of the child-** To identify developmental crises involved and gives appropriate treatment plan according to the age.
- b) **The family background-** To establish degree of dysfunction in the family as well as prepare the family to assist in the rehabilitation of the child.
- c) **Parents' character** and their level of concern and the level of control they have over the offender.
- d) Assess effectiveness of the training and discipline the parents have given the child offender.
- e) **The child offender's growth and development history**, noting any social, economic and psychological impact they could have.
- f) The offender's relationship with his family
- g) **The school related details-** To establish the possibility of returning the child to the school or identify another school so as to protect the child from stigma.
- h) **Child's known behaviour-** From significant others so as to draw up a behaviour modification treatment plan.
- i) **The views and wishes of the child** -Towards education, treatment program to be offered.
- j) **The wishes of the parent-guardian** -Because of their critical role in the rehabilitation of their child.
- k) **The best interest of the child** - Protecting the child offender from the stigma of being labelled a criminal, to restore dignity to the child and enforce child rights approach to treatment of child offenders.
- l) **The health of the minor including special needs** - To match treatment with the special needs of the young offender.
- m) **What made the child commit the offence-**An assessment of the criminogenic needs of the child that if addressed will forestall reoffending.
- n) **The attitude of the child towards the offence and** the child's ability to understand effect of their behaviour on self and others.
- o) **Degree of motivation to change** that the child displays.

9.5.6. Pre-bail Report

Purpose: This is a social inquiry report based on information generated about the background and community ties of a child. Its purposes are to verify information provided to the court by the child or their guardian, to assess the likelihood that the child will appear for trial, and enable the court to impose reasonable bail terms and conditions.

1. **Importance:** Assist the court decides whether the child is eligible for bail, and to assist the court in gauging the suitable bond terms and helps in reducing case back-log as well as decongest children's remand homes.
2. **Contents:** Previous records, sources of information, family background, personal history such as education, religion, and health status or drug & substance abuse. Nature of offence, victim's attitude, attitude towards bail and bond (child, family, community). Ability to pay bond/cash bail, accused person's reliability to attend court, his address, surety, criminogenic history, conclusion and recommendations.

9.5.7. Victim Impact Assessment Reports ((Impact of the offence on the Victim) VPA, CPC, SOA)

These are reports that present to the court an assessment of the consequences of the crime on the victim or the offended community. Probation officers seek the views and opinion of victims of crime regarding possible return of the offender to the same community where he/she committed the crime. This report guides the court in arriving at a sentence disposal which is in the best interest of all concerned parties.

Child victims of crime also provide victim impact statements. CCPOs interview child victims in order to assess the physical, emotional, psychological, social impact of the abuse on the child. The views of the child are sought regarding the offenders release on bail or probation. CCPOs are expected to use child friendly interview procedures and avoid causing more trauma when getting impact statements from children.

The role of the victim in rehabilitation of young offender is discussed and restorative justice mechanisms are put in place. This is aimed at ensuring safety both for the victim and the offender as well as facilitating the resettlement of the offender.

This section ought to speak about victims, children as victims and how those reports assist.

Pretrial VIAR are important for purposes of rescue, treatment, psychological counselling, psychosocial support, declaration of vulnerability among other things.

1. During trial progress reports if necessary for support.
2. Posttrial for psychosocial support.
3. Remember that the child offender may also be a victim of circumstances.

Revision exercise

Using the examples in the Appendix, explain how you would go about preparing any of the following reports:

1. Social enquiry reports
2. Progress reports (Post-institutional Supervision)
3. Environmental Adjustment reports
4. Presentence Report (COR/POR)
5. Prebail

Sample reports

9.6 REFERENCES

Bail and Bond Policy Sentencing Guidelines

The Children Act

Criminal Penal Code

CSOA

Department of Children's Services and JICA. (1994). Probation and Aftercare Services. The National Standards Manual. Kenya. Nairobi.

Department of Children's Services and JICA. (2008). National Standards and Regulation for Statutory Children's Institutions. Kenya. Nairobi.

POA

Sexual Offences Act

Through Care and Aftercare Guidelines

VPA

INTRODUCTION TO TREATMENT AND REHABILITATION

Length	4 hours
Overview	This unit deals with the principles of treatment and rehabilitation in juvenile justice institutions as well as at the community level.
Key Learning Outcomes	<p>General Objectives</p> <p>By the end of this unit the learners will be able to acquire knowledge, skills, values and attitudes in treatment and rehabilitation.</p> <p>Specific Objectives</p> <p>The participant should be able to:</p> <ol style="list-style-type: none"> Define the terms treatment and rehabilitation. Apply the various treatment approaches Demonstrate an understanding of the principles of rehabilitation. Outline of the RNR model as relates to juvenile justice. Articulate the treatment process in the JJS. Develop and implement a treatment plan for children in need of care and protection and children in conflict with the law in institutions and in the community.
Materials	Flip chart and markers, laptop and projector
Session type	Lecture, discussion and activity

10.1 WHAT IS TREATMENT AND REHABILITATION

The terms treatment and rehabilitation are often used interchangeably, however treatment alludes to the management of symptoms of illnesses or disease while rehabilitation refers to holistic restoration to a former desirable state. For the purposes of this unit the two terms shall be used interchangeably.

As such treatment/rehabilitation is the process of equipping a child or a child offender with information and skills to address behavioural problems and provision of psychosocial support to children in need of care and protection to enable them realize acceptable intellectual, social, moral and economic obligations. Rehabilitation treatment is designed to facilitate the process of recovery from injury, illness, or disease or habit to a normal condition as much as possible.

The process of rehabilitation thus involves helping the child to get back to 'normal', for example, a child who has suffered physical abuse may be provided with both medical and psychological services to help recover from physical and psychological injuries and regain normalcy in life. Offender rehabilitation should encompass not only a return to former state but acceptance by his/her community and ability to enjoy the same rights as other members of the community.

Scholars have added that rehabilitation needs to go beyond returning to a normal state so that it gives room to improve on the child offenders' original state but rather aim at change for the better.

10.2 Case formulation and treatment planning

10.2.1 Case formulation

Formulation is the process of making sense of a child's information derived from interviews reports observations into a coherent story that provided the CCPO with an overall picture of the issues that the child is dealing with and that need treatment or rehabilitation. There are various frameworks for case formulation with the common one being the biopsychosocial. This model sifts information related to the child's genetic and physiological issues, medical illness and how these have contributed to the issues at hand. The psychological dimension includes an evaluation of the child's psychological make-up, including strengths and vulnerabilities. The social dimension situates the child in their communities, exploring relationships with family, teachers, peers and the community in general (IAACAP, 2020)

10.2.2 Treatment planning

Treatment planning is an organized, conceptual effort to design programs or interventions that outlines in advance what the CCPO will use to rehabilitate the child or help the child address their problems. Treatment planning also goes by several terms such as sentence planning, case planning, rehabilitation planning, service plans and care planning.

Importance of treatment planning

1. The CCPO develops interventions targeted at motivating change, attitude and skill development.
2. The plan stipulates the issues that are the focus of treatment for both categories of children.
3. Enables both the CCPO and the child to concentrate on specifically stated objectives using specific interventions.
4. Since issues can change as the rehabilitation of the child progresses, the treatment plan must be viewed as a dynamic document that can and must be updated to reflect any major change of problem definition, goals objective and intervention.
5. Both the CCPO and the child focus on the treatment outcomes.

Issues to consider in treatment planning

There are several things to consider in treatment planning.

1. The child's participation in development of ITP.
 - Children do not have to be passive recipients of services. They have a right to participate in decisions affecting them.
 - A client's motivation to participate in and cooperate with the treatment process depends, to some extent, on the degree to which treatment addresses his other greatest needs.
 - ITP should be child focused as opposed to CCPO or system focused.
 - Young people are more likely to make positive changes if the expectations, the language, the reinforcements, and the programs they are involved in are consistent.

2. Multi-agency teamwork

The CCPO cannot work alone. Involving other professionals who can contribute to the treatment interventions is part of ITP my house these include: school, medical workers, social workers, spiritual as well as volunteers.

3. Relapse prevention

Relapse prevention is the overall goal of rehabilitation hence a relapse plan should be in place incase the youth relapses

4. Special needs

A treatment plan should consider age, gender, developmental abilities, mental health issues, cultural circumstances of the child.

5. The risk, need and responsivity principles

Treatment and rehabilitation of children cannot be effective without an assessment of Risk, Need and Responsivity.

10.3 PRINCIPLES OF REHABILITATION

Day, Howells, and Rickwood (2004) describe 5 principles that govern the rehabilitation process. These principles are:

1. risk;
2. needs;
3. responsivity;
4. integrity and;
5. professional discretion.

Integrity entails being a person who is honest and truthful, seeks to promote accuracy, keeps promises and avoids unclear commitments or deception.

Professional discretion involves decisions and judgments into any rehabilitation being made on characteristics and situations, rather than application of rigid static principles.

The other three principles are aligned to the RNR Model of offender rehabilitation, which focuses on the Risks, Needs and Responsivity. While this model does not fully reflect on children matters in relation to offenders, it is a starting point towards the understanding of the offenders.

10.3.1 The RNR Model for rehabilitation for children in conflict with the law

Rationale of the Risk Needs Responsivity Model

This is a leading, evidence-based model, for guiding offender assessment and treatment in the world (Andrews and Bonta, 2006).

10.3.2 Principles of RNR Model

The three core principles that underlie this model are:

- ï Risk Principle
- ï The Criminogenic Needs Principle
- ï The Responsivity principle

10.3.2.1 The Risk Principle

This is in relation to the factors that could expose one to probability of reoffending. The levels of treatment services should be matched with the risk level of the offender. High-risk offenders for example, need intensive services such as institutionalization or intensive supervision, while low-risk offenders need minimal intervention.

10.3.2.2 The Needs Principle

This principle targets criminogenic needs or those offender needs that are functionally related to criminal behaviour. This could be the problems or things that can be targeted in order to make the child better.

10.3.2.3 The Responsivity principle

The Responsivity principle seeks to maximize the offender's ability to learn from a rehabilitative intervention by providing cognitive behavioural treatment and tailoring the intervention to the learning style, motivation, abilities and strengths of the offender.

10.3.2.4 The Central 8 Risks/Need factors

The theory of RNR describes eight areas also Central Eight called of which seven are dynamic and can therefore be viewed as criminogenic needs as listed below.

1. History of Antisocial behaviour/Criminal history (Static factor)
2. Antisocial personality pattern

3. Antisocial attitudes
4. Associates
5. Alcohol/Drug abuse
6. Family/relationships
7. Education/Employment and economy
8. Recreational/free time

10.4 TREATMENT APPROACHES

There are a number of evidence based treatments for children in need of care and protection and children in conflict with the law. CCPO's apply different modalities as informed by the case conceptualization of the child's issues. The following are examples of treatment approaches:

10.4.1 Motivational interviewing

In motivational interviewing, attempts are made to move individuals from a state of indecision or uncertainty, towards accomplishment of established goals, making positive decisions, and finding motivation. It is collaborative, non-confrontational, sparking motivation and change. The aim is to support without pressure. Principles used are expression of empathy, development of discrepancies, rolling with resistance and support of a belief of change, also known as self-efficacy (Miller & Saitz, 2014; Solof, 2013).

10.4.2 Cognitive Behaviour Therapy (CBT)

Cognitive Behavioural Therapy approach is one that engages the emotions and thought processes, in relation to behaviour. It stipulates that actions are affected by how one thinks. Rehabilitation will thus be effective, if the thought pattern changes. Individual formulations are made in targeting maladaptive core beliefs, then various techniques are used in therapy. CBT is most effective where there are mental health disorders, but is also an effective in primary care (Fenn & Byrne, 2013).

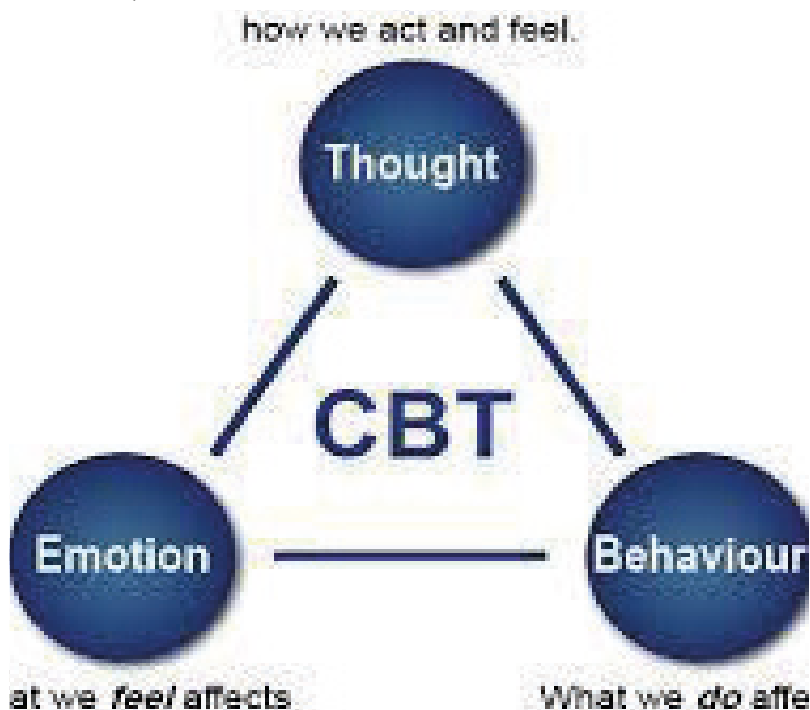


Figure 10.4: Adapted from <http://www.northbaymfr.ca>

CBT has been found to be effective in helping justice involved children in a number of ways such as:

1. Children with conduct disorders
2. Children traumatized by various forms of abuse;
3. Learn techniques for coping with stressful life situations;
4. Resolve relationship conflicts and learn better ways to communicate;
5. Cope with grief or loss;
6. Overcome emotional trauma related to abuse or violence;
7. Helps reduce the negative emotional and behavioural responses of the traumatized child;
8. Helps the child identify negative emotions and problem behaviours are assumed to be directly related to their offending behaviour;
9. Teaches the child self-regulation so that they are in control of their reactions and symptoms.

10.5 OTHER IMPORTANT THERAPEUTIC SKILLS IN WORKING WITH CHILDREN IN THE JJS

1. **Empathy** - This is the ability to understand experience from the child's point of view in order to build rapport which facilitates feelings of trust and mutual respect between CCPO and the child.
2. **Genuineness** - This is the ability to be authentic and free of dishonesty or hypocrisy through:
 - a) Non-verbal behaviour of eye contact giving full attention to the child, nodding in agreement or understanding.
 - b) Role behaviour is where the relationship between CCPO and child is that of partnership, both work together to alleviate concerns, fears and problems in the child's life.
 - c) Posture suggests that the CCPO should sit in such a way that they are at level with the child so that they are not looking down at them.
3. Unconditional positive regard -The CCPO should treat the child with respect, make them feel that their thoughts and feelings/beliefs are acknowledged and understood. This leads to more sharing from the child and connection to the CCPO and the therapeutic process.
4. Active listening- is a useful tool to communicate nonspecific factors of empathy, genuineness and Unconditional Positive Regard (UPR). This is the foundation of therapeutic approaches which is composed of receiving a message, processing it and sending feedback. Therapists should remain open to all the messages from clients (both verbal and non-verbal) and process them.
5. Clarification- Here the CCPO asks the child to explain anything that may be ambiguous so as to simplify messages and confirm accuracy.
6. Paraphrasing and reflection- this is restating the child's main thoughts in a different way or reflecting back emotions the client is experiencing to help them gain insight into their feeling and behaviour.
7. Summarization- in this skill the CCPO picks out the important themes and issues from the child's narrative and reflects back to the child for ease of understanding of their issues.
8. Collaborative goal setting- A process for jointly determining what the CCPO and the child will work on during the supervision. The aim of this is to determining a prosocial direction that the child wants to move towards and which both agree on. The idea is to attract the child to see the benefits of change.
9. Reinforcement- this is the introduction of rewards when the child engages in appropriate behaviour. This encourages the child to repeat the appropriate behaviour in future.

10.6 FRAMEWORK FOR AN INDIVIDUALISED TREATMENT PLAN

1. Problem definition

- The problem definition is derived from assessment tools, interviewing client and significant others and case formulation.
- The problem should be stated in observable behaviours or client self-report.
- Phrases such as *repeated, frequent, tendency to ..., a pattern of ..., consistent..., excessive, high-level, persistent, displays, heightened, recurrent, verbalizes having uncontrollable thoughts about ..., displays, demonstrates, refuses, unable, avoids, seeks, difficulty, increasing, or declining.*
- Usually as you develop the client presenting problem, a primary problem will surface, and secondary problems that may linked to the primary problem.
- A plan cannot have many problems to work on. The officer and the client need to agree on the most urgent problem, medium term and long term. If one treatment plan has too many problems to be handled at a go, it will be difficult to implement. Therefore, it is advisable that the ITP is divided into 3 quarters or months and objectives are given timelines.

2. Goals

- Set broad goals for the resolution of the target problem.
- Although not crafted in measurable terms, these statements are global, long-term goals that indicate a desired positive outcome to the rehabilitation of the offender.
- The goals are written in strength-based terms.
- Goals should focus on the key issues that brought the youth into the justice system and on the essential psychological, social, behavioural, relapse prevention, and safety issues that will lead to a successful exiting of the program.
- The goals should be concise, understandable, and reachable.
- Plans should clearly present benchmarks (indicators) of progress and specify actual treatment interventions to help the child accomplish the goals. The plan's benchmarks should be measurable, and define the orientation and direction of treatment, as well as all planned behavioural and clinical interventions.
- Goals can be short term, medium and long term.

3. OBJECTIVES

- Objectives can be thought of as a series of steps that, when completed, result in the achievement of the long-term goal. There should be at least two objectives for each target problem.
- Although the objective is to teach skills that address skill deficits, the strength-based wording is intended to maximize motivation and desire to engage.
- Objectives must be behaviourally measurable, for example client will learn to manage their anger.
- Time bound for example: "By 30th August, 2020 client and his family will have a reconciliation session that will pave way for his smooth reintegration of his stay."

4. Tasks/Interventions

- Interventions are the actions of the CCPO designed to help the child.
- complete the objectives. There should be at least one intervention for every objective.
- If the child does not accomplish the objective after the initial intervention, new interventions should be added to the plan.
- Interventions can be psychological, social, family/community related, life skills training, vocational, referral, pharmacological, spiritual among other things.

Sample: Individualised Treatment plan for a child in conflict with the law.

Name: Elsa

Age: 14 Years

Case formulation

Elsa is a client who is in her pre-adolescence stage and the second born in a family of four children. She attempted suicide by taking rat poison and was found unconscious by her elder brother. She was rushed to the hospital and later charged with the offence of attempted suicide.

