


# Chapter 10

## The Legal Dilemma in the Implementation of Laws Against Drug Abuse Among Street Children in Nairobi, Kenya

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### **ABSTRACT**

*According to the Consortium of street children, there are about 60,000 street children in the country. While on the streets, these children are exposed to a hard life with drug abuse. This scenario puts them in a conflict situation with law enforcement. Drug abuse is criminalized in Kenya through the Narcotic Drugs and Psychotropic Substances Act (1994) and other legal frameworks. The study's objectives were to establish the legislative framework to curb drugs among street children and explore the challenges these laws face. The study adopted a Case Study design in which Nairobi, Kenya's capital, was the case study. Sampling was stratified among the 17 sub-counties in the city, and each had an equal representation of 4, making a total of 68 respondents. The target population consisted of social workers, law enforcers*

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(particularly in the children's department), and administrators such as chiefs and Sub County commissioners. Data was collected using KIIS (Key Informant Interviews), document analysis, and desktop review.

## 1. INTRODUCTION

According to the National Census Street families Report (2018), Kenya has a total of 46, 639 persons living on the streets. Out of these, a majority of them are aged between 10-34 years and the highest concentration is in Nairobi, Mombasa and Uasin Gishu counties. A majority of them are males (97.4%) and those aged 19-34 followed by children below 19 years who were at 19,752. In Nairobi, it was established that there were 15,337 people living on the streets while in Mombasa they were 7,529, Kisumu 2,746, Uasin Gishu 2,147 and Nakuru 2005 (National Census for Street Families Report, 2018).

The numbers keep on rising day by day because of several factors such as poverty at family level, death of parents, separation or divorce of parents, abandonment, parents living on the streets, mistreatment by parents or relatives, tribal displacement, inadequate food at home, influence of friends, getting lost while travelling, lack of school fees, fear of being reprimanded and an illusion of freedom while living on the streets. Over the years, efforts have been fronted by the government and non-governmental organizations to address the issue. For example, in 2002, when the NARC government took over, the Ministry of Local Government then embarked on a rehabilitation program for street children in collaboration with the National Youth Service (NYS). This led to offering of informal education, training as well as giving some of them an opportunity to go back to school. This program saw 6,000 ex-street children being enrolled in different primary schools across the country (Morangi, 2013).

While on the streets, one of the things that these children engage in is drug abuse (Obondo, 2020). The most abused drugs by the street children in Nairobi are hydrocarbons, tobacco, alcohol, cannabis and *Khat*. In an attempt to curb this menace, the Kenyan Criminal Justice System has been reactionary. The US Department of Justice (2021), notes that on many occasions, the criminal justice system demonstrate brutal attitudes towards street children. These children are subjected to corporal punishment, incarceration with adults and disregard to their welfare. This, in itself raises questions as to what extent should the criminal justice system go in implementing laws on drug abuse among street children. It is against this background that the study sought to establish the legal dilemma faced by the criminal justice system in balancing the intentions of the law against drug abuse while at the same time adhering to the laws on the rights of the children living on the streets.

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