

Chapter 9

Challenges in Safeguarding Children's Rights in Kenya's Criminal Justice System: A Prosecutor's View

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ABSTRACT

This paper examines the practical challenges of safeguarding children's rights within Kenya's criminal justice system, focusing on gaps in legal representation, professional training, privacy protections, and support systems for vulnerable groups such as child parents, victims, and youth offenders. Drawing on lessons from jurisdictions like South Africa, Canada, the United Kingdom, and the United States, the paper offers actionable recommendations to strengthen Kenya's child justice framework. These include ensuring continuous legal assistance, enhancing accessibility of information, implementing individualized assessments, and safeguarding children's privacy in criminal proceedings. The study advocates for a child-centered, rights-based approach to justice that prioritizes rehabilitation and reintegration over punitive measures, aiming to align Kenya's practices with international standards and best practices.

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1. INTRODUCTION

The protection of children's rights within the criminal justice system is a cornerstone of any society committed to justice and human dignity (Viola, 2009). In Kenya, the legal and policy frameworks for safeguarding the rights of children in conflict with the law are extensive, including the Constitution, the Children Act, and the Legal Aid Act. However, significant gaps persist in the practical implementation of these safeguards, leaving many children vulnerable to systemic failures and injustices (Viola, 2009). This paper critically examines the challenges and proposes reforms to ensure the realization of children's rights within Kenya's criminal justice system, drawing on comparative lessons from jurisdictions such as South Africa, Canada, the United Kingdom, and the United States.

Children in conflict with the law face unique vulnerabilities arising from their developmental stage, dependence on adults, and limited understanding of legal processes (Viola, 2009). Issues such as inadequate legal representation, lack of child-friendly procedures, breaches of privacy, and insufficient support systems exacerbate these vulnerabilities. Additionally, challenges such as youth radicalization, stigmatization of offenders, and the systemic neglect of vulnerable groups like child parents and victims further highlight the urgent need for reform (Viola, 2009).

This paper adopts a multi-dimensional approach to identify and address these challenges. It explores the statutory and policy frameworks currently in place, highlighting gaps and inconsistencies in their application. Practical challenges such as limited access to legal assistance, insufficient professional training, and weak privacy protections are analyzed in depth. Drawing lessons from jurisdictions with progressive child justice systems, the paper offers actionable recommendations, including ensuring continuous legal assistance, conducting individual child assessments, enhancing the accessibility of legal information, and protecting children's privacy.

By advocating for a child-centered and rights-based approach, this paper underscores the importance of aligning Kenya's criminal justice practices with international standards and best practices. Only by addressing these critical gaps can Kenya create a justice system that truly upholds the rights and dignity of children, fostering their rehabilitation and reintegration into society.

2. LEGAL AND POLICY FRAMEWORK OF CHILDREN'S RIGHTS IN KENYA'S CRIMINAL JUSTICE SYSTEM

This section sets out the current statutory and policy framework for the protection of the rights of children in conflict with the law.

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