She started experiencing adversity very early in her life. The state of deprivation that she was brought up in and still lives in was the first adverse experience. Her mother was an alcoholic even as she sold the brews herself, thereby exposing the client and her siblings to different forms of abuse. At 5 years the mother left her to work in the city. This a critical period in a child's life when attachment bonds between mother and child are being secured. Her grandmother became her secure base, but had 3 other grandchildren to raise. At one time one of the uncles attempted to rape her but she screamed and he ran away. Elsa and her siblings sometimes go without food and have to beg neighbours to assist them. The mother hardly visits them.

The absence of the mother left Elsa feeling unloved and neglected, which is probably why she continues to view herself as worthless. Elsa compares her life to that of other children in the neighbourhood and feels that life has been unfair to her. She has withdrawn from friends and prefers to keep to herself. She still lives with her grandmother and visits the probation officer every once a month.

5. Presenting Problem(s)

Definition of the problem (using observational, predisposing, precipitating, perpetuating factors)

- Recurrent pattern of attempting suicide
- Verbalises lack of interest in previously enjoyed activities
- Traumatized by the attempted rape by the uncle and experiences panic attacks
- Lacks parental love as has been raised by grandmother and abusive relatives.

6. Treatment/Rehabilitation Goals:

Elsa will learn coping skills to deal with her depressive symptoms

Elsa will have a positive view of life

Objectives	Interventions
<ul style="list-style-type: none">• Identify thoughts, feelings and behaviours that lead to suicidal ideation.• Gain family support in the child's treatment.• Enhance mother-child relationship.• Empower Elsa with formal and vocational skills	<ul style="list-style-type: none">• Use cognitive behavioural therapy (behaviour records, thought records).• Use journal and art therapy to help Elsa process her traumatic experiences.• Arrange for a family conference with significant persons in the Elsa's life• Enroll Elsa in formal schooling so that she can continue with education• During school holidays, engage her in talent discovery activities.

Activity



Ask the participants to brainstorm on the term Orientation, the basic principles of orientation and write down their responses on a flip chart.

Activity



Provide the participants with a case study to discuss in groups and use it to fill out the Individual Treatment Plan (ITP) and later have presentations on the same.

10.7 REFERENCES

- Bonta, J., & Andrews, D. A. (2007). Risk-need-responsivity model for offender assessment and rehabilitation. *Rehabilitation*, 6(1), 1-22.
- Day, A., Howells, K., & Rickwood, D. (2004). *Current trends in the rehabilitation of juvenile offenders*. Trends and issues in crime and criminal justice, 284, 1-6.
- Department of Children's Services and JICA (2008). *National Standards and Regulation for Statutory Children's Institutions*. JICA
- Fenn, K. & Byrne, M. (2013). The key principles of cognitive behavioural therapy. *InnovAiT*, 6(9), 579-585.
- Government of Kenya. 2013. Throughcare and aftercare procedures for children in statutory institutions in Kenya.
- Hanser, R. D. (2006). Special needs offenders in the community. *CRIME AND JUSTICE INTERNATIONAL*, 22(93), 23.
- Miller, S., & Saitz, R. (2014). *Principles of Addiction Medicine* (5th ed.) (R. Ries & D. Fiellin, Eds.). Philadelphia: Wolters Kluwer Health.
- Republic of Kenya. The Children Act No. 8 of 2001.
- Robinson, G., & Crow, I. D. (2009). *Offender rehabilitation: Theory, research and practice*. Sage.
- Solof, B. (2013). *The Therapist's Guide to Addiction Medicine: A Handbook for Addiction Counsellors and Therapists*. Central Recovery Press, LLC.

REINTEGRATION AND COMMUNITY SUPERVISION

Duration	2 hours
Overview	This unit focuses on procedures of reintegration and handling of children under community supervision in line with various legislation within the JJS.
Key Learning Outcomes	By the end of this unit the participant should be able to: <ul style="list-style-type: none"> a) Define reintegration. b) Describe the process of reintegration from the institution and during community supervision. c) Define community supervision its principles and purpose. d) Identify the child offenders and terms of supervision. e) Discuss methods and levels of community based supervision and support. f) Discuss bail, bond and alternative dispute resolutions.
Preparation	Request participants to share in groups the current practice and some of their experiences in supervision of children within the JJS. (10 min)
Materials	Flip chart, markers, laptop and projector
Session type	Lecture, discussion

11.1 DEFINITION OF REINTEGRATION

Reintegration (re-entry as it is sometimes called) is both an event and a process (Maruna and Immarigeon, 2004). Reintegration is a long-term process that starts prior to release and continues thereafter. The UK Association of Chief Officers of Probation defined resettlement and reintegration to refer to 'A systematic and evidence-based process by which actions are taken to work with the offenders in custody and on release, so that re-offending is significantly reduced. It encompasses the totality of work with child offenders, their families and significant others and with statutory and voluntary organizations.

This definition implies that reintegration and resettlement is a holistic process, which requires coordination between different agencies in the criminal justice system and voluntary organizations.

11.2 SPECIFIC PROCESS OF REINTEGRATION

11.2.1 Institution to the community

11.2.1.1 Commencement of environmental adjustment Process

The manager of a rehabilitation school should send "Summary Assessment Report of Newly Admitted Child (SARNAC)" within one month of admission to the sub county children's officer or sub county probation officer (the SCCO and SCPO) who is in contact with the guardian or any appropriate person or organization recorded as responsible for the child. The summary assessment report is accompanied with a copy of the committal warrant and a copy of the child's case history. In case, the guardian's address is unknown, the birthplace of the child or any appropriate person/organization's address. Effort should be made by the officer to physically reach the guardian to give any necessary explanation.

11.2.1.2 Period of submission of Environmental Adjustment Report (EAR)

The first report of environmental adjustment should be sent from the SCCO/SCPO to the manager of the institution within one month after the SCCO/SCPO received the SARNAC. The Environmental Adjustment Report prepared by the SCCO/SCPO should be sent to the school every three months to let the manager of the rehabilitation school learn about the progress of environmental adjustment.

11.2.1.3 Quarterly Progress Report

The manager of the institution shall send Quarterly Progress Reports to the SCCO/SCPO in charge of guardian's address or any appropriate person/organization's address of the child.

11.3 ALTERATION OF INFORMATION

In case any changes occur to the items provided in SARNAC, the manager of the institution should report to the SCCO/SCPO in charge of guardian's address or any appropriate person/organization's address of the child using *Change in the Profile of the Child under Environmental Adjustment*.

11.3.1 Notification of alteration of profile of the child

In case of a change of parental address, the manager of the institution should send the SARNAC to the new parent/guardian/organization address.

11.3.2 Early release and application for revocation of committal order

When the environmental adjustment is complete, the SCCO should recommend to the manager of the institution to apply for revocation of committal order to the court for the early release of the child. All the necessary forms should accompany this application. Consideration of the application for revocation of committal order is taken one year after admission to the institution. If the application is not filed in time, the manager of the institution should examine the possibility of reviewing the application once in three months. The manager of the institution should apply for revocation of a committal order in collaboration with the SCCO/SCPO and other community resources within the two years after admission to the institution.

11.4 LEAVE OF ABSENCE AND RELEASE

Leave of absence may be granted by the permission of the manager of the institution to encourage contact with family members or responsible persons concerned with the smooth rehabilitation of children.

Selection criteria, conditions, and procedures of leave of absence shall be made by the manager of the institution with reference to the specific conditions, and approved by the Director of the Department of Children's Services.

11.5 SELECTION OF CANDIDATES

Children obtaining school leave have to meet the following conditions:

1. Mentally and physically healthy.
2. Low risk behaviour.
3. Information from SCCO/SCPO shows that:
 - a) Guardians have capability of taking care of the child
 - b) The relationship of the child with the guardian is good.
 - c) Guardians will come to the school to receive the child and send him back to school.
 - d) The child has maintained good behaviour for a certain period.
 - e) The child is emotionally stable.

- f) The child has not created any problems concerning previous school leaves.
- g) The child has no other factors that hinder the successful school leave.

The manager, with the approval of the school committee, shall make the decision of 'school leave'.

11.5.1 Procedure of selection of candidate for school leave

Upon the approval of the school leave, the manager will send a letter to the guardians to make necessary arrangements.

Staff members will hold an orientation programme for children who will be on school leave.

During the school leave, the children will be monitored by the SCCO, SCPO, Community Probation Volunteers or the Child Protection Volunteers.

In case any accident happens during the school leave, the manager of the institution should make necessary measures with close collaboration with officers working in the area.

After the school leave, staff members of the institution should interview the children and their guardians to monitor how they have progressed during the leave.

11.5.2 Exceptional procedure of reintegration from the rehabilitation school

The same procedure can be performed by the probation office in cases where a child is to be released from a rehabilitation school under following listed circumstances:

1. Leave of absence
2. Revocation of order
3. Expiry of order

According to the Children Act, Section 54(2), "A child committed to a rehabilitation school shall, after the expiration of the prescribed period of his/her stay, be under supervision of such a person the director shall appoint, for a period of two years, or until he/she attains the age of twenty-one years whichever shall be the shorter period." This calls for the reintegration process to take effect.

The institution manager can inform the committing SCPO/SCCO to prepare an EAR and the SCPO/ SCCO should make the EAR for the child in the rehabilitation school and undertake the child's supervision in the community after his/her release.

However, there is no clear mandate as to whether the child offender from rehabilitation school should be placed under the supervision of the Probation Department following the role it plays in provision of an EAR.

In the event that the child is released from the rehabilitation school, the supervision of that child for the purpose of effecting aftercare will always be in accordance with the existing probation practices on reintegration.

11.5.3 Exceptional procedure for release from borstal institution to community

The superintendent in charge of a borstal institution is required to send a profile called "Individual Progress Report of a Youth Offender due for Release" to the SCPO who is in charge of the committing office about one year after admission.

The SCPO receives the "Individual Progress Report of a Youth Offender due for Release" by the borstal and prepares a Final Home Report (FHR). The FHR is submitted to the officer in charge who forwards the same to the Board of Visitors (BOV) for consideration of suitability for release. The BOVs meeting is held on quarterly basis. A copy of the report is submitted to the probation headquarters for coordination, monitoring and quality control.

11.5.4 Significance of the Final Home Report (FHR)

The FHR:

1. Provides the borstal institution with information regarding the home condition of the child offender.
2. Provides information to the borstal institution about the reintegration and acceptance of the child offender by his/her community.

3. Provides information on the resources available for continued post release rehabilitation with regard to the needs of the child offender.
4. Indicates potential risks, if any, of likelihood of the child offender reverting to criminality.
5. Indicates availability of accommodation upon release.
6. If it is a youthful offender, the FHR indicates availability of person(s)-guardian, parent or caregiver, willing and ready to take immediate charge and in accordance with release orders if any.
7. Verifies information already available to the holding authority.
8. Indicate any fears by the victim(s) about the offender's potential return.
9. Verifies if there is objection by other authorities such as the police about the offender's release on license.
10. Informs whether the offender had faulted/breached previous licenses.
11. Indicates to the holding authority of the supervision arrangements necessary for observation of the release license and thus forestall reoffending.
12. Prepares concerned parties of the potential return of the ex-offender.

A favourable FHR may elicit immediate release of the child offender whereas an unfavourable FHR may lead to the continued stay at the institution pending the rectification of the underlying situation.

11.5.5 Reasons for extended stay

1. Pending sitting exams such as national examination and vocational tests. He/she will be recommended for release as soon as he/she is through with the exam.
2. Non-submission of FHR. The concerned SCPO is asked to submit the report for the next board of visitors meeting.
3. Unfavourable home environment. The Board of Visitors(BOV) will ask the SCPO to endeavour to improve the home situation within the shortest time possible and submit another FHR to the institution in time for the next BOV meeting.
4. Best interest of the child offender for example health, will depend on the prevailing situation but concerned officers have to ensure that this is done within a reasonable period and the board be advised accordingly.

11.6 CHANGE OF RESIDENCE AFTER ADMISSION

In case a child offender intends to change his residence from where he/she was committed for whatever reason, the Borstal institution must indicate in the request for EAR to the committing SCPO. The SCPO will then immediately inform the receiving SCPO to conduct an environmental assessment of where the child offender wishes to stay. However, there must be concurrence that the desired new place of stay is suitable for his or her growth and development.

His findings will then be forwarded to the committing Sub County Probation Office who will consider and where appropriate include these views in the EAR and give his recommendation on the change of residence. He/she will supply the receiving Sub County Probation Office with a copy of the EAR. Once it is agreed on, the institution will immediately engage the new sub county Probation Office in the reintegration process. This process can be lessened if this information is communicated early enough for the receiving SCPO to prepare the EAR and inform the committing SCPO of the changes. The committing sub county probation Office SCPO will then transfer all supervision responsibilities to the receiving probation officer.

11.6.1 Release from a borstal institution

Release from a borstal institution can be in any of the following forms:

1. Leave of absence
2. Release on license
3. Actual completion of the three-year term

11.7 PREPARATION OF THE CHILD FOR THE FAMILY

11.7.1 Family Meeting

This is a meeting held between the manager of a statutory institution or a field probation officer, children's officer together with the family members of the child. The conference actively seeks the collaboration and leadership of family groups and significant others in crafting and implementing plans that support the safety, permanency and well-being of their children after their reintegration. It recognizes the importance of involving family groups, significant others and the children themselves in decision making about the exit options available two months before a child is released from an institution.

11.7.2 Family group decision making conference

Family conference is a family group decision-making (FGDM) process by a children or probation officer of a statutory institution together with the receiving office. The conference actively seeks the collaboration and leadership of family groups and significant others in crafting and implementing plans that support the safety, permanency and well-being of their children after their reintegration. It recognizes the importance of involving family groups, significant others and the children themselves in decision making about the exit options available before a child is released from a rescue centre.

11.7.3 Procedure of release

1. The child is notified immediately once the decision to release him/her is reached.
2. The process to release should be expedited to avoid anxiety.
3. The probation officer should be informed immediately the child is released.
4. The child must be escorted by the borstal staff and handed over to the probation officer in person.
5. Hold a Family group decision-making conference which will have the probation officer, Borstal staff, child and parent/guardian and significant others in attendance. They will help in crafting and implementing plans that support safety permanency and well-being of the child after reintegration.

11.7.4 The role of the Prison Officer

1. Develop exit plan.
2. Assess the child offender for reintegration.
3. Receive EAR/FHR.
4. Forward EAR/FHR to the BOV.
5. Report on the child during the BOV meeting.
6. Issue, read and explain the conditions of license to the child.
7. Escort the child to the probation officer.
8. Receive and contain the child on breach of license or such condition of release.

11.7.5 Reintegration from Kamiti Youth Corrective Training Centre (KYCTC) to community

Although the Prisons Act does not provide for the aftercare of the ex-KYCTC, their reintegration procedure should align to that of the borstal institution. Prison officers should as soon as practicable write to the committing probation office to inform them of the reception of the child and to start the necessary reintegration processes including development of exit and reintegration plan respectively.

11.7.6 Reintegration from CCI and Statutory Rescue Centres to community

Reintegration procedure from CCIs and Statutory Rescue Centres should follow that from Rehabilitation school.

11.7.6.1 Release Exercise

1. Assume you are the rehabilitation school manager or superintendent of a borstal institution, list the key ingredients of an exit plan of a child.
2. Assume you are the supervising children's/probation officer, list the key ingredients of a reintegration plan.
3. What challenges may be encountered during the reintegration of a child offender?
4. How may these challenges be addressed?

1.8 DEFINITION OF COMMUNITY SUPERVISION

Community supervision of offenders in the community is an alternative measure to imprisonment that allows offenders to live, work and be with their families in the community under the support of a probation officer while undergoing rehabilitation and reconciliation with victims.

11.8.1 Children for supervision

Any of the following children can be placed under the supervision of children's officer under the provision of the National standard.

1. Child who has been placed under supervision of a children's officer under paragraph (d) of sub section (2) of Section 125 and Section 191 (d(e), (h), (I) of the Children Act (Child under discretionary supervision).
2. Child released on leave of absence under Section 52 of the Children Act (Child on leave of absence)/released on license.
3. Child who has been placed under supervision of children's officer under Section 54(2) of the Children Act (Child released from rehabilitation school).
4. A child admitted or committed to a CCI or person or to an appointed local authority under a care order as per Section 65(1) (Child on Supervision in CCI) and Section 132(9) of the Children Act (Child on Supervision under Care Order).
5. Any child under 18 years whose case is reported to a children's officer by members of the public should be deemed to be under supervision and child whose parental responsibility is extended as provided for under 28(1) of the Children Act (Child on Supervision over parental responsibility).
6. A child under eighteen years placed on a repatriation order shall be presumed and can be placed under further supervision, if this is found to be necessary (Child under Repatriation Order).
7. Child who has been placed under supervision of a Children's officer under section 130 of the Children Act (Child under Supervision Order).
8. Child who has been placed under supervision of a Children's officer under subsection (3) of Section 131 of the Children Act (Child under Interim Supervision Order).

11.8.2 Terms of supervision

1. The supervision of child under discretionary supervision and child on supervision under Care Order may be suspended even during the term of supervision, if it is deemed unnecessary.
2. The suspension of supervision may be granted to the child if it is found unnecessary to continue supervision, after comprehensive consideration of his/her character, environment, performance under supervision and other relevant matters.
3. A children's officer should investigate the child under suspension of supervision every three months after the suspension is effected, or deemed necessary, so that the children's officer may consider the necessity of revoking

the suspension of supervision if necessary.

4. The children's officer may determine that the supervision of such a child should be resumed in case such a child in the children's officer's opinion needs supervision as provided for under Section 131(2) of the Children Act (period of supervision order) and (5)(c)(variation of supervision order by court).

11.8.3 Terms of supervision of child on leave of absence

The term of supervision of the child on leave of absence should be until such a time as when he returns to the rehabilitation school from which he was released on leave of absence.

11.8.4 Revocation of committal order for child released from rehabilitation school

The term of supervision of the released child from rehabilitation school shall not remain in force beyond the date on which the child attains the age of 18 years nor shall such order remain in force for longer than 3 years at a time as per Section 53(3) (duration of committal order) of the Children Act.

The Director of Children's Services, Children's Court or any other person to revoke a committal order only through a court as provided for under Section 53(1) (revocation of committal order) and sec. 53(2) (revocation of committal order) of the Children Act for following cases:

1. If a period of 12 months has passed since supervision was started under Section 131(2) (review of supervision order) of the Children Act.
2. If the child has maintained good performance for a period of two weeks as per Section 131(4) (period of expiry of interim order) of the Children Act.
3. If the child follows the conditions and supervision orders accorded to him obediently, the children's officer may decide that supervision is not necessary.
4. The children's officer in charge of the supervision over the child shall request the revocation of a committal order to the Children's Court when such a child in the children's officer's opinion meets the criteria mentioned in subsection (2) by using the form that includes the following:
 - a) Name, age and address of the child
 - b) Education or occupation of the child
 - c) Released date
 - d) Reason of committal
 - e) Performance while on leave of absence
 - f) Reason of request
 - g) Other relevant information attached with a copy of case record sheet, individual treatment plan, written promise, progress report and other relevant documents.

11.8.5 Period of supervision for a child placed on supervision over parental responsibility and child under repatriation order

1. The period of supervision of a child on supervision over parental responsibility and Child under Repatriation Order should be for a period not exceeding 12 months.
2. The termination of supervision to child under Repatriation Order when he/she deems it proper, as a result of the examination, can terminate the supervision in the following cases.
 - a) If a period of 12 months has passed since supervision was started.
 - b) The child has maintained good performance for more than 8 weeks.
 - c) The child follows the conditions and supervision accorded to him, the children's officer may decide that supervision is not necessary.

11.8.6 Application, reporting and recommendation to the court application for Court Order

Before making an application for a court order, the children's officer should be satisfied that the orders are necessary for the best interest of the child.

11.8.7 Reports to Court by Children's Officer

The children's officer who is to apply for court order should prepare a report and submit it to the court. The report can be written or oral and should include:

1. Biodata of a parent such information as is applicable to the case
2. The character, behaviour and attitude of the child.
3. His willingness to take responsibility.
4. Any plans put forward by the child to change his/her conduct or to participate in activities or undertake measures to improve himself.
5. The history of previous findings of delinquency and of dispositions.
6. The history of alternative measures used to the child.
7. The availability and appropriateness of social resources for the child's rehabilitation and the willingness of the child to avail himself of those opportunities.
8. The relationship between the child and his/her parents or his extended family and the degree of control and influence of the parents over the child.
9. The school attendance and performance record and/or the employment record of the child.

Additionally, the report made in respect of the child should include such information as the child/ parents/guardian's/ public opinion and any other recommendation that the children's officer considers appropriate.

11.8.8 Consideration for recommendation of committal order to rehabilitation school

1. Children's officers/Probation Officers should consider commitment to institutions as a last resort. When a children officer recommends to the court to commit a child to rehabilitation school, it should be out of necessity for the protection of society having regard to the seriousness of the offence, the circumstances in which it was committed, and for the rehabilitation of the child in view of his/her needs and circumstances.
2. The recommendation of committal order to rehabilitation school, should be based on the result of needs and risk assessment under the provisions of National Standard of the classification of the child, for the children's officers working for sub county children's office/sub county Probation Officers.
3. In making a recommendation of committal to a rehabilitation school, the children's officer, recognizing that the committal to rehabilitation school is a legally authorized infringement of rights of freedom of the child should take the following into account:
 - a) That a committal order to rehabilitation school should not be used solely for the purpose of child health and other social assistance.
 - b) That a child whose offense is of non-serious nature should be dealt with through non- custodial dispositions such as diversion, and supervision under a children's officer whenever appropriate.
 - c) That a committal order to rehabilitation school should only be imposed when all available alternatives to the order that are reasonable in the circumstances have been considered.
4. Committal to Rehabilitation school should be construed to be utilized for the following:
 - a) Any child who is above ten years and under 15 years alleged to have committed an offence.
 - b) Any child above ten years and under 15 years supposedly going to commit an offence or violates a criminal law or other standards in view of his/her character or environment because of the existence of the reasons that he/she has the propensity to commit acts seriously harmful to the moral character of his own or others.

11.9 CONDITIONS TO BE OBSERVED FOR COMMUNITY SUPERVISION

11.9.1 Conditions for child under discretional supervision and child on supervision under care order

1. The children's officer in charge of supervision over a child under discretional supervision and Child on Supervision under Care Order should prescribe the conditions for him to observe while under supervision, after hearing the opinion of the court that has made the supervision order as well as the child's view.
2. The conditions mentioned in the subsection of this article should include the following items:
 - a) to keep good behaviour;
 - b) to ask his/her supervisor for permission in advance for changing his/her residence or going on a long journey.
3. Conditions mentioned in the subsection of this article should be set, considering the child's life history, mental/health condition, cause and nature of offence, home and community conditions where the child is supposed to reside, according to the following principles:
 - a) The conditions should be useful and appropriate for the rehabilitation of the child.
 - b) The child is expected to follow the conditions.
 - c) The conditions do not unreasonably infringe on the rights of the child.
4. When the children's officer has prescribed the conditions mentioned in subsection (1) of this Article, he should notify the child in writing of the conditions that he should observe while under supervision, and make him promise to observe such conditions in writing with his signature. However, the same should not apply in case the child is seriously ill or injured.
5. The conditions mentioned in subsection (1) and (2) of this Article may be revised, modified and supplemented even during the term of supervision, if it is deemed necessary.
6. It should be construed that the parent/guardian with whom the child under supervision of Article 3(a) to 3(d) lives is required to allow the supervisor to visit the child at his/her home.
7. For illiterate children, oral agreement will be explained to the child and they can thumbprint.

11.9.2 Conditions for child on leave of absence and child released from rehabilitation school

When the children's officer determines the conditions for "the child under release on leave of absence" and "the child released from rehabilitation school" the following conditions should apply:

1. That the child should go back to the pre-assigned family/guardians home by the specified date.
2. That the child should report to the specified children's office by the specified date.
3. The term of supervision of the child on leave of absence should be until such a time as when he returns to the rehabilitation school from which he was released on leave of absence.

11.9.3 Conditions for child on supervision over parental responsibility and child under repatriation order

The children's officer in charge of supervision over child on supervision over parental responsibility and child under repatriation order may, prescribe the conditions for him to observe while under supervision, with consent of such a child. When the children's officer prescribes the conditions mentioned in consideration for recommendation of committal order to rehabilitation school, he should consider the principles and purpose of supervision.

11.9.4 Methods of supervision and support

The supervision of the child should be carried out using the following methods:

1. To watch the behaviour of the child under supervision by keeping proper contact with him/her.
2. To give the child under supervision such instructions as are deemed necessary and pertinent to make him/her observe the conditions.
3. To assist them acquire means for education and training.
4. To assist them acquire medical treatment and recreation.
5. To assist them acquire shelter.
6. To give them vocational guidance and assist them to acquire a job.
7. To advise the parents or guardians to reform and adjust the environment that is harmful to the child.
8. To assist them return to a destination deemed most suitable for his/her rehabilitation.
9. To assist them to have plans for their future in consultation with them and their parents or guardians.
10. To take such other reasonable steps as may be necessary to accomplish their rehabilitation.
11. Facilitating reconciliation through mediation.
12. Keeping and updating supervision records such as risk and needs assessment and Individual Treatment Plans (ITP).
13. Making referrals depending on the child's needs to other stakeholders for assistance.
14. Making applications for revision of orders. Extension of period, revocation of order and transfer of supervision order where necessary.

The children's officer should make every effort to mobilize and maintain a variety of social resources, to intensify networking and mutual cooperation among public offices, local public entities, schools, hospitals, public health and welfare institutions and other organizations, in order to assist in the child's rehabilitation. To this end, the Area Advisory Council should be fully involved.

In case the child is committed to a Charitable Children Institution or placed with a foster parent the Children's Officer should keep contact with the child and continue supervision. The children's officer should seek progress reports from the Charitable Children's Institution or the foster parent twice every one year, visit the place where the child lives if necessary, or have regular meetings with them, by means of which methods for aftercare should be established.

11.9.5 The level for community supervision

Children's officer should take into account the summary of needs/risk factors in the National Standard of the Department of Children Services (DCS, 2008) when he/she makes an individual treatment plan.

The children's officer should take appropriate treatment measures based on the following classification.

1. Total Score Low (0-7): Class C, Suitable for temporary support.
2. Total Score Medium (8-16): Class B, Suitable for regular supervision and support.
3. Total Score High (17-42): Class A, Suitable for intensive supervision and support.

11.9.5.1 Temporary support

1. The children's officer will meet or communicate with the child if necessary.
2. The children's officer will provide information regarding education and vocational training based on the request from child and/or parents or guardians.

11.9.5.2 Regular supervision and support

The children's officer will meet the child and his/her parents/guardians at least once a month.

3. He/She provides information to the child regarding education or vocational training more than once a month.

4. He/She considers the possibility of referring children to appropriate organizations or bodies to consider the education or vocational training.
5. He/She will consider the possibility of referring the children to Child Protection volunteers for purposes of getting close support in the community.

11.9.5.3 Intensive Supervision and Support

6. The children's officer will meet the children and his/her parents/guardians/relatives/other appropriate persons at least twice a month.
7. He/She will provide information to the child regarding education and vocational training more than twice a month.
8. He/She will try to refer the children to appropriate organizations/bodies for education or vocational training based on his/her needs.
9. He/She will try to refer the children to child protection volunteers for getting close support in the community.
10. He/She tries to get various kinds of support through Area Advisory Council (case committees) and other relevant agencies, organizations and bodies as much as possible.

11.9.6 Responsible office for supervision

11.9.6.1 Organ in Charge of Supervision

Supervision over the child should be exercised by the children's office who has jurisdiction over the place of his/her residence (or the place where he/she is at present or the last known residence or the place where he/she has been present, in case he has no fixed residence or such is not known).

11.9.7 Procedure for asking permission for changing his residence or going on a long journey

1. The period of a long journey prescribed in this Article should be construed to be no less than seven days.
2. In order to ask his/her supervisor for permission for going on a long journey, the child should apply to the children's officer in writing, clearly indicating his/her name and residence, the new residence or the destination of journey, the reason of changing residence or the purpose of journey, and the date of changing residence or the period of journey. Writing is not necessary in case of urgency and the journey does not exceed seven days. If the child is illiterate, he or she can thumbprint.
3. The children's officer should grant permission to the child in case that the officer, considering the reason of changing residence or the purpose of journey, his/her environment of the new residence or the destination of journey, mental and physical state, progress under supervision and other relevant matters, deems that there is no likelihood of hindrance this/her rehabilitation.

11.9.8 Transfer of case

1. The children's officer/probation officer who granted permission for journey if necessary, may ask the children's officer in the office that has jurisdiction over the place of child's temporary stay to provide supervision to him/her during his/her temporary stay. The latter children's officer should provide the child with necessary supervision, and send a report to the former children's officer.
2. When a children's officer finds out that a child under supervision moved to, or there is a reason to believe that the child moved to, a place where another children's officer has jurisdiction, the former children's officer should ask the latter children's officer to confirm whether or not the child lives in the new place.
3. The children's officer who received the inquiry document should start investigation without delay, and send the outcome of his/her investigation to the children's officer who made the request.
4. Even if a children's Officer is not asked to make inquiry but in the course of his/her duties finds out that a child under the supervision of another children's officer lives within his/her area of jurisdiction, he/she should take action to notify the supervising children's officer.

5. When a children's officer has confirmed that the child whose supervision, he/she is in charge lives in the place over which another children's office has jurisdiction, the former children's officer should transfer the case to the latter office with case records and other relevant records.
6. The preceding procedure should be applied to the cases where the child placed on a repatriation order is repatriated.

11.9.9 Officer in charge

The children's officer should give supervision, provided that, if necessary and appropriate, the supervision may be entrusted to an authorized officer through the delegated powers for example, Volunteer Children's Officer as provided for under supervision order (Section 130 of the Children Act) under the guidance of children's officer.

11.9.10 Summon Letters

In case a Children's Officer lays information before a magistrate to obtain the issue of warrant for search of children, much as possible, provided that the same should not apply in case that there are reasonable grounds that in the opinion of the children's officer, prompt measure is necessary to be taken.

11.9.11 Application for review of judgment

1. Any child who is dissatisfied with the recommendation made by the children/probation officer may apply for a review. In case the judgment is made by a SCCO/SCPO the application may be made to the County Children's Coordinator or Regional Probation Coordinator in the region, and in case that the judgment is made by a Children's Court, Sub County Children Officer and children's officer in the County Children Coordinator's office, the application may be made to the Director Department of Children's Services.
2. The application for review may be made on behalf of the child by his parents or guardians.

11.10 PROCEDURE OF COMMUNITY SUPERVISION IN PROBATION AND AFTERCARE SERVICE

11.10.1 Community supervision in probation and aftercare service

Community supervision connotes statutory supervision and enforcement of non-custodial orders made by the courts in respect to children who are in conflict with the law or children found by the court to exhibit delinquent behaviour.

11.10.1.1 Probation Orders (Cap. 64) Purpose

The purpose of the probation order supervision, is to promote compliance of court orders and secure the rehabilitation of the child in order to make the child become a law abiding citizen, self-reliant in future by improving on his/her skills, education and providing support. It is also meant to prevent the child offender from committing further offences. A probation order can only be made by the court for the purposes of enforcing set conditions and for assisting the child to undergo therapeutic supervision by a probation officer.

11.10.1.2 Subject of Supervision

Any child who has committed an offence and found guilty can be placed on supervision by the court making a probation order under Cap. 64 Section 4 (1) of Probation of Offenders Act and the subject is referred to as a probationer.

11.10.1.3 Supervisor

The person who is mandated to enforce probation order in their area of jurisdiction is the probation Officer. The probation officer can enlist the support of other persons including the family and the Community Probation Volunteers (CPV).

11.10.1.4 Community Probation Volunteers (CPV)

Community probation volunteers are persons appointed by the Director of Probation and Aftercare services department to assist the probation officer in supervision of probation orders and does so on behalf of the probation

officer. Volunteer probation officers are the face of community involvement in child offender supervision and provide auxiliary support.

11.10.1.5 Authority of making the order

The law courts are mandated to make probation orders under Section 4 (1) & (2) and Section 5 of the Probation of Offenders Act. No other body or person can make a probation order but there is provision in the Constitution under Article 133 for the president to exercise Power of Mercy that may subject a child offender to a probation order.

11.10.1.6 Reports to the court

Subject to Section 4 (1) or (2), the court prior to making a probation order may request for a pre- sentence report from the probation officer. However good practice and provisions of the Children Act on child offenders has seen no order is made before making a probation order.

Consequently, the probation officer conducts a social enquiry through interviewing the child and other relevant stakeholders to get his/her views of the offence, acceptance of responsibility and feelings of guilt, remorse, attitudes and motivation to change, criminal history, relationships and personal problems.

A pre-sentence report is compiled and submitted and the court referring to the facts of the offence involved aggravating and mitigating factors, from the report the court takes into consideration the age, character, antecedents, home surroundings, health, mental condition and any extenuating circumstances in which the offense was committed and proceeds to make a decision on the sentence also making a consideration of probation officers recommendation.

11.10.1.7 Duration

The minimum probation period is six months and maximum period is three years. The commencement date of the order commences on same day the order is made and the expiry period is given a day earlier to the date of expiry. If the order has not attracted the maximum sentence the order can still be extended upon application by the probation officer to create more time for rehabilitation and support.

11.10.1.8 Conditions of probation order

According to Section 5 (1) of the Probation of Offenders Act, these are the conditions or instruments which enhance supervision of the order.

1. The probationer shall be of good behaviour throughout the probation period.
2. The probationer shall report to the probation officer once a month or more frequently as required by the probation officer.
3. The probationer shall not associate with people whom he/she is forbidden by probation officer.
4. The probationer shall receive home visits by the probation officer.
5. The probationer shall answer truthfully to all questions asked by the probation officer.
6. The probationer shall report any change of employment or residence to probation officer.
7. The probationer shall abstain from overindulging in alcohol and liquor.
8. The probationer shall obtain and remain in employment or /schooling.
9. The probationer shall reside in a place known or as instructed by the probation officer.
10. Any other terms and conditions or orders as given by the court such as compensation, reconciliation, continuing with school among others.

Procedure for permission for changing his/her residence or going a long journey (Section 11 (3)). In case a probationer has changed place of residence or intends to change the place of residence from the place where the order of supervision was made, then the probation officer shall make an application to the court which made the order to substitute the supervision from him/her to the probation officer for the area of intended residence and a supervision notice shall be given to the child offender.

11.10.1.9 Transmission of Documents

According to Section 10(3) when a breach proceeding is being made or whereby the probationer has been convicted of subsequent offense by another court the magistrate shall transmit a certificate confirming the same.

Where, an order of variation in case of change of residence or committal to institution the court shall transfer the documents to that court which is considered to be mandated to handle the case for any action. The probation officer shall transmit the supervision document to the new county supervisor (Section 11).

11.10.1.10 Breach of the order

Breach of order is whereby a probationer has committed a subsequent offense while the probation order is in operation or where the probationer has failed to comply with the terms and conditions of the order Section 7 (1).

11.10.1.11 Revocation of the order

Revocation comes after breach of order by the offender. Breach of the order may mean the court substituting the court order for another, including institutional placement or even a fine. Then proceed to pass any sentence, which could have been given if the offense had just been convicted in, Section 8.

11.10.1.12 Discharge of the Order

A probation order can be discharged upon application made by probation officer for example, when a probationer is permanently moving out of the country (Section 12).

11.10.1.13 Extension of supervision period

A probation officer can make an application for extension of supervision order provided that the order was not exceeding three years. The extension should not exceed three years. This can be made for purposes of extending rehabilitation and support, if the probation officer is not satisfied with the level of rehabilitation, Section 11(1).

11.10.2 Review & evaluation (Case Conference & Case Committee)

During the process of rehabilitation, the progress is reviewed through discussing the case in case conferences and case committees for purposes of getting new ideas/inputs and support from other officers and stakeholders for purposes of referrals. According to subsidiary legislation, whereas case conferences are composed of probation officers, the case committees are composed of people of different professions and organizations. For example County Commissioners, faith based leaders, relevant heads of departments in a local jurisdiction, NGOs managers among others.

The committee meets at intervals of at least six months and review reports are presented by probation officers. On the other hand, the case conferences are held quarterly or frequently as need be.

11.10.2.1 Special conditions

According to Section 6 of Cap. 64 the probation order may be enhanced by other conditions ordered by the court like orders relating to payment of costs, compensation for damages reconciliation and any others. This procedure enables the probation officer to promote reconciliation with the victim. It is however notified that the probation officers should play a leading role in advising the court on the application of this section.

11.11 PROBATION HOSTEL

These are established under Section 5 (2) of Cap. 64 as part of community supervision to offer temporary accommodation for probationers coming from unfavourable home environment and the maximum period for residence is one year. The operation runs like a normal home where residents are allowed to interact with the neighbouring community like attending local schools and vocational training are also offered.

11.12 REFERRAL SYSTEM

During supervision and rehabilitation when a probation officer finds that the child can benefit more from services

and support offered by other stakeholders, then assistance can be sought through referring the child to the relevant institution or organization for example health services, school issues, counselling for anti-social behaviour or addition or any other form of material or vocational skills acquisition.

11.12.1 Post institutional supervision

11.12.1.1 Post institutional supervision of ex-borstal offenders

This entails supervision of clients who had undergone other forms of rehabilitation in institutions by other officers under different mandates, for instance the Borstal Institutions Act Cap.92 for ex-borstal offenders and Constitution (Article 133) for ex-psychiatric patients known as special category criminals.

It is important to note that it is very rare to have children in the last category due to duration taken in the mental health facility. Majority of post institutional supervision clients in the probation department are ex borstal offenders.

There is no clear mandate as to whether the ex-inmate from rehabilitation school should be placed under the supervision of the department following the role it plays in provision of environmental adjustment reports. However, the department has authorized and directed probation officers to undertake aftercare supervision for children exiting from rehabilitation schools as the case may be. It should be noted further that post institutional supervision falls within the Aftercare Policy which falls under the overall mandate of the department of probation.

11.12.2 Purpose of post institutional supervision of ex-borstal offenders

This is aimed at reintegrating the child back to the community, ensuring safe arrival and settlement, enhancing the utilization of the skills and techniques acquired in the institution so as to make them self-reliant and law abiding citizens also to enforce compliance of the terms and conditions of the release.

11.12.2.1 Authority

The Commissioner General of prisons is mandated to grant leave of absence and may at the same time revoke such leave of absence for breach of its conditions and direct the child whom the leave was granted to return to the borstal institution, Borstal Institutions Act Cap. 92 Section 25 & 26.

11.12.2.2 Supervisor

This is the person appointed under Section 26 (1) of the Borstal Institutions Act Cap. 92. They should be trustworthy, respectable and willing to receive and take charge to supervise, guide and advise the child for the remaining period for which the inmate has been directed to be detained or until cancellation under Section 27. For purposes of supervision, probation officers are usually appointed as such.

11.12.2.3 The role of the supervisor

1. Receive and resettle the ex- borstal.
2. Take charge to supervise.
3. Guide, advise and befriend him/her for the remaining period.
4. Make preliminary inquiries as ordered by the institution.
5. Undertake supervision of the condition and terms of the license in order to enforce them.
6. Ensure the ex-borstal inmate understands the terms and conditions of the license and enforce it through encouragement, persuasion and warning.
7. Keep and update supervision records.
8. Make appointments and meet the ex-borstal at least once a month.
9. Make home visits to check on the child's behaviour and form of life.
10. Make periodic enquiries on academic progress if the child is in school.
11. Making assessment and Individual Treatment Plans (ITP).
12. Make referrals depending on the child's needs to other stakeholders for assistance.

13. Make applications for revocation of license in case of breach.
14. Presentation of progress of rehabilitation in case conferences and case committee for further advice and support.
15. Provide support and empowerment.
16. Role modelling by being a good example.

11.12.3 Method of supervision

1. Supervision is basically the casework approaches which may not be limited to the following:
 - a) Meeting the ex-borstal during the monthly reporting appointments.
 - b) Providing guidance and counselling to the ex-borstal.
 - c) Making home visits for follow ups.
 - d) Making referrals for assistance to relevant stakeholders, for example, for treatment counselling.
 - e) Empowerment in form of vocational skills, formal education through fees payments.
 - f) Case conferencing to acquire new ideas and assistance for the ex-borstal.
 - g) Holding discussions with the family and relevant others to improve on the unfriendly environments.
 - h) Giving instructions deemed necessary to the ex-borstal
 - i) Facilitating reconciliations through mediation.

11.12.3.1 Duration

The duration of supervision commences on the date the release on license is granted and remains in force until the expiration of the period for which the ex-borstal had been committed Section 26 (2), or until cancellation under section 29 of the Borstal Institutions Act Cap. 92.

The ex-borstal shall also remain under aftercare supervision for a period of one year. For instance, if a youthful offender is granted license after staying in the institution or one year, he/she shall remain on community supervision for two (2) years (for which he would have been in confinement) and for another one year (for which he would have been on supervision had he completed the whole three (3) years in confinement. For instance, if the youthful offender is released after one (1) year, he shall remain under supervision for 2 years and further 1 year totalling to three (3) years community supervision.

According to Section 26 (3) the period served on license shall be termed as part of time spent in the institution.

11.12.3.2 Breach and revocation

A license may be revoked by order in writing by the Commissioner General of Prison if the ex-borstal has broken any condition of the license or if the commissioner and the Aftercare Committee considers revocation license to be in the best interest of the person it was granted, Section 27 (a & b) of the Borstal Institutions Act Cap. 92.

Upon revocation of the license, the ex-borstal offenders should be apprehended and escorted back to the institution to complete the remaining period. The order from the superintendent of the borstal institution revoking the license has enough authority to cause the police to effect arrest.

11.12.3.3 Transfer

Relocation from one jurisdiction to the other is bound to happen, in case of such the committing office will liaise with the receiving office within the new jurisdiction for supervision upon release of the ex-borstal.

11.12.3.4 Record management

The following documents are to be maintained in the case of ex-borstals.

1. The initial report committing the subject to the institution.
2. The final home report to the Aftercare committee.
3. The license order which gives details of the remaining period for the term to be served and the nature of offense resulting to committal, the committing court and committing probation station and gives the necessary conditions.

4. Supervision records.
5. Review records to the case committee.

Note: Record management for ex-borstals starts right from the date of committal to the institution as the supervising officer is left liaising with the home and the same records are used for his supervision upon release.

11.12.4 Transmission of documents

In preparation for the release of the child, the superintendent in charge of the borstal requests for the final home report through writing to the probation officer. The final home report sent by the probation officer is relied upon for decision making during the board meeting when reviewing cases to grant license.

Upon the grant of release on license, the order is forwarded to probation officer as a tool for supervision. In case of breach the supervising officer makes an application of revocation of license by writing to the Commissioner General of Prisons through the superintendent in charge of the releasing borstal institution.

The Commissioner General revokes and communicates the same to the supervising officer through the superintendent. The same revocation order is used for purposes of apprehending the ex-borstals by the police.

The police use the same revocation order to escort the ex-borstals to the institution to the releasing borstal institution.

11.12.5 Review and evaluation

Activity



Ask the participants to role-play. Divide the class in appropriate numbers to reflect a children's court.

Conduct a procedure of presenting a case for committal to an institution with all the relevant documents presented and duly signed.

Conduct a probation order breach procedure before arrest and after arrest depicting what actions the court may take on a child who has breached supervision terms.

During the process of rehabilitation, the progress is reviewed through discussing the case in case conferences and case committees for purposes of getting new ideas/inputs and support from other officers and other stakeholders for purposes of referrals. Whereas case conferences are composed of probation officers, the case committees are composed of people of different professions and organizations such as, opinion leaders, church leaders, heads of departments, NGOs, managers among others.

The case committee meets at intervals of six months and review progress reports are presented by probation officers. The case conferences are held quarterly or as frequently as need be. Probation officers submit quarterly audit reports to the Board of Visitors on all ex-borstals who are under supervision.

11.12.6 Post Institutional Supervision -Rehabilitation School Children

According to the Children Act, section 54(2) "A child committed to a rehabilitation school shall, after the expiration of the prescribed period of his/her stay, be under supervision of such a suitable person the Director shall appoint, for a period of two years, or until he/she attains the age of twenty-one years whichever shall be the shorter period". This provision is however not largely used at the moment and it does not define who the 'suitable person' is.

1. This calls for the reintegration processes to take effect.
2. The rehabilitation school manager can inform the committing SCPO to prepare an FHR and the SCPO should make the FHR for the child in the rehabilitation school and undertake the child's supervision in the community after his/her release.
3. However, there is no clear mandate as to whether the ex-inmate from rehabilitation school should be placed under the supervision of the Probation Department following the role it plays in provision of the FHR.

4. In the event that the child is released from the rehabilitation school, the supervision of that child for the purpose of effecting aftercare will always be in accordance with the existing probation practices on reintegration.

Revision exercise

List the roles of a CCPO (probation and a children's officer) on a child offender.

What are the key practice challenges that may be experienced by CCPO when undertaking community supervision of a child?

How can the challenges be surmounted?

11.13 BAIL AND BOND

11.13.1 Definitions

Victim – any natural person who suffers injury, loss or damage as a consequence of an offence.

Witness – a person who sees an event, crime or accident or has knowledge or experience related to an event and who may be called upon to testify in a trial process.

Bail – an agreement between a subject or his/her sureties and the court that the subject will attend court when required, and that should the subject abscond, in addition to the court issuing summon letter, a sum of money or property directed by the court to be deposited, will be forfeited to the court.

Bail Information Report – a social inquiry report prepared by probation officers based on information generated about the background and community ties of the subject for the purposes of verifying information provided to the court by the subject, to assess the likelihood that the subject will appear for trial and to enable the court to impose reasonable bail terms and conditions.

Bail term – the specific amount pronounced by the court as a requirement for a subject facing a charge, to deposit so as to secure his or her release from custody and await trial.

Bail conditions – these are the additional measures imposed by the court as a means to securing the subject attendance to court and to forestall interference with the course of justice.

Bond – an undertaking, with or without sureties or security, entered into by a subject in custody under which he or she binds him or herself to comply with the conditions of the undertaking and if in default of such compliance to pay the amount of bail or other sum fixed in the bond.

Bond with surety – this is where the court requires that a security be advanced and that additionally, a third party gives a guarantee to the court that they will ensure that the subject attends court when required.

Free bond – this is where the subject is released without being required to advance any security to secure his/her court attendance. It is also known as personal bond, or personal recognizance.

Surety – a person who undertakes to ensure that a subject will appear in court and abide by bail conditions. The surety puts up security, such as money or title to a property, which can be forfeited to the court if the subject fails to appear in court.

11.13.1.1 Role of the criminal justice agencies and other stakeholders in supervision collaboration and coordination

For effective management of bail supervision, probation officers need to work with other criminal justice agencies and stakeholders. The following agencies and individuals will play specific roles as stipulated herein:

The court

1. Shall make the order for the preparation of the Bail Information Report;

2. Shall make the bail supervision order setting the terms and conditions of the bail supervision;
3. May review, revoke, amend, terminate or discharge the bail supervision order.

The child offender

1. Comply with the terms and conditions of the bail supervision order.
2. Attend all bail supervision meetings as directed by the court.
3. In case of any justifiable reason why they cannot attend a meeting, inform the relevant criminal justice system agency.
4. Report any complaint about unfair treatment to the criminal justice system.

Office of Director of Public Prosecutions (ODPP)

1. To liaise with the police to bring to the attention of the court any compellable reasons that may assist the court in the determination of bail.
2. Make recommendations for possible bail conditions including any protective measures.
3. Apply for cancellation of bail upon breach of bail terms and condition.

Police Department of Criminal Investigations Officer

1. Effect summon letters against the subject as directed by the court.
2. Provide security to the probation officer and other criminal justice agencies as ordered by the court where necessary.
3. Verify any information that the court or prosecutor may wish to be verified.

Sureties

1. Must ensure that the subject person attends all mentions and hearings as required by the court;
2. They must ensure that the security documents they presented are genuine;
3. Where they have any reason to believe the subject intends or is about to breach the bail supervision conditions, they must inform the court, for necessary action.

National government and local administration - chiefs, sub-chiefs and village elders

1. In liaison with, the community, the family members of the subject and the victim of the crime, must liaise with the probation officer and provide relevant information required for purposes of bail information report.
2. In case of any breach or intended breach thereon, they must report it to the police.
3. They may be required to give evidence on the subject in relation to breach of order or commission of a subsequent offence(s) that comes to their knowledge.

OTHER ALTERNATIVES

11.14 DIVERSION

Diversion is a programme or process which involves removal or re-routing a child offender away from the existing justice processing system, and directs cases involving child offender to community alternative support service. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) Article 11.1 – 11.4 promotes diversion.

This has also been captured in Article 53(1) (f) of the Constitution which provides that no child shall be detained, except as a measure of last resort.

The Children's law amendment 2007, which is pending for legislation, seeks to set out the spirit and framework of diversion.

11.15 ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR is a process other than litigation or judicial decision, in which an impartial individual or group (an ADR practitioner) assists disputants to resolve the issues between them. It is a term generally used to describe 'a set of approaches and techniques aimed at resolving disputes in a non-confrontational way'.

ADR is however not applicable to serious offenses such as murder, robbery with violence or any offence under the Sexual Offences Act.

11.15.1 Negotiation

Negotiation technique in ADR is a process whereby disputants directly discuss with each other possible outcomes on matters causing disagreement in an attempt to reach a common ground (Stone, 2000). During the negotiation, parties are expected to express their concerns, interests and exchange proposal on how the dispute is to be resolved without any further grudges.

11.15.2 Mediation

Mediation technique is a process that employs the assistance of a neutral or impartial third person(s) to facilitate negotiation between the parties to a dispute in an endeavour to reach a mutually acceptable resolution (Lindell, 2004). The underlying reason for bringing the third party to the resolution of the dispute under mediation is to address the salient interest of the disputant and guide them in an innovative manner to arrive at a possible outcome. The mediation process is close to negotiation in its premises (Goldberg, Sander, & Rogers, 1992).

11.15.3 Arbitration

Arbitration technique is an agreement by the disputant parties that a tribunal of their choice settles the dispute arising between them. Arbitration as a form of ADR also involves an impartial third party in the dispute resolution process. The third party in arbitration serves as a judge who listens to each party's interests and demands and as well considers any relevant evidence presented, and based on the facts gathered, he/she renders a binding decision (an award) on the parties (Stipanowich, 2004). Disputants are allowed to negotiate any aspect of the process, including the selection of an arbitrator, plan the hearing procedure and pattern, and have the sole decision to allow a legal expert to be present.

However, the outcome of the process can only be questioned or appealed to a formal court on narrow justification and exceptions (Yona, 2013).

11.15.4 Conciliation Technique

Conciliation technique is a process that also involves the activity of an impartial third party called conciliator. The conciliator plays an active role in the resolution of a dispute by making an available wide range of options or proposals for the parties to resolve the dispute. The conciliator plays an interventionist role and he/she is usually seen as a neutral but experienced person who has what it takes to provide the best possible solution to the dispute (Stone, 2000).

11.16 REFERENCES

Bail and Bond Policy Guidelines (2015)

Department of Children's Services and JICA (2003) *The Manual for Children's Officers, Staff of Children's Institutions, and Volunteer Children Officers* (Second Revised Version).

Goldberg, S. B., Sander, F. E. A., & Rogers, N.H. (1992). *Dispute resolution: Negotiation, mediation, and other processes*. Boston, MA: Little Brown.

Lindell, B. (2004). *Mediation in Sweden*. ADR Bulletin, 7(5), 86.

Maruna S., Immerigeon, R.,(2004) *After Crime and Punishment: Pathways to Offender Reintegration*. Willan Publication.

Probation and Aftercare Services (1994) *The National Standards Manual*. Government Printers: Kenya, Nairobi

Republic of Kenya (1998) *Guidelines for the supervision of child offenders on Community Service Orders*. Government Printers: Kenya, Nairobi.

Republic of Kenya (1967) *The Borstal Act, Cap. 92*. Government Printers: Kenya, Nairobi.

Republic of Kenya (2001) *The Children Act No. 8*. Government Printers: Kenya, Nairobi.

Republic of Kenya (1977) *The Prisons Act Cap. 90*. Government Printers: Kenya, Nairobi.

Republic of Kenya (1981) *The Probation of Offenders Act Cap.64*. Government Printers: Kenya, Nairobi.

Republic of Kenya (2013) *Through Care and Aftercare Guidelines in Statutory Institutions*. Nairobi, Kenya.

Yona, S., (2013) *Alternative dispute resolution approaches and their application*. Telaviv: Israel Center for Negotiation and Mediation.

CHILDREN WITH SPECIAL NEEDS IN THE JUVENILE JUSTICE SYSTEM

Duration	3 hours
Overview	This unit focuses on children with special needs in the JJS and the role of the CCPOs in their rehabilitation.
Learning Objectives	By the end of this unit the participant should be able to: a) Define special needs/mental illnesses. b) Demonstrate an understanding of the characteristics of various special needs. c) Outline the categories of special needs/mental illnesses in children in the JJS. d) Identify signs of mental illnesses and other special needs. e) Identify ways to support children with special needs in JJS.
Preparation/Learning Activities	Request participants to share in two to three minutes some of their experiences in dealing with mental health disorders and various special needs in children within the JJS.
Materials	Flip chart and markers, laptop and projector
Session Type	Lecture, discussion, and activity

12.1 INTRODUCTION

Children and adolescents may find themselves in conflict with the law not because they deliberately set out to break the law but due to underlying psychiatric/physical disabilities. This unit describes selected categories of mental illnesses and physical disabilities that likely contribute to criminal behaviour among juveniles and also discusses the role of CCPOs working with the juveniles with the said conditions.

12.2 SPECIAL NEEDS

Children with special needs include those who have a disability or a combination of disabilities that make learning or other activities difficult. Special needs children include those who have:

1. Neuro-developmental disabilities, which causes them to develop more slowly than other children;
2. Speech and Language impairment, such as a problem expressing themselves or understanding others;
3. Physical disability, such as vision problem, cerebral palsy, or other conditions;
4. Learning disabilities, which distort messages from their senses;
5. Emotional disabilities, such as antisocial or other behavioural problems.

12.3 MENTAL ILLNESSES

According to APA (2018), mental illnesses are health conditions involving changes in emotion, thinking or behaviour (or a combination of these). They are associated with distress and/or problems functioning in social, work or family activities. Individuals with mental illness are generally characterized by a combination of abnormal thoughts, emotions, behaviour, and relationships with others (WHO, 2018).

This unit describes selected categories of mental illnesses that are likely to contribute to criminal behaviour.

12.3.1 Disruptive, impulse-control and conduct disorders

Disruptive, impulse-control, and conduct disorders include conditions involving problems in the control of emotions and behaviours. Problems in this category are manifested in behaviours that violate the rights of others such as aggression, destruction of property and/or that bring the individual into significant conflict with societal norms and laws or authority figures (APA, 2013).

1. Conduct disorders

These are repetitive and persistent patterns of behaviour in which the basic rights of others or major age-appropriate societal norms or rules are violated, as manifested by the presence of at least three of the following criteria.

Aggression to people and animals

1. Often bullies, threatens or intimidates others.
2. Often initiates physical fights.
3. Has used a weapon that can cause serious physical harm to others such as a bat, brick, broken bottle, knife or gun.
4. Has been physically cruel to people.
5. Has been physically cruel to animals.
6. Has stolen while confronting a victim, for example mugging, purse snatching, extortion, armed robbery.
7. Has forced someone into sexual activity.

Destruction of property

1. Has deliberately engaged in fire setting with the intention of causing serious damage.
2. Has deliberately destroyed others' property other than by fire setting.

Deceitfulness or theft

1. Has broken into someone else's house, building or car.
2. Often lies to obtain goods or favours or to avoid obligations that is "cons" others.
3. Has stolen items of nontrivial value without confronting a victim for example shoplifting, but without breaking and entering, forgery.

Serious violations of rules

1. Often stays out at night despite parental prohibitions, beginning before age 13 years.
2. Has run away from home overnight at least twice while living in the parental or parental surrogate home, or once without returning for a lengthy period.
3. Is often truant from school, beginning before age 13 years.

2. Oppositional Defiant Disorders (ODD)

Children with Oppositional Defiant Disorders display a pattern of angry/irritable mood, argumentative/defiant behaviour, or vindictiveness lasting at least 6 months as evidenced by at least four symptoms from any of the following categories, and exhibited during interaction with at least one individual who is not a sibling.

Angry/Irritable mood

1. Often loses temper.
2. Often touchy or easily annoyed.
3. Often angry and resentful.

Argumentative/Defiant behaviour

1. Often argues with authority figures and adults.
2. Often actively defies or refuses to comply with requests from authority figures or with rules.

3. Often deliberately annoys others.
4. Often blames others for his or her mistakes or misbehaviour.

Vindictiveness

1. Has been spiteful or vindictive at least twice within the past 6 months.



Explain that the frequency of such behaviours should be used to distinguish a behaviour that is normal and one that is symptomatic. For instance, for a child older than 5 years the behaviour has to occur at least once a week for six months.

12.3.2. Trauma, Stress and/or related disorders

This category encompasses disorders in which exposure to a traumatic or stressful event predisposes a child to clinically significant distress.

a) Post-traumatic stress disorder

This disorder is characterized by:

1. Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:
2. Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s).
3. Recurrent distressing dreams in which the content and/or affect of the dream are related to the traumatic event.
4. Dissociative reactions such as flashbacks in which the individual feels or acts as if the traumatic event(s) were recurring.
5. Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).
6. Marked physiological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).
7. Persistent avoidance of stimuli associated with the traumatic event(s), beginning after the traumatic event(s) occurred, as evidenced by one or both of the following:
8. Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (e.g., “I am bad,” “No one can be trusted,” “The world is completely dangerous,” “My whole nervous system is permanently ruined”).
9. Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others.
10. Persistent negative emotional state (e.g., fear, horror, anger, guilt, or shame).
11. Markedly diminished interest or participation in significant activities.

12.3.3 The Neuro-Developmental disorders

The neurodevelopmental disorders are a group of conditions that typically manifest early in development, often before the child begins grade school. They are characterized by developmental deficits that produce impairment in personal, social, academic, or occupational functioning. The deficits result in impairments of adaptive functioning, such that the individual fails to meet standards of personal independence and social responsibility in one or more aspects of daily life, including communication, social participation, academic or occupational functioning, and personal independence at home or in community settings.

1. Attention Deficit Hyperactivity Disorder (ADHD)

Attention deficit/hyperactivity disorder ADHD is a disruptive behaviour characterized by inattention, hyperactivity and impulsivity.

A child with this disorder often:

- a) Fails to give close attention to details, makes careless mistakes in school work, or other activities.
- b) Has difficulty sustaining attention in tasks or play activities.
- c) Does not seem to listen when spoken to directly.
- d) Does not follow through instructions and fails to finish school work, chores, and duties (not due to oppositional behaviour or failure to understand instructions).
- e) Has difficulty in organizing tasks and activities.
- f) Avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as school work or homework).
- g) Loses things necessary for tasks or activities such as toys, school assignments, pencil, books, or tools.
- h) Is easily distracted by extraneous stimuli.
- i) Is forgetful in daily activities.

Hyperactivity

A child with this disorder often displays six or more of the following symptoms of hyperactivity.

1. Fidgets with hands or feet or squirms in seat.
2. Leaves seat in classroom or other situations in which remaining seated is expected.
3. Runs about or climbs excessively in situations where it is inappropriate. In adolescents or adults may be limited to subjective feelings or restlessness.
4. Has difficulty playing or engaging in leisure activities quietly.
5. Is 'on the go' or often acts as if driven by a motor.
6. Talks excessively.

Impulsivity

Impulsivity has persisted for at least 6 months to a degree that is maladaptive and inconsistent with developmental level.

A child with this disorder often:

1. Blurts out answers before questions have been completed.
2. Has difficulty waiting in turns.
3. Interrupts and intrudes on others and butts into conversation or games.



Explain to the participants that the CCPO should arrange for psychological testing to confirm the presence of ADHD. It is also important that psychological testing to rule out emotional factors or learning disabilities as the basis for the client's maladaptive behaviour is carried out.

2. Intellectual Disability Disorder

Intellectual disability disorder is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains comprised of the following:

- a) Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, and standardized intelligence testing.
- b) Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning

in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

- c) Onset of intellectual and adaptive deficits during the developmental period.

3. Autism Spectrum Disorders

This condition is characterized by persistent deficits in social communication and social interaction across multiple contexts.

- a) Deficits in social-emotional interaction, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, to failure to initiate or respond to social interactions.
- b) Deficits in non-verbal communicative behaviours used for social interaction, ranging, for example, from poorly integrated verbal and non-verbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and non-verbal communication.
- c) Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behaviour to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers. Specify current severity where severity is based on social communication impairments and restricted, repetitive patterns of behaviour.
- d) Restricted, repetitive patterns of behaviour, interests, or activities, as manifested by
 - i) Stereotyped or repetitive motor movements, use of objects, or speech.
 - ii) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or non-verbal behaviour.
 - iii) Highly restricted, fixated interests that are abnormal in intensity or focus
 - iv) Hyper-activity or hypo-activity to sensory input or unusual interest in sensory aspects of the environment.



Note that Autism is in a wide spectrum range such that diagnosis is specific to the individual where some may be intellectually impaired while others can be very intellectually able.

12.3.4 Substance related and addictive disorders

The substance related disorders encompass various separate classes of drugs: alcohol; cannabis; hallucinogens; inhalants; opioids (over the counter-drugs) and tobacco.

All the substances that are taken in excess and have a common direct activation to the brain reward system resulting in a 'high'.

The substance-related disorders are divided into two groups:

1. Substance use disorders
 - a) Cognitive, behavioural and physiological symptoms causing the individual to continue use despite negative consequences.
 - b) Change in brain circuit causing cravings, relapse.
 - c) Characterized with reduced control, social impairment and risky use.
2. Substance induced disorders.
 - a) Intoxication-disturbance of perception, wakefulness, attention, judgement, psychomotor behaviour and interpersonal behaviour.
 - b) Withdrawal-tolerance depends on characteristics of specific substances.

Substance related disorders include:

1. Alcohol related disorders
2. Cannabis related disorders
3. Hallucinogen related disorders
4. Inhalant related disorders
5. Opioid-related disorders
6. Tobacco related disorders

12.3.5 Sexual Disorders

It is noteworthy that most of the conditions defined as sexually problematic are not related to criminality unless those acts are done without partners' consent.

The only condition included in the category of sexual disorders due to its relation to child sexual abuse and defilement is paedophilic disorder sexual focus on children.

Paedophilic disorders

1. Recurrent, intense sexually arousing fantasies, sexual urges, or behaviours involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
2. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
3. The individual is at least age 16 years and at least 5 years older than the child or children.

Note: Does not include an individual in late adolescence involved in an ongoing sexual relationship with a 12 or 13-year-old.

SEXUAL DISORDERS

Activity



Participants to brainstorm on various forms of sexual offences among juveniles, including causes and possible interventions. Include defilement and incest. Who are the common perpetrators and victims?

Technology has expanded exposure of sexually explicit information to children through media for instance internet, contemporary television and music. It is recommended that the behaviours are evaluated within different contexts such as socialization difficulties or family dysfunction that might include history of neglect, violence, and abuse (Kellogg, 2010).

12.4 PHYSICAL DISABILITIES

Definition of physical disabilities

A physical disability is a limitation on a person's physical functioning, mobility, dexterity or stamina. According to WHO 2018, disabilities are complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which they live. Overcoming the difficulties faced by people with disabilities requires interventions to remove environmental and social barriers.

Types and forms of physical disabilities in children

The different types and forms of disabilities in children include:

1. Visual impairment
2. Hearing impairment
3. Physical impairment

12.4.1 Visual impairment

This is the difficulty in seeing. It can be mild, moderate, or severe. When a person sees very little or nothing, we say they are **blind**. Some children are completely blind and cannot see anything. However, some have limited vision. Some can only see the difference between light and dark or day and night, but cannot see any shapes. Others can see shapes of large objects, but none of the details. Many children are not blind but have problems seeing things clearly. They may see fairly well for most daily activities for example, but have trouble seeing details. The family may not realize that the child has a visual problem until they notice that the child has difficulty threading a needle, or reading letters on the blackboard at school. Often these children can see much better with eyeglasses or a magnifying glass. Children who are completely blind cannot see at all, even with eyeglasses. Some children are born blind. Others become blind during early childhood or later.

12.4.2 Hearing impairment

This is the failure to respond to verbal communication. Children constantly rub their ears. They show no startle response at noise that would normally evoke such a reaction. The child bends forward to hear what is being said, complains of ringing or buzzing in the ears, watches the speakers lips instead of the eyes, speaks too loudly or in a low monotonous voice, and has a low tolerance for noise or changes in sound pattern.

Deaf/Blind

Children with this impairment have the following characteristics:

1. The auditory senses of these children are dysfunctional.
2. They also have impaired sense of sight and hearing.
3. They have a challenge with living skills and have limited mobility and may be disoriented.
4. They have a challenge in communication.
5. Tactile method can be used to teach them.

How to help a child with a hearing problem

1. Let the child sit at the front of the class where they can hear well.
2. Be sure everyone speaks clearly and loudly enough. But do not shout because shouting makes the words less clear. Check often to make sure the child understands.
3. Have one child who hears well sit next to the one who hears poorly, to repeat and explain things if necessary.
4. Always try to look at the child while you are speaking to them.
5. If possible, the child should be assessed and examined in an Educational Assessment and Resource Services (EARS) centre especially if they have pus in an ear or frequent earache.

12.4.3 Physical impairment

This affects the child's ability to use their body parts and perform motor skills. They are classified into two groups as follows:

1. **Neurological impairment** is when the central nervous system is damaged. This includes the brain, spinal cord and nerve network.
2. **The muscular-skeletal** impairment where the muscles and frame work or bones that support the body are damaged such as having broken or weak limbs.

Causes of physical disability in children

Some causes of disability in children take place during pre-natal stage (during pregnancy), peri-natal (during birth) or during post natal stage (after birth). This can be as a result of the following:

1. Genetics (inherited)
2. Road and other accidents

3. Diseases such as polio
4. German measles
5. Malnutrition
6. Exposure to radiation and x-rays
7. Lack of oxygen during delivery due to prolonged labour
8. Social environment that may lead to severe emotional disturbance
9. Natural disasters
10. Armed conflict
11. Substance abuse, including drugs
12. Child abuse especially in cases of excessive punishment

Activity

Participants to brainstorm on various other forms of emerging special needs that CCPOs can consider in their work such as Intersex, Albinism.

12.5 CHALLENGES FOR CHILDREN WITH SPECIAL NEEDS

12.5.1 Stigma

Stigma involves how one sees the other person. This occurs as a result of social cultural beliefs associated with disabilities. Many people still believe that disability in children is as a result of witchcraft, evil spirits or ancestral curses. There also exists a negative perception in society with many people still believing that ‘disability is inability’. Some cultural practices and beliefs also perpetuate discrimination of such children with some communities viewing such children as ‘taboo children’ or ‘bad omens’.

12.5.2 Discrimination

Discrimination involves receiving different treatment, especially in a negative way, by virtue of being different. According to Article 2 of the UN Convention on the Rights of Persons with Disabilities, “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Discrimination takes place in different forms involving overprotection, fears, negative attitudes and prejudices in areas such as service provision, health and social services, education and vocational trainings (UNICEF, 2007).

In Kenya, children with disabilities face discrimination at all levels in the society. As a result of the stigma associated with disability, they cannot access their rights at the same level as other children. In many homes, such children are hidden from the public and are limited in their access to education, health services, among others.

12.5.3 Child abuse

Children with disabilities are vulnerable to abuse due to their condition. The abuse may be physical, sexual or emotional, among others. They are teased, laughed at, imitated and excluded from activities that their peers enjoy.

12.5.4 Limited access to specialized programmes and services

Children with disabilities require specialized medical and educational programmes to enable them access their rights like other children in the country. This clearly illustrates the fact that many children with disabilities face challenges accessing such programmes and services.

12.5.5 Lack of disability-infrastructural provisions

Children with special needs often need specialized infrastructural provisions for ease of movement and access to amenities. These include lifts, ramps, disability toilets among others.

12.5.6 Insufficient material

Children with special needs often need specialized materials that are not always provided for in the agencies. These include: braille books, hearing aids, walking aids, wheelchairs and many more.

Considerations/Recommendations



Activity:



Participants to discuss various considerations recommendations that can curb the challenges above including provision of child friendly approaches and infrastructure including play therapy, play rooms, Art therapy and more.

Factors to have in mind when working with children

There are values and needs that are universal to children, whether with special needs or not. There are inbuilt desires and actions that can never fail in regards to children. Lundqvist, Allodi and Siljehag (2019) studied young children and found the following needs and themes that are most commonly valued and matter to them:

1. To feel a sense of belonging among peers;
2. To have opportunities for play, creative activities and thinking;
3. Experiences of speed, excitement, and physical challenges;
4. Elements of coziness, withdrawal and comfort for recreation;
5. Feeling safe;
6. Experience growth in knowledge and understanding of the world;
7. Feeling free and autonomous;
8. To have a Connection with nature;
9. To have comforting objects and bonds with home and family.

12.6 THE ROLES OF THE CCPOs WORKING WITH CHILDREN WITH SPECIAL NEEDS

CCPOs working with children with special needs should be able to:

1. Regularly acquaint themselves with the facilities and services available for children with special needs and to refer the children and their families as is appropriate.
2. Refer the child for evaluation, expert opinion and medical care at the earliest time possible.
3. Encourage, validate, use affirmations, unconditional positive regard, acceptance and such other skills to help the children to thrive in all the facets of their lives.
4. Protect the child from any form of discrimination.
5. Teach the child life skills that are equally significant for learning and developing such as self-expression, loving oneself, social skills, and creativity, among others.
6. Seek information about children and learning disabilities as this is both empowering and also helps reduce anxiety.

7. Protect the child from stigma and labelling.
8. Avoid using corporal or humiliating punishment as a means to 'rid' the child of their learning difficulty.
9. Be sensitive to the needs of the child with special needs and ensure that they get assistance whenever they experience difficulties.
10. Ensure that there is full understanding and consent of parents and guardians where personal tasks are necessary.
11. Ensure that any task of a personal nature that the child can do themselves should not be done for them by someone else, they can do it themselves.
12. Inform parents/guardians of emergencies as soon as possible.
13. Be keen to actively listen children with special needs, they are highly likely to be bullied.
14. Arrange for the child to be placed in an appropriate institution.
15. Ensure that the child is put on medication as advised by the specialist.
16. Monitor the child for compliance in taking the medicine and watch out for side effects and discuss these with the doctor.
17. Educate the child's parents or guardians about the symptoms of the various conditions.
18. Assist the parents in developing a system to help the child learn social skills.
19. Assist the parents in developing a routine schedule to increase the child's compliance with school, household work related activities.
20. Advise parents on various issues including registration of the child with the relevant disability bodies, on referrals, support groups and to facilitate them through the processes.

12.7 INSTITUTIONS FOR REFFERAL OF CHILDREN WITH SPECIAL NEEDS

It is important that CCPOs are able to identify and discern circumstances whereby referrals need to be done. The following are some of the institutions for referral in Kenya:

1. Kenyatta National Hospital
2. Mathari Teaching and Referral Hospital
3. Kenya Institute of Special Education
4. Association for the Physically Disabled of Kenya (APDK)
5. All County Hospitals
6. Support Groups
7. Children Offices in all Sub-counties
8. City Primary School
9. Kenya Police Service
10. Government Rescue Centres (DSC managed rescue centres) for example: Machakos Girls Rescue Centre, Thika Rescue Centre for boys.
11. Children Protection Centres
12. The National Legal Aid Service (NLAS) formerly National Legal Aid & Awareness Programme (NALEAP)
13. Charitable Children Institutions
14. NGOs such as Nairobi Women's Hospital, Federation of Women Lawyers (FIDA), The CRADLE and many more.

Revision exercise

CCPOs to develop action plans on how they would manage a case of the child with the following special needs:

1. Mental health disability
2. Physical disabilities

12.8 REFERENCES

American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders (DSM-5®)*. American Psychiatric Pub.

American Academy of Child & Adolescent Psychiatry www.aacap.org/cs/root/facts_for_families/conduct_disorder

Jongsma Jr, A. E. (1996). *The child and adolescent psychotherapy treatment planner*. John Wiley & Sons Incorporated.

Kellogg, N. D. (2010). Sexual behaviours in children: Evaluation and management. *American family physician*, 82(10), 1233-1238.

Kendall, P. C. (Ed.). (2011). *Child and adolescent therapy: Cognitive-behavioural procedures*. Guilford Press.

Lundqvist, J., Westling Allodi, M., & Siljehag, E. (2019). Values and needs of children with and without special educational needs in early school years: A study of young children's views on what matters to them. *Scandinavian Journal of Educational Research*, 63(6), 951-967, DOI: [10.1080/00313831.2018.1466360](https://doi.org/10.1080/00313831.2018.1466360)

Mash, E. M., Wolfe, D. A. (2002). *Abnormal child psychology*. National Institute of Mental Health. Wadsworth: Australia.

Remschmidt, H., Nurcombe, B., Belfer, M. L., Sartorius, N., & Okasha, A. (Eds.). (2007). *The mental health of children and adolescents: An area of global neglect*. John Wiley & Sons.

Schaefer C. E. (2003). *Foundations of play therapy*. John Wiley & Sons: New Jersey.

Schultz, D. P., & Schultz, S. E. (2001). *Theories of personality*. Wadsworth: Australia.

The National Institute of Mental Health. (2018). *Anxiety disorders*. Retrieved from www.nimh.nih.gov/health/publications/anxiety-disorders/completeindex.shsmtl

Thompson, C. L., Rudolph, L. B., Henderson, D. A., Dansby, V., & Dansby, T. (2000). *Counseling children*. Pacific Grove, CA: Brooks/Cole.

Unicef. (2007). *Implementation Handbook for the Convention on the Rights of the Child*. Unicef.

Wiener, J. M. (1999). *Textbook of child and adolescent psychiatry*. All India Publishers and Distributors: Chennai. www.mayoclinic.com/health/adhd

PARTNERSHIP AND SUPPORT NETWORKING FOR CHILD CARE AND PROTECTION OFFICERS

Duration	4 hours
Overview	This unit provides all necessary factors which Child Care and Protection Officers (CCPOs) should understand for working within the support networking. They range from introduction to support networking; influencing factors for support networking, the role of non-state actors in support networking in Kenya, and the application in the formation of networks and its management.
Key Learning Outcomes	By the end of this unit the participant should be able to: <ul style="list-style-type: none"> a) Explain the concept of partnership and networking in relation to JJAs in Kenya. b) Explain the importance of multi-agency partnership and support networking. c) Describe the characteristics of support networking. d) Explain good practices in networking for CCPOs. e) Discuss the factors influencing networking. f) Outline the role of CCPOs and non-state actors in support networking. g) Explain the basic concepts in developing and managing support networks. h) Identify partners to work with in CCPO program at their work stations. i) Initiate partnerships to support CCPO program at the station level. j) Outline the challenges faced by various actors in support networking. k) Suggest recommendations on how to improve networking within the Juvenile Justice stakeholders.
Preparation Activities	/Learning Provide participants with soft copies of lecture notes on the unit Role plays experiences of success stories in support networking
Materials	Flip chart, markers, laptop and projector
Session type	Lecture, discussion, role play and case studies

13.1 INTRODUCTION TO PARTNERSHIP AND SUPPORT NETWORKING

Activity



Ask the participants to share some of their experiences they faced when creating networks as CCPOs in two to three minutes.

The Private Public Partnership Act No. 15 of 2013

The Public Private Partnerships Act No. 15 of 2013 promotes the participation of the private sector in supporting government programs, services and projects. The letter and spirit of this Act in the context of child care and protection calls upon CCPOs to work together to promote the best interest of children. These partnerships are implemented through networking.

Support networking

Networking is a process in which individuals; groups, institutions and organizations work together for the purpose of pursuing a common objective for instance pooling resources, data sharing and communication.

A network may be formal or informal. Formal networks in some context are also referred to as partnerships. These partnerships involve entities that are legally recognized at community, national and international levels. As a CCPO it is important to be acquainted with the Public Private Partnerships Act.

Informal networks on the other hand include the family, neighbours, and work colleagues, followers of a religion, acquaintances, peer groups and members of a community. However, in carrying out the activities of the network there are no rigid boundaries between these two kinds of networks. Quite often, the formal and informal networks co-exist and carry out activities that are of common interest.

The Support Networking in this context is on child protection. In this manual the support network incorporates the major Juvenile Justice Agencies (JJAs) namely National Police Service (NPS), Kenya Prisons Service (KPS), Department of Children Services (DCS), Office of the Director of Public Prosecutions (ODPP), Judiciary and Probation and Aftercare Service (PACS).

Support networking is a process that begins from the point of formal entry to the justice system up to exit. It involves all relevant agencies and partners. It starts from the time a child is deemed to have committed an offence or is in need of care and protection. The child could either be in the hands of the police or the community, from where he/she moves to the courts, then to the institutions or finally back to the society. It is therefore important for all CCPOs to realize that support networking is necessary in child protection throughout the Juvenile Justice System (JJS). All CCPOs need to cooperate in supporting networking to ensure continuous collaboration, with each agency performing their role effectively, owning the process and the outcome.

Partnership

Partnership is defined as a relationship where two or more parties having compatible goals form an agreement to do something together. It is about people working together in a mutually beneficial relationship, often times doing things together that might not be able to be achieved alone. It implies sharing of resources, work, risks, responsibilities, decision making, power, benefits and burdens. In partnership there is give and take.

13.2 IMPORTANCE OF MULTI-AGENCY NETWORKING AND PARTNERSHIPS

1. It is a way of securing greater integration within an increasingly fragmented juvenile justice landscape.
2. It is an interdependent network where several agencies depend on each other to achieve our goals.
3. It prevents duplication of services.
4. It attracts more development partners and strengthens the system for the child.
5. It allows more targeted and individualized interventions.
6. It is an efficient care pathway for children.
7. It helps in sharing of best practice among agencies.
8. It enhances access to justice for all children.
9. It encourages low rates of recidivism.
10. It enhances better communication skills and a greater understanding of interventions for child offenders and child in of care and protection.
11. It reduces inter-role stress for workers at all levels and increases confidence in their professional abilities.

13.3 CHARACTERISTICS OF SUPPORT NETWORKING

Some characteristics of a good networking system are:

1. Sharing of information, expertise and skills.

2. Fostering understanding between agencies.
3. Defining clear roles and responsibilities.
4. Valuing diversity.
5. Commitment by all partners at all levels.
6. Trust and mutual respect.
7. Open communication and feedback.
8. Confidentiality.
9. Accountability.
10. Rewards and open acknowledgements.

13.4 GOOD PRACTICES IN NETWORKING FOR CCPOS

A successful networking system requires good practices which include and not limited to: mapping, teamwork, communication and information sharing, resource management, fundraising and negotiation.

13.4.1 Mapping

Mapping is a strategy for promoting interagency collaboration by better aligning programs and services found in the locality. The major goal of mapping is to ensure that the target group has access to a broad comprehensive and integrated system of services essential in achievement of desired results. Mapping can be used by the CCPOs to improve child services in their area.

Mapping builds on the community strengths by increasing the frequency, duration, intensity, quality of services and supports in the Juvenile Justice. Therefore CCPOs should seek ways to:

1. Build and sustain inter-agency collaboration and systems linkages in their locality
2. Examine inter-agency collaboration, funding and cost sharing avenues in their locality
3. Build understanding among stakeholders about existing and potential services, resources and supports in their locality
4. Improve capacities of coexisting systems to streamline or realign resources to serve all children in their locality
5. Reduce fragmentation, duplication and gaps in services, supports and resources commonly occurring across children serving entities

Mapping Steps

1. Identify all Juvenile Justice Agencies in the area by brainstorming on potential partners for example: individuals, FBOs, CBOs, NGOS, government agencies among others to include into your mapping process.
2. Pick each one of your identified partners and write down what each brings to the table, their self-interest, what will keep them involved and their role in the mapping process
3. Identify what type of services each agency offers to children.
4. List the activities, projects, programs and initiatives offered by these agencies
5. Identify their strengths in meeting the needs of children

Once the collection of all the information is completed, it must be analysed and interpreted and a report written for all the Juvenile Justice Agencies (JJAs) in your list.

Note: Before writing the report or proposal, it is important to verify the accuracy of the information collected with the target agencies.

The information gained from mapping should be shared with other Juvenile Justice Agencies to help them make decisions on whether the CCPOs can collaborate with them in improving children matters.

The information can also be used to increase awareness on individuals and organizations to improve their performance.

13.4.2 Teamwork

In this context teamwork refers to working to build effective cohesive multi-agency and multidisciplinary forums. Effective multi-agency teams have clearly defined goals and focus on achieving tangible results.

Characteristics of effective teams

1. Involvement of all partners.
2. Focus on the team agenda.
3. Building consensus for task purpose and direction with other team members (CCPOs).
4. Supporting and acting in unison with final group decisions even when such decisions may not entirely reflect own position.
5. Sharing credit for the team's accomplishment and accepting joint responsibility for team's shortcomings.
6. Addressing conflict and do not hesitate to disagree with, challenge and question one another all in the spirit of finding the best answers, discovering the truth and making great decisions.
7. Members trust one another on a fundamental emotional level and they are comfortable being vulnerable with each other about their weaknesses, mistakes, fears and behaviours.

How to organize a team

A team can be organized by doing the following:

1. Mapping;
2. Sending out invitations to relevant agencies;
3. Share/sell your vision with the team. The vision should reflect a shared goal, easy to understand, initiate and evaluate;
4. Listen to their views both (positive and negative) and look for common ground;
5. Build consensus on what the team wants to achieve;
6. Outline how the team will be communicating;
7. Outline concrete actions that the team should achieve;
8. Identify the required resources such as human, capital, financial and social;
9. Monitor the implementation of action plans.

13.4.3 Fundraising

Fundraising refers to the process of mobilizing financial resources.

Rationale for fundraising

Some of the reasons for fundraising may include the following:

- a) Increase the amount of resources available to CCPOs.
- b) Complement funding from county and national governments.
- c) Enhancement of CCPO programs and services.
- d) Ensure sustainability of programs and services.
- e) Develop community links; the process of resources mobilization entails working closely with the community thereby forging better links with it; build a pool of supporters.
- f) Involve other actors such as stakeholders and partners in resources mobilization also ensures that other stakeholders and partners participate in its activities.

Qualities of an effective fundraiser

Some of the skills that CCPOs need for fundraising include:

- a) Commitment to the cause - all the CCPOs must be committed to the objectives of the fundraising.
- b) The ability to ask - the CCPOs must not shy away from asking for what they need.

- c) Persuasiveness - the CCPOS must have the ability to persuade potential funders or donors.
- d) Confidence in dealing with rejection- good fund raising also includes confidence and the ability to handle rejection.
- e) Persistence - ability not to give up but to persist until the results are achieved.
- f) Ability to negotiate with potential donors
- g) Truthfulness and integrity - all CCPOs must at all times exhibit transparency and integrity.
- h) Social skills - members must be able to relate well with other people in the community.
- i) Contacts and ability to make contact - it is important to have wider and bigger networks.
- j) Imagination and creativity - this is important for solving problems, coming up with creative and effective fundraising schemes.
- k) Opportunism - be able to identify fundraising opportunities.

Sources of funds

There are several sources of funds including:

- a) Domestic government and agency funding;
- b) Foreign governments;
- c) International donors such as UN bodies, Plan International ;
- d) Faith based organizations;
- e) Community based organizations;
- f) Non-governmental organizations;
- g) Individual Donors.
- h) Foundations
- i) Corporate World: Companies and Business Firms
- j) Fundraising campaigns and events

Challenges of resource mobilization and fundraising

Activity

Ask the participants to discuss in groups some of the challenges in relation to resource mobilization.



Some of the challenges include the following:

1. Lack of adequate skills and knowledge in fund raising.
2. Inadequate resources from potential donors.
3. Changing donor priorities.
4. Stringent partnership government policies.
5. Competition.
6. Lack or inadequate fund raising strategies.
7. Inadequate community awareness of CCPOs activities.

13.5 FACTORS INFLUENCING SUPPORT NETWORKING

13.5.1 Individual factors influencing support networking

There are several key factors that promote or inhibit Support Networking. Self-evaluation provides group members with an understanding of strengths and challenges they face as they work to reach their goals. These factors could be internal or external to an individual.

i) **Attitude**

Attitudes are the established ways of responding to people and situations based on the beliefs, values and assumptions one holds. Attitudes are manifested through one's behaviour.

Components of attitude

Attitude has three components, namely:

1. Cognitive component which consists of thoughts and beliefs;
2. Affective component which has to do with feelings such as frustrations;
3. Behavioural component which consists of a predisposition to act in a certain way towards an attitude object.

Attitudes are learned and can be changed. They are learned through direct experience or indirect observations like listening to parents discussing social issues.

Attitudes and interpersonal relationships

1. Attitudes towards other people depend, on the past experience and shared common beliefs or disagreements. A simpler reciprocated way of attitude change is to respond with the same attitude to the person from whom a certain attitude was experienced. If somebody for example, has behaved badly towards another one in the past, it is very likely that the second one will develop a dislike to the first one (without even trying to judge the motives).
2. The attitude the CCPOs have towards themselves as individuals, their work, other departments and other CCPOs can be worked on by choosing the right attitude. Attitudes drive behaviour, by choosing the right attitude a CCPO will send out a message that everyone understands, consciously or unconsciously.

ii) **Assertiveness**

Assertiveness is a response to fear, shyness, passivity and even anger. Assertiveness means speaking up, making reasonable requests, and generally insisting that your rights be respected and viewed as significant.

Assertiveness is also the ability to express negative emotions without personalizing the problem. It is the ability to question authority from a positive perspective. Assertiveness involves standing up for personal rights, respect for self and respect for other people's needs and their rights.

Assertive people have the skill to explore their thoughts, feelings and beliefs in an open, direct, honest and appropriate way that does not violate upon another's rights.

Importance of assertiveness to an individual

1. Increases self-respect and development of positive self-image.
2. Increases feeling of self-confidence.
3. It leads to the development of closer and more satisfying relationships.

Importance of assertiveness to a group

Groups can gain when members are assertive through:

1. Better use of resources since all give constructive views and loud voices do not carry the day.
2. Results in more initiatives because people present ideas.
3. There is improved decision-making and problems solving.

iii) Interpersonal Relationships

An interpersonal relationship is an association between two or more people that may range from fleeting to enduring. Individuals, groups or even nations may have relations with each other. These relationships usually involve some level of interdependence. People in a relationship tend to influence each other, share their thoughts and feelings, and engage in activities together. Because of this interdependence, most things that change or have an impact on one member of the relationship will have some level of impact on the other member(s). Communication is a very important component to a successful interpersonal relationship. As time goes on people's attitudes change because they have become more comfortable with the groups.

How interpersonal relationship can be improved amongst CCPOs

1. CCPOs should identify and describe existing relationships amongst themselves, in their existing organizational structures and come up with ways to improve them.
2. Enhancing collaboration among organizational members. To develop effective working relationships, CCPOs should be able to interact with different work partners (within the department, across different departments, or external collaborators or targeted clients). These work partners are different in terms of social distance. That is, their perception of being "close" to each other, as well as their actual physical distance that is between two organizational locations. A working relationship with colleagues at the same department for example is very different from relationships with other CCPOs from other departments, because different social norms apply. In order for a communication medium to become an effective means of fostering working relationships in an organization, the medium must reduce barriers between communication partners, both in terms of physical and social distance.

13.5.2 External factors influencing support networking

Networking and collaboration is a process of participation through which people, groups and organizations work together to achieve desired results. Through research common factors and characteristics have been identified as influencing the collaborative process. The differences for instance amongst JJAs such as; aims, culture, bureaucratic structure and human resource profile create variety of problems that are likely to be encountered in implementation of joint projects. Child interests, previous experience and varying government policies are among other factors external to other CCPOs that may influence collaboration.

There may be a perception of lack of interest in CCPO interactions. All sides should be proactive in stimulating collaboration. Bureaucratic obstacles must be reduced or removed altogether to accelerate the process of collaboration thus, teams need to work together to eradicate the barriers.

Collaboration requires frequent communication among all involved parties and contributes as expected in creating the perception of equal benefit among them as well as building trust amongst others.

i) Institutional cultures

Institutional culture refers to the psychology, attitudes, experiences, beliefs and values (personal and cultural values) of an organization. It is a specific collection of values and norms that are shared by people and groups in an institution. These values and norms control the way they interact with each other and their stakeholders. The organizations or Individuals within institutions carry out roles defined by the rules, regulations, and procedures of the institution, and these roles and their interpersonal relationships make up the structure of the institution.

It is important to take note of the followings:

1. Institutional culture has profound impact on our work environment and our ability to succeed and prosper. It can silently make us willing to accept lower professional or ethical standards of behaviour in ourselves and others. On the other hand, institutional culture can influence us to raise our values and our standards of professional behaviour, work ethics or productivity.
2. One of the biggest obstacles in networking is organizational culture. Each organization has its own unique culture and most often when brought together, these cultures clash.
3. Organizations characterized by collegial values such as teamwork, participation, commitment and high levels of affiliation, looked at change enthusiastically and in positive terms as opposed to organizations characterized by

elite, meritocratic or leadership style value structures, which were more likely to view change negatively. It is the conflicting priorities and values among sub cultures that most often contribute to resistance toward change efforts.

ii) Laws and regulations

All organizations have to abide by the legal systems. New Laws and regulations are constantly added due to socio-political change. Ordinarily, collaboration functions effectively under existing policies, laws and regulations therefore consensus, communication and updating is required for altering creating of new regulations.

iii) Trust

Trust is essential to the process of learning through collaboration. Building trust may take time and effort but the ability of stakeholders to trust and share responsibilities can help them to move beyond their initial perceptions, to learn from each other and to discern commonalities between their different viewpoints.

iv) Turf (Territory) issues

Turf issues arise when individuals feel someone else is invading their turf, that is their professional, philosophical or personal territory. This can mean competition among organizations for prestige, credibility with the target population, plus funding and this can result in organizations working against one another. It can also lead to organizations asserting ownership of information, use of equipment, administrative procedures causing disastrous splits amongst the organizations.

13.5.3 Factors hampering collaborative leadership

Leaders are often confronted with situations or factors that work against collaboration. It is important to anticipate the most common of these, and to be aware of some ways to eliminate them. If people do not know how to work together, teach them.

If there are turf (territory) issues, emphasize the benefits of collaboration to everyone. Show people that they are better off collaborating, and the chances are that they will cooperate.

1. **Time**- Collaboration takes time, and decision-making that involves a large number of people and organizations may seem to proceed glacially (very slowly) and with a great deal of friction.
2. **Conflict**- Collaborative leadership is not a job for people who like everything calm and who would prefer that no one ever raise his or her voice. It demands the ability to face conflict directly and mediate it to a resolution acceptable to everyone.
3. **Resistance** - It may mean trying to overcome resistance to the whole idea of collaborative leadership. Many people particularly in organizations would prefer a leader to tell them exactly what they need to do so that they know they are doing the right thing. Being asked to share leadership just makes them resentful and leaves them feeling that the leader is not doing his/her job. As a collaborative leader, you should be able to know how to deal with resistance, how to let go of your own ideas and biases, and maintain a process that will guide the group to its own goals, strategy, and action plans.
4. **Egoism** - It demands that leaders subordinate their egos. You are not the boss in this situation and you may not get any credit if the group is successful since the credit goes to the whole group.
5. **Institutional cultures** - This can either be within the organization, among organizations, individuals or with the issue itself. As the leader it is important to mediate the disputes; point out the differences in what CCPOs are doing now and what they have been doing; and structure the situation so that groups and individuals can interact and make connections. If professionals or some other elite seem to be dominating the collaboration, work with that group to emphasize the importance of inclusiveness while modelling it yourself. At the same time provide support and if necessary training for others so that they feel more comfortable participating.

Put structures on face-to-face situations through meetings or workshops to equalize input from everyone. Where there are poor links to the community, forge new ones: bring people together through introductions and events; encourage organizations and groups to reach out with active solicitation of help and advice; publicity, public education and events. Where there are little organizational capacity find resources to hire a coordinator or tap

the collaboration's internal resources for one. With the collaboration as a whole create structures that address this issue. If there seems to be no funding available, look for unusual sources as well as looking within the collaboration for ideas. At the same time, work on projects that are significant but require little or no funding to complete.

1.6 MULTI-AGENCY SUPPORT NETWORKING PARTNERSHIPS IN THE JUVENILE JUSTICE SYSTEM

Activity



Ask the participants to share some of the existing multi-agency forums known to them.

The following are some multi-agency forums.

1. National Council on the Administration of Justice (NCAJ)
2. Court Users Committees (CUCc)
3. Area Advisory Councils (AACs)
4. Probation Case Committees
5. Hostel management committees
6. Multi-agency committee on throughcare
7. Borstal institutions board of visitors
8. Online child protection teams

13.6.1 The role of partners in support networking

1. Undertaking policy and legislative advocacy on various laws that touch on children.
2. Enhance access to justice through provision of legal aid to children in conflict and contact with the law.
3. Protecting and promoting rights of the children.
4. Holding joint forums to discuss matters related to children.
5. To provide/sponsor training or education on children rights to all Juvenile Justice Players.
6. To conduct research on children rights.
7. To provide funding to agencies and institutions dealing with and promoting Juvenile rights.
8. Acts as checks and balances on the mode and standard of service delivery.

Inform the participants of the list of the partners that play a role in support networking in Kenya.

13.6.2 Partners in support networking

1. **Charitable Children institutions (CCIs)**

These institutions derive their mandate from Section (58) and Section 77 of the Children Act 2001 and the Charitable Children Institutions (CCIs) Regulations.

2. Child Helpline 116



Child helpline 116 a toll free line where people can report any matter relating to children.

The role of the Child Helpline

- a) To end the silence on child abuse and eradicate the vice.
- b) To receive reports and complaints of child abuse in Kenya or national wide on 24-hour basis on a toll free 116 child helpline.
- c) To provide active listening, telephone based counselling and advice to children, parents and the community on matters of child abuse.
- d) For cases requiring rescue or urgent interventions, the helpline refers them to a network of partners in that area for support.
- e) To empower children with information and legal support.
- f) To promote community role in advocating and safeguarding child rights and welfare.
- g) As many cases are referred to various agencies, this promotes networking.
- h) Capacity building of agencies and individual dealing with children.
- i) Creation of awareness on child abuse.
- j) Conduct advocacy on legislation and policy relating to child abuse.

3. Kenya Society for Care Leavers

These are youths who have been in care and corrective institutions before. in as much as they are resource persons, they represent a vulnerable group that is bound to be forgotten yet their vast experiences are needed in designing care plans for other children undergoing rehabilitation, through care and aftercare. Care leavers should be recognized as an important resource by the existing support networks as they can contribute in the formulation of policies and regulations in the best interest of the child. Those who succeed in life can act as role models to the children and other youths alike.

4. Local Media

- a) Give positive publicity and information.
- b) Highlight children issues.
- c) Educate the general public on children matters.
- d) Report in the best interest of the child.
- e) Make public information accessible to children.

5. Pro bono lawyers

- a) Provide free legal aid and advice

- b) Alternative dispute resolution services
- c) Adolescent counselling clinics
- d) Gender-based recovery units
- e) Medical services provision.

6. Professionals

A pool of different professionals will offer

- a) mental health treatment,
- b) Psycho-social support,
- c) Maintain family contacts,
- d) Online advocacy & protection, and
- e) referral services.

7. The child

The child is the centre of decision-making and should be consulted where possible. Children from erratic and inconsistent family or parental upbringing often feel a weaker sense of attachment to their families and are more vulnerable to being influenced by their peers with some being initiated into crime and delinquency.

- a) Child-to-Child campaigns and advocacy strategies have been seen to be effective for positive change.
- b) Inculcating a culture of child responsibility at an early age, within peer interactions and in the outside community plays a big role in preventing child delinquency. Child participation at all levels is rapidly being accepted as an all-inclusive approach that allows children to contribute to the processes and strategies that affect them.

8. The Community

The community is a key stakeholder in all matters concerning children. Juvenile delinquency and social problems amongst children are multi-faceted. This calls for a multi-agency approach on the part of the family, schools, children or youths, concerned citizens and governmental agencies – which are to be found in a particular community. Community leaders and community development workers are required to do mapping and a community profile of all existing support networking initiatives within a particular area for purposes of collaboration and referrals for child offenders.

9. Community Based Organizations

Focuses working with governments and communities to protect and promote the welfare of children. They:

- a) improves the livelihoods of children through several projects;
- b) create awareness in prevention of child trafficking and assist in prosecutions of persons involved;
- c) offer counselling services to children victims.

10. Parents/families

The family environment is the most important factor which shapes young people's behaviour. Studies have shown that children from homes where there is poor parental guidance and supervision are more likely to become delinquent. Parents who are inconsistent or erratic when disciplining their children may also find it difficult to control them. When a child gets into conflict with the law, parents and families inevitably get concerned. They may be required to:

- a) Participate in family conferencing sessions,
- b) Open days in the juvenile institutions,
- c) Seek counselling,
- d) Visit their child or children in custodial institutions,
- e) Sign a security bond to ensure their child's good behaviour or pay fines, damages and costs – especially if it is found they have not taken advantage steps to supervise and guide their children.

13.7 MANAGEMENT OF SUPPORT NETWORKING SYSTEMS

Management in all human organizations is the activity of getting people together to accomplish desired goals and objectives. It comprises of planning, organizing, leading, coordinating and controlling organization.

13.7.1 Forming support networking

For a CCPO to be an active participant in Support Networking they need knowledge on planning, creation and management of support networks. They should be introduced to the importance of creation of network communication channels for collecting, sharing and disseminating information. Network referrals and follow-up systems need to be developed and strengthened.

13.7.2 Effective leadership

i) Competent leadership

Competent leadership involves:

1. Self-awareness-deep understanding of one's cultural values, strengths and weaknesses, and privileges and power that come with ones roles and cultural background.
2. Appreciation of differences as opportunities rather than as problems.
3. Commitment to pluralistic understanding of issues while being able to make faithful decisions.
4. Active reflection on diverse issues as they relate to oneself, others, one's community and creation.
5. Discipline in applying appropriate skills, models and theories that will increase the inclusiveness of various situations.
6. Ability to guide and support a community to move towards change faithfully in response to its changing environment.

Activity



Ask the participants to suggest some of the key skills needed for effective leadership for a CCPO support network. Write down their responses on a flip chart.

ii) Leadership skills

The following are leadership skills needed in a support network.

1. Effective communication
2. Understanding group needs and characteristics
3. Team building
4. Conflict resolution
5. Knowing and understanding group resources
6. Controlling the group
7. Counselling
8. Being a role model
9. Representing the group's interest
10. Planning
11. Evaluation

13.8 THE ROLE OF CCPOS AND NON-STATE ACTORS IN SUPPORT NETWORKING

1. To supervise and regulate planning and coordinate support network programs.
2. Promote and create public awareness on support networks and child protection through advocacy.
3. Facilitate the formation of partnerships, linkages, networking systems between the institutions and the communities.
4. Facilitate the collection of data and creation of data banks on children issues and facilitate information sharing.
5. Participate in monitoring, evaluation of the implementation of child rights and welfare activities.

Note: Each actor or player participating in support networks stand to benefit from the common synergies derived from the roles of other actors or players. Jointly CCPOs can be involved in the following:

1. Creation of an atmosphere conducive to a more collaborative, cooperative and efficient relationship.
2. Reviewing of cases with the purpose of recommendation for release, Community Service Orders, aftercare or supervision, direct family reintegration or remain in Care/Rehabilitation. A procedure to be formulated to expedite the transition back to the community after care or rehabilitation treatment.
3. Ensuring that crucial decisions affecting children should not be left to the discretion of one JJA, but be undertaken as a joint venture of the JJAs in the support network.
4. Develop one JJS database to enable JJAs capture juvenile offender information. Agree on mode of sharing the data, reporting system, competent staff, training of the users' exportation of the data and utilization of the same.
5. Co-ordinate and facilitate actual training related to various capacity competencies required in areas such as psychology and counselling. This should target CCPOs in Children Remand Homes CRH), Rehabilitation Schools (RS), Youth Corrective and Training Centres (YCTC), Charitable Children Institutions CCIs), Borstal Institutions and Probation Hostels among others.

13.9 CONCEPTS IN DEVELOPING AND MANAGING SUPPORT NETWORKING

1. Partnerships or networking should be developed with clear definitions of success for all partners. Measures for success should be established at the onset of the partnership.
2. Partnerships or networking should be evaluated on a regular basis. Evaluation should include collection and analysis of information to determine accomplishments, strengths and weaknesses.
3. Networking should be developed with clear definitions of success for building capacities for all partners.
4. Communicating new ideas to break status quo and rigidity of systems is crucial.
5. All JJAs should support basic values of networking through interlinkages in the investigation, information collection, sharing, care, trial, rehabilitation and resettlement of children.
6. Signing of service delivery agreement amongst partners to ensure commitment and sustainability
7. Applying the evaluation plan of the impact of support networking.
8. Using the findings of the evaluation to gain insights for future direction.

13.10 CHALLENGES IN SUPPORT NETWORKING

Activity



Ask the participants to come up with some of the challenges to support networking and brainstorm on how to deal with each challenge. Let them discuss in groups.

There are several challenges in support networking. Some of the challenges include:

1. Disagreement about target populations, agency responsibilities and authority within and between organizations.
2. Agencies blaming each other.
3. Lack of common information database.
4. Lack of accepted procedures for sharing information.
5. Commitment
6. Limited resources
7. Negative attitude

Activity



Ask the participants to share some of the success stories or case studies of how Juvenile Justice Procedures have utilized proper networking for especially difficult cases.

13.11 SUCCESS STORIES IN SUPPORT NETWORKING

CCPOs should be able to understand the success stories in Kenya where good relationship amongst JJAs has yielded good results. The following are success stories.

1. Child Protection Teams (CPTs)

These teams provide a forum where various JJAs and other stakeholders meet and discuss matters related to children. Actions are taken by the teams to rescue children or provide other forms of psycho-social support. The teams have been effective in lobbying for apprehension of perpetrators.

2. St. Joseph Cafasso Consolation halfway house

It was started in 2005 and is managed by Sister Rachel Soria Consolata Missionary. The governance and management of the house involves several partners namely Kenya Episcopal Conference, Consolata Missionaries, Caritas Italiana, Abrosiana and Prisons Department which donated the land where it stands at Kamiti Command. The house admits some of the boys who have been released from the Youth Corrective Training Centre (YCTC) and takes them through a process of further rehabilitation and eventual reintegration back to their families and society. In the house the boys go through the process of orientation, basic education, vocational training and counselling. In addition, after completion of training the boys are helped to get attachment, jobs or are provided with tools and finances to start their own business in collaboration with their parents or guardians. A social worker monitors all the activities.

3. Multi-agency Committee on Throughcare Team

This committee comprises of all mainstream juvenile justice agencies and stakeholders formed in 2013. The teams developed throughcare procedures for children in statutory institutions and have been overseeing the implementation of the same. The procedures are now being used by JJAs.

Activity



Invite a guest speaker to share the experiences on how to form and sustain Child Protection Teams.

13.12 CASE STUDY

Buyanzi and Mwenda were at the university together, but have not met since graduation. Fortunately they bump into one another at a CDF leaders meeting in the sub county where both of them have been newly deployed after recruitment

as children's officer and probation officer respectively. As newly employed civil servants, both Mwenda and Buyanzi are enthusiastic, motivated about their new appointments as their informal meeting could reveal. However, they are faced with the challenge of their inexperience and lack of support from the older officers in their respective stations.

Discussion



Ask the participants to discuss the following items:

1. List the problem(s) in the case study.
2. What important steps should the CCPOs take to solve the problem (s) in 1 above.
3. What should the newly recruited CCPOs do to improve their working relations at their work stations and within the existing support networks?

Before parting, Mwenda invites Buyanzi to a case committee, which is normally attended by the JJAs representatives in the sub county. Buyanzi seeks permission from her superior to attend the meeting and was allowed, though reluctantly. She however misses other consecutive meetings and loses track. After a while, an AAC meeting is planned and to Buyanzi's surprise, her supervisor expects her to invite the very members of JJAs to attend. Of course the turnout is so poor that the day's agenda of discussing Special Needs Offenders is postponed.

13.13 ROLE PLAY

The objective of this role play is to help participants understand the importance of communication and feedback and follow up.

Enact a case where a child was rescued from the streets by a police officer. The police filled a care and protection form and handed the child to a children's officer. The child is repatriated by the children's officer. The child commits an offence and is taken to court, remanded and later committed to a rehabilitation school where he stays for one year and re-integrated back to the community. After a while the same child reoffends and this time the court orders that he be taken to a borstal institution. While at the borstal institution, the child sexually molests another child. None of the JJAs has an idea that they have at one time handled that case until at the time it is realized that the child has a special need.

Let the class discuss the networking challenges surrounding the case.



Inform participants that some of the information required in a referral includes:

1. The full names and date of birth of the child, caregivers or any other family members.
2. The child's caregivers or parents' full address and telephone number.
3. The ethnic origin, religion and cultural background of the child, its family or caregivers.
4. The reason for your referral, including a description of any injuries observed, allegations made discussions with the child or other person, details of any witnesses and dates/times/places of alleged incidents.
5. Details of any action and people you have contacted since the concern arose.
6. Details of immediate or impending danger to the child.
7. Details of any previous concerns or any relevant background information.
8. Recommendation by the referring agency.

13.14 CASE STUDY (MULTI-AGENCY CHILD PROTECTION)

Jason who is 13-year-old was apprehended after being found defiling a five-year-old boy. Jason had been watching pornographic movies in a neighbour's house where a 35-year-old lady used to gather children from the neighbourhood to watch the movies. Jason was found to be a child in conflict with the law, he was taken to court for trial and was committed to a probation hostel for the offence of defilement. The probation officer worked together with the children officer and the police officer to have the 35 years old lady who was exposing Jason and other boys to pornographic materials arrested. The lady was arraigned in court and charged with exposing children to pornographic materials.

After trial she was sentenced to serve 5 years imprisonment. On conviction she was accompanied by her 2-year-old child to prison where the children officer with the help of prisons officers organized for the child to be placed with a relative upon attaining the age of 4 years old.

13.15 WORKING TOGETHER

This case study demonstrates how important it is for agencies to share their information and work together. In Jason's case there was a relatively good outcome.

Ask participants to discuss lessons learnt from this case study.

Revision exercise

1. Explain the role of CCPOs in linking up institutions and communities.
2. Imagine you have been asked to make a presentation on the characteristics for successful support networks. Make a list of the key points you would include in your presentation.
3. One of the partner organizations has complained that they do not get important communication in good time.
 - a) What are some of the causes of this problem?
 - b) What are some of the actions you will take to remedy the problem?

What are some of the challenges relating to networking within existing forums in the JJS of Kenya?

13.16. REFERENCES

Adler, E., & Haas, P.M. (1992). Epistemic Communities, World Order and the Creation of Reflective Research Programme. *International Organizations* Vol. 46(1), pp. 367-390.

Antony, D. S. (1994). *Leadership: Trilogy on Leadership and Effective Management*. Pauline Publications Africa. Nairobi.

Atkinson, M., Jones, M., & Lamont, E. (2007). Multi-agency working and its implications for practice. *Reading: CfBT Education Trust*. Retrieved from https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Multi-agency+working+and+its+implications+for+practice%3A&btnG=#d=gs_cit&u=%2Fscholar%3Fq%3Dinfo%3AFYe9dFcoM04J%3Ascholar.google.com%2F%26output%3Dcite%26scirp%3D0%26hl%3Den

Callon, M. (1994). *Is Science a Public Good? Science, Technology and Human Values*. Vol. 19(4), pp. 395-424.

Chikati, J. (2009). *The Partnership Handbook Publisher: Establishing Partnership for Community Development*. Nairobi. REPAED.

Constitution of Kenya. (2010). Government Printer. Kenya. Nairobi.

Darren, R. (2009). *31 Days to Build a Better Blog*. Retrieved from <http://www.problogger.net>

Herbst, N. B. & Norton, M. (2012). *The Complete Fundraising Handbook*. (6th ed.).

John, A. (1998). *Leadership Skills: Management Shapers*. Chartered Institute of Personnel and Development. London.

John, F. (2009). *Introduction to Communication Studies*. Retrieved from <http://ebookbrowse.com/02-fiske-Introduction-to-communication-studies-chapter01-pdf-d490175137>

Kenis, P. and Schneider, V. (1991). Policy Networks and Policy Analysis: Scrutinizing a new Analytical Toolbox in B. Marin & R. Mayntz (Eds), *Policy Networks, Empirical Evidences and Theoretical Consideration*. Westview Pr: Frankfurt.

Locke, T (1990). *New Approaches to Crime in the 1990s: Planning Responses to Crime*. Harlow Longman.

Marsh, D. & Rhodes, R. A. W., (1992). Policy Communities and Issue Networks: Beyond Typology in D. Marsh and

R.A.W Rhodes (Eds). *Policy Networks in British Government*. Oxford University Press.

Ministry of Education, Kenya. (1999). *School Management Guide*. Ministry of Education, Kenya. Strategic Plan 2008-2012.

Public Private Partnership Act No. 15 of 2013. Government Printer. Kenya. Nairobi.

Reid, B., (2001). Partnership and Change in Social Housing in S. Balloch and M.Taylor (Eds),

Partnership Working: Policy and Practice. Policy Press: Bristol.

Rumgay, J., (2000). *The Addicted Offender: Developments in British Policy and Practice*. Palgrave Macmillan: Basingstoke.

Sex Offences Act, No. 3 of 2006. Government Printer. Kenya. Nairobi.

Wolf, T., (1990). *Managing a Non-Profit Organization in the Twenty First Century*. Prentice Hall Press:New York.

Wing, H., C. & Nellis, M. (2003). *Moving Probation Forward: Evidence, Arguments and Practice*. Pearson Longman: England.

Victims Protection Act, 2014. Government Printer. Kenya. Nairobi.

ALTERNATIVE CARE FOR CHILDREN

Duration	2 hours
Overview	This unit focuses on record management in the Juvenile Justice Agencies (JJAs).
Key Learning Outcomes	By the end of this unit the participants should be able to: a) Define records and records management. b) State the various purposes of records management. c) Explain the importance of confidentiality in records management. d) Demonstrate the recommended filing system and record keeping at various levels.
Preparation / Learning Activities	Request participants to share in two to three minutes some of their experiences in keeping records within JJAs.
Materials	Flip chart and markers, laptop and projector
Session Type	Lecture, discussion and activity

Activity



Ask the participants to define the term 'record' and write down their responses on a flip chart.

14.1. RECORDS

14.1.1 Definition of a record

A record is a document, either electronic or physical, with information about something, someone or an organization. It serves as evidence of an activity or transaction and it requires retention for some time period.

14.1.2 Categories of records in Juvenile Justice Administration

Activity



Explain to the participants that in the Juvenile Justice Administration, records can be classified into three categories.

1. Administrative records

These are records with details of administration which are useful in decision-making and planning. They create continuity and consistency in the operations of the organization.

Activity

Ask the participants to give examples of administrative records. Some of the examples of administrative records include:



- a) Agenda and minutes in case conferencing, case committees, school committees, AAC meetings among others;
- b) Policy and procurement manuals;
- c) By-laws;
- d) Rules and regulation;
- e) Annual reports;
- f) Strategic planning documents;
- g) Photographs.

2. Legal records

These records form proof of an event or agreement, obligations, commitments, rights and delegation of authority. These are the records on which security or foundation for decision-making is based on. They provide evidence to support the rule of law, accountability of government and management of state resources.

Activity



Ask the participants to give examples of legal records.

Some of the examples of legal documents include:

- a) Court orders;
- b) Child files;
- c) Memorandum of understanding (MoUs);
- d) Agreements;
- e) Statutory reports;
- f) The will;
- g) Instrument of appointment and delegation of authority.

3. Fiscal records

Fiscal record is used for documenting operating funds and other financial processes such as bills, receipts, vouchers that document monies received, spent or managed and establish an audit trail in an organization.

Activity



Ask the participants to give examples of fiscal records.

Some of the examples of fiscal records include:

- a) Financial statements
- b) Financial returns

- c) Audit reports
- d) Statutory reports
- e) Cash books
- f) Ledgers

14.2 RECORD MANAGEMENT



Explain to the participants that:

1. Records management has been defined as: “the efficient and systematic planning, control and directing the creation, receipt, maintenance and disposal of records”. (ISO Standard 15 489)
2. Records management refers to the administration and management of records for future reference.

Activity



Ask the participants to define the term record management and write down their responses on a flip chart.

Activity



Ask participants to discuss in groups what they think is the purpose of record management and to record their responses on a flip chart.

14.2.1. The purpose of records management



Explain to the participants that the following constitute the purposes of records management in any organization:

1. Policy making - policy formulation relies on accurate data and information available.
2. Act as evidence for solving disputes - in case of disputes emanating from actions of omission or commissions, for example parental agreements.
3. For safe custody and for future reference. In foster and adoption cases, for example cases committed to institutions.
4. For performance analysis.
5. For planning and budgeting.

14.3 DISPOSAL OF RECORDS

14.3.1 Legal Requirement

The law may specify the duration for which records should be kept. According to the Records Disposal Act cap 14 (1st and 2nd Schedules) the period of disposal or destruction ranges from 3 years to 12 years (from the date of judgment or final order). The period of disposal also depends on the type of cases i.e. Civil or Criminal.

14.3.2 Confidentiality in Records Management

Inform the participants that confidentiality in case management is key as the matters being addressed are mostly of personal nature and if mishandled may compound the matter being solved. Confidential materials especially touching children should be kept in safe custody and should be accessible to authorized CCPOs. In spite of the Constitutional provision on the access to information held by the government, CCPOs should not inadvertently expose the records to the press or anybody except

by the authority of the responsible person or the court. It is important for CCPOs to explore the limits of confidentiality with their children i.e. as learnt in role clarification in skills and techniques in Case Management. CCPOs should explain the information from the child could be shared within their offices and with other Juvenile Justice or Child Protection Agencies.

14.4 THE RECOMMENDED METHOD OF FILING INDIVIDUAL FILES

The importance of opening and maintaining an individual file for the child should be noted by all CCPOs.

CCPOs should open and maintain individual files for each child case. An exception might be allowed for children's officers to handle cases of parental responsibility agreements, including the issues of maintenance, or custody. In these cases, children's officers can file the documents together into a common file, not into individual file. However, all children cases which children officer need to continuously monitor or follow up, individual files must be opened.

Each child should have an individual file that contains the various documents at the respective Juvenile Justice stages.

NB: Each JJA to comply with their set guidelines on making individual file for the child.

14.4.1. Initial/Pre-disposal stage (apprehension/rescue, remand, court levels)

The individual file should contain the following documents depending on the JJA's guidelines:

1. Initial assessment reports
2. Police charge sheet
3. Statements by witnesses, the victims and the accused
4. Criminal investigation report
5. Pre bail report
6. Various court orders
7. Committal warrant to a remand home
8. RNR assessment -Social enquiry reports
9. School records
10. Medical Record
11. Assessment reports by specialists e.g age assessment report
12. Birth certificate
13. Case record sheet
14. Diversion team report
15. Supervision plan or ITP at community level
16. The court's judgment

14.4.2. Post disposal stage

At this stage the individual file for each child should contain the following documents depending on the JJA's guidelines:

1. Supervision order by the court
2. Committal warrant
3. Supervision plan if the child is diverted
4. Confirmation of admission report
5. Assessment reports or classification (CICWL/CNCP)
6. ITP/ICP

7. Medical Record
8. Case record sheet
9. Request for EAR (Final Home Report) from PO/CO
10. Progress reports on implementation of ITP/ICP
11. Revised ITP/ICP
12. Environmental Adjustment Report
13. Final progress report for purpose of release
14. Application for revocation committal orders for purposes of early release
15. Revocation of Committal orders
16. Discharge summary
17. Discharge order (PF 70)
18. Certificate of release

14.4.3. Post institutional supervision stage

The individual file should contain the following documents.

1. Progress Report from Statutory such as the borstal institution, rehabilitation schools, YCTC)
2. After Care Plan (ITP in Post institutional supervision)
3. Minutes of case conference meeting
4. Medical Record

14.5 RECORDS MANAGEMENT IN EACH JUVENILE JUSTICE AGENCIES (JJAS)

14.5.1 Police

The police are the gatekeepers of the justice system. Most children in conflict with the law will come into contact with the police station before being processed by the other agencies.

The police therefore will share the following information about the child:

1. Arrest or apprehension
2. The charge sheet for CICWL or Protection & Care sheet (form C 1) for CNCP
3. Contact of the next of kin
4. Home locations
5. Circumstances of the case
6. Any information gathered during investigation
7. Medical or counselling report for CNCP
8. Police bond
9. Diversion, if undertaken
10. Previous records
11. Any Special needs that the child has.

Note: This information should be shared by CCPOs on a need-to-know basis to any of the JJA.

14.5.2. Office of the Director of Public Prosecution

After the police, in the case of a child in conflict with the law, the next agency of contact will either be the ODPP or the courts. When the child comes into contact with the prosecution, the ODPP will share:

1. The Police file, if any
2. Plea bargaining agreement, if any
3. Diversion agreement,

In the case of a child in need of care and protection, the ODPP will share:

- 1.
- 2.

15.5.3. Courts

The courts are mandated to dispense justice. In this endeavour the courts receive a lot of information from the police, witnesses, guardians, the child and authorized officers. The courts need to share the following information:

1. Proceedings of the case
2. Rulings
3. Bail information
4. Judgments
5. Orders made in respect of the child
6. Contact details of significant others

This information is contained in the court file. The court should avail the court file to a probation officer, children officer, police and prison officer for necessary perusal.

14.5.4. Probation and Children Services

These two departments are concerned with the generation of information to courts and penal institutions for dispensation of justice. Information sharing between these two agencies is crucial because they are required to provide courts with social enquiry reports, undertake rehabilitation, as well as post institutional care of children. The information that is shared includes:

1. Background information on the child
2. Nature of offence
3. Previous convictions
4. Court orders
5. ITP or ICP
6. Diversion
7. Supervision
8. Aftercare
9. Case conference or school committee reports
10. Case committee deliberations
11. Any other information relevant for the smooth operation of the Juvenile Justice system.

14.5.5. Prisons

This department is mandated with the custodial rehabilitation of offenders into responsible citizens. In order to implement court orders, the department relies on information gathered by probation and children services regarding the child. The information shared with partners includes:

1. Deliberations made during board of visitors' meetings
2. Progress reports

3. Special needs
4. Any rehabilitation Programmes being undertaken in respect of the child
5. Deliberations made by Discharge board on children of imprisoned mothers

The progress report on the rehabilitation of Juveniles should be generated individually and shared with probation officers who committed them to borstal institutions. The information on rehabilitation should be utilized for ITP formulation in aftercare.



Explain that information sharing is a key aspect of the Juvenile justice administration.

14.6 INFORMATION SHARING AND HANDLING OF DOCUMENTS IN THE JUVENILE JUSTICE SYSTEM

1. CCPOs need to share certain aspects of information regarding the children they are dealing with for purposes of effective dispensation of justice, rehabilitation and treatment.
2. At every level of the juvenile justice system each agency is required to forward to the next agency some information.

The information is generated for children passing through the different stages of the Juvenile Justice Care path. Documents containing specific information on the child should be shared in the following stages; pre disposition stage, post disposition stage (rehabilitation at the Institution or community) and post institutional stage (as explained in the throughcare guidelines).

Activity



Ask the participants to explain how information can be shared at the various levels within the JJA, compared to what supposed to be done. Use the matrix below and CCPOs review on how much they have generated and shared the documents/information with amongst JJAs.

14.7 HANDLING OF SPECIFIC DOCUMENTS IN THE JUVENILE JUSTICE SYSTEM

Table 14.1 Documents in the JJS

Document	Source of Document	Purpose	Who to share with
Initial assessment reports	Prepared by the police at the apprehension/ rescue stage.	Capture relevant background information of the child and status of the child at the initial stage.	<ol style="list-style-type: none"> 1. The court 2. ODPP 3. The probation or Children officer 4. Manager of the Children's Remand Home (CRH) 5. The Diversion team 6. Parents/Guardians and the Child

Police charge sheet	Prepared by the police.	Captures the offence committed by the child or The category of the protection concern affecting the child.	<ol style="list-style-type: none"> 1. The court 2. ODPP 3. PO or CO, Manager of Children's Remand Home (CRH) 4. Parents/Guardians and the Child or Child's counsel
Statements by witnesses, the victims and the accused Criminal investigation report	Prepared by the police. The Source of documents : Witnesses, the victim and the offender	Provide relevant information on the case to the court for purposes of fair resolution/ judgement that is in the best interest of the child.	These are prejudicial documents however access can be given to the Children's Officer (CO)/ Probation Officer (PO), Parents/ guardians and the child could access once they have been filed in court (when they become court records)
Pre bail report	Prepared by PO.	Provides information on circumstances in favour of or against provision of bail to a child. Helps the court to make an informed decision Where bail is granted by police a report is not generated.	<ol style="list-style-type: none"> 1. Court Parents/guardians 2. Child or Child's counsel
Various court orders	Issued by the court at its own discretion or upon the application of a party to the case (the children's officer (CO)/ probation officer (PO), the child, parents/guardians or any other party acting on behalf of the child	Court orders should always seek the best interest of the child and made pursuant of proper care and protection of the child and provide relevant information to facilitate fair judgement.	Persons responsible for the execution of the order: <ol style="list-style-type: none"> 1. PO/CO 2. Parents/guardians, 3. the child and/or the child's counsel.
Committal warrant	Issued by the court	Orders the provision of interim care and protection of the child at the Child Remand Home (CRH) or at a place of safety for a Child in Need of Care and Protection (CNCP) pending determination of the case.	<ol style="list-style-type: none"> 1. Police 2. Manager of the children's institution (Children's Remand Home (CRH), CCI, Rescue Centre, Shelter Home) 3. Superintendent in Charge of the YCTC
RNR Assessment Social Inquiry Reports	Developed by the Children's Officer (CO)/ Probation Officer (PO).	Assessment of the RNR tool and interviews with significant others informs the development of a comprehensive report detailing the circumstances	<ol style="list-style-type: none"> 1. Court 2. Parents/guardians and the child 3. Manager of the rehabilitation school 4. Superintendent of the Borstal Institution (BI) /YCTC 5. Supervising officer (if diverted)
School Records, assessment reports by specialists	Generated by the school administration and specialist who have assessed the child upon the direction of the court	Provides important information that explains factors contributing to the child's behaviour or condition. This information should feed into the SER	<ol style="list-style-type: none"> 1. PO/CO 2. Court 3. Parents/guardians and the child

Diversion report	Generated by the police, ODPP, Children Officer	Explains reasons for diversion, the position of the victim of offence and spells out conditions pegged on the diversion.	<ol style="list-style-type: none"> 1. PO, CO 2. Parents/guardians and the child, 3. The victim of offence
Supervision plan or ITP at community level	Developed by a supervising officer and implementing partners.	The supervision plan/ ITP is informed by an assessment of the child Criminogenic and non-Criminogenic needs. The plans, details, goals and interventions of the identified needs plus the actions.	<ol style="list-style-type: none"> 1. Implementing partners Parents/guardians and the child 2. PO,CO
The Court's judgment	Issued by the Court.	The judgment disposes the case and provides direction on the interventions to be provided for the child.	<ol style="list-style-type: none"> 1. Parents/guardians and the child 2. Manager of rehabilitation school 3. Superintendent in BI/ YCTC 4. PO, and CO
Confirmation of admission report in a Statutory/Place of Safety	Made by the receiving institution.	Confirms arrival of the child in the institution and consequent admission.	<ol style="list-style-type: none"> 1. Court PO/CO 2. Parents/guardians
Assessment reports/ classification (CIL/ CNCP)	Developed by the reception centres and places of safety.	Identifies both criminogenic needs and non-criminogenic needs for CNCP and classifies the child accordingly for placement in a suitable rehabilitation school and development of ITP/ ICP.	<ol style="list-style-type: none"> 1. Manager of rehabilitation school or place of safety Superintendent in BI/ YCTC 2. PO,CO

ITP/ICP at institutional level	Developed by the rehabilitation schools, probation hostel or places of safety	Provides a SMART plan to adequately address all the needs identified in the assessment report.	<ol style="list-style-type: none"> 1. Staff working with the Child in the institution Other specialist involved in the implementation of ITP/ ICP 2. PO/CO 3. Parents/guardians and the child
Request for EAR from PO/ CO	Request done by the manager of RS or the superintendent of B.I.	Provides a copy of the ITP to the PO/CO so that he/ she can start addressing the factors that contributed to the behaviour of the child at home and community environment.	<ol style="list-style-type: none"> 1. PO/CO 2. Parents/guardians and the child

Progress reports on implementation of ITP/ICP	Generated by the manager of RS.	Informs the PO/CO on the progress made the child in achieving the ITP goals and any revision on the ITP/ICP.	<ol style="list-style-type: none"> 1. PO/CO 2. Parents/guardians, the victim and the child
Environmental Adjustment Report/ Final progress report for purpose of release	Generated by the PO/CO in field offices.	The PO/CO informs the manager of the institution on the progress his or her work with the family and the child's environment The EAR reports should be sent on a quarterly basis, they indicate the suitability of the environment to the child's reintegration.	<ol style="list-style-type: none"> 1. Manager of rehabilitation school, the child's parents/guardians, other implementing partners 2. The Board of visitors (BI) 3. The school conference Committee (RS)
Application for revocation of committal orders for purposes of early release Revocation of Committal orders	Application is made by the manager of the RS/Rescue Centre to the nearest court. Granted by the Court.	Reduces unnecessary institutionalization. Authorizes early release of the child from RS.	<ol style="list-style-type: none"> 1. Court 2. PO/CO 3. The child 4. Parents/guardians
Discharge Summary	Generated by RS, BI, KYCTC,	Gives summary of education, training, discipline and conduct, health status, board decision, remarks of superintendent In charge	<ol style="list-style-type: none"> 1. PO/CO 2. The child 3. Parents/guardians
Discharge order from BI	Given by BI	Gives instructions to be observed by the release while serving the remaining period of sentence on release license, and aftercare supervision period	<ol style="list-style-type: none"> 1. PO/CO 2. The child 3. Parents/guardians
Certificate of release	Granted by the Manager of the institution on behalf of DCS.	Proves that the child has completed his sentence and is completely rehabilitated. It also indicates the vocational skills that the child has acquired.	<ol style="list-style-type: none"> 1. The child 2. Parents/guardians
After care plan	Developed by the officer implementing post institutional.	The plan stipulates how the child will be effectively reintegrated that is assisted to assume a productive life in his/her community.	<ol style="list-style-type: none"> 1. Other implementing partners 2. The child 3. Parents/guardians
Minutes of case conference meeting	Generated by meeting of actors in the child's post supervision plan.	Helps actors to report on progress in the area they are working with child, make necessary revision on the plan if necessary and finally make a decision to disengage the child when the child is fully settled.	<ol style="list-style-type: none"> 1. Other implementing partners 2. The child 3. Parents/guardians

14.8 CHALLENGES IN RECORD MANAGEMENT

Activity

Ask the participants to brainstorm on the challenges revolving around record management and share in class.
Some of the responses may have included:



1. Lack of National policy on Records management
2. Lack of or poor systems, procedures and practices
3. Inadequate resources (finances, housing, equipment and personnel)
4. Inadequate training and skills that is data analysis for registry officials
5. Computer illiteracy among the personnel
6. Poor legislation
7. Lack of organizational policy on records management

Revision exercise

1. Imagine that information regarding a sensitive case in your department on child abuse has leaked out to the press. What are some of the actions you would take as the head of department?
2. One of the agencies has already carried out a thorough investigation on a case that you are now handling. What are some of the ways of ensuring that you do not have to repeat an investigation on the case?
3. What action would you take to handle a situation where your colleagues have inadequate record-keeping skills?

14.9. REFERENCES

Department of Children's Services and JICA. (2003). *The Manual for Children's Officers, Staff of Children's Institutions, and Volunteer Children's Officers* (Second Revised Version). Kenya. Nairobi.

Department of Children's Services and JICA. (2008). *National Standards and Regulation for Statutory Children's Institutions*. Kenya. Nairobi.

Department of Children's Services and JICA. (1994) *Probation and Aftercare Services. The National Standards Manual*. Kenya. Nairobi.

Read J. and Ginn M.A.(2015). *Records Management*. Cengage Learning , USA.

Republic of Kenya. *The Children Act No. 8 of 2001*. Government Printer. Kenya. Nairobi.

Republic of Kenya. *The Community Service Orders Act No. 10 of 1998*. Government Printer. Kenya. Nairobi.

Republic of Kenya. *The Constitutions of Kenya 2010*. Government Printer. Kenya. Nairobi.

Republic of Kenya. *The Probation of Offenders Act Cap. 64*. Government Printer. Kenya. Nairobi.

Republic of Kenya. *The Public Archives and Documentation Service Act, Cap.19*. (Revised 2012). Government Printer. Kenya. Nairobi.

Republic of Kenya. *The Records Disposal Act Cap. 14*. (Revised 2012). Government Printer. Kenya. Nairobi.