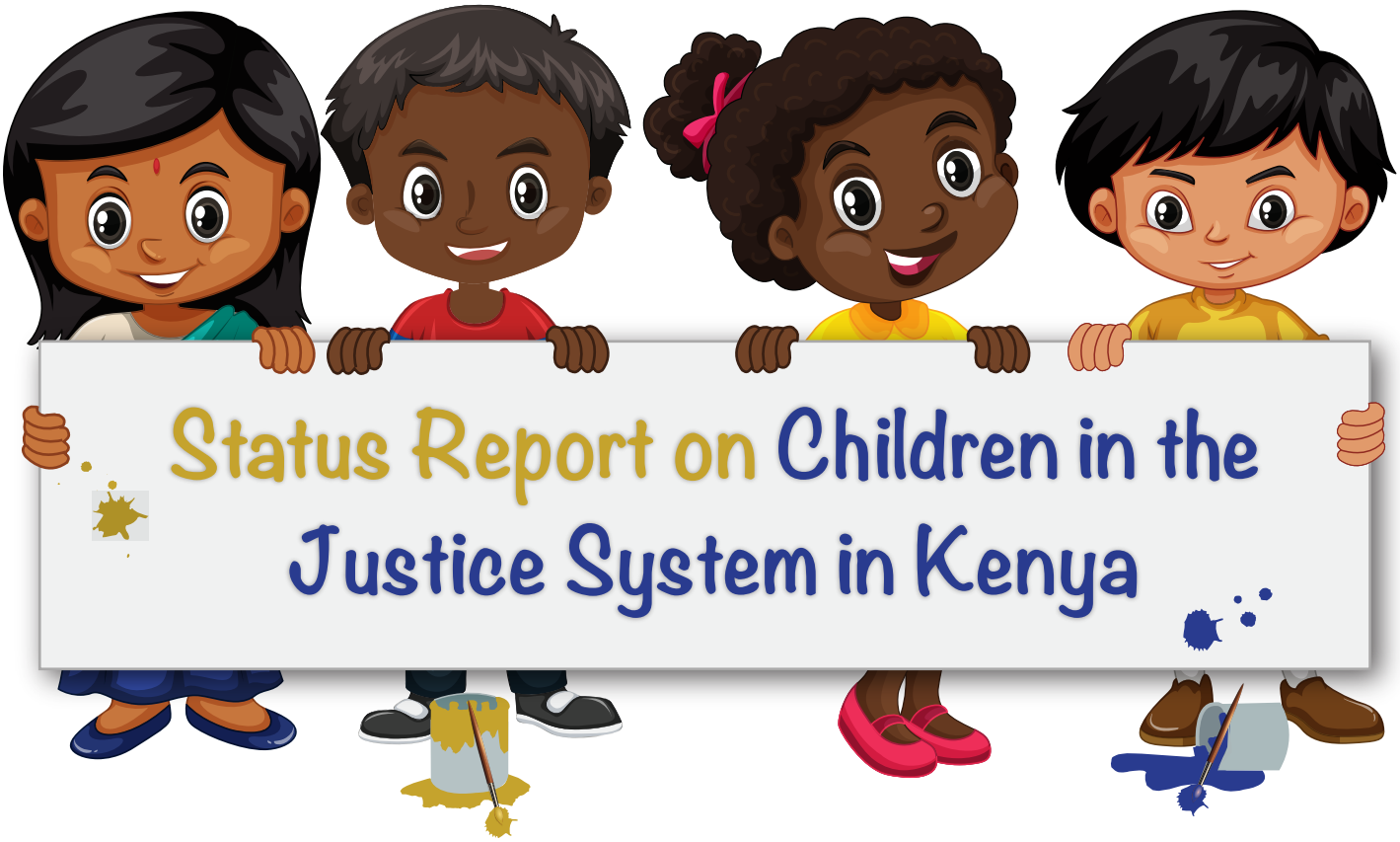

Status Report on Children in the Justice System in Kenya

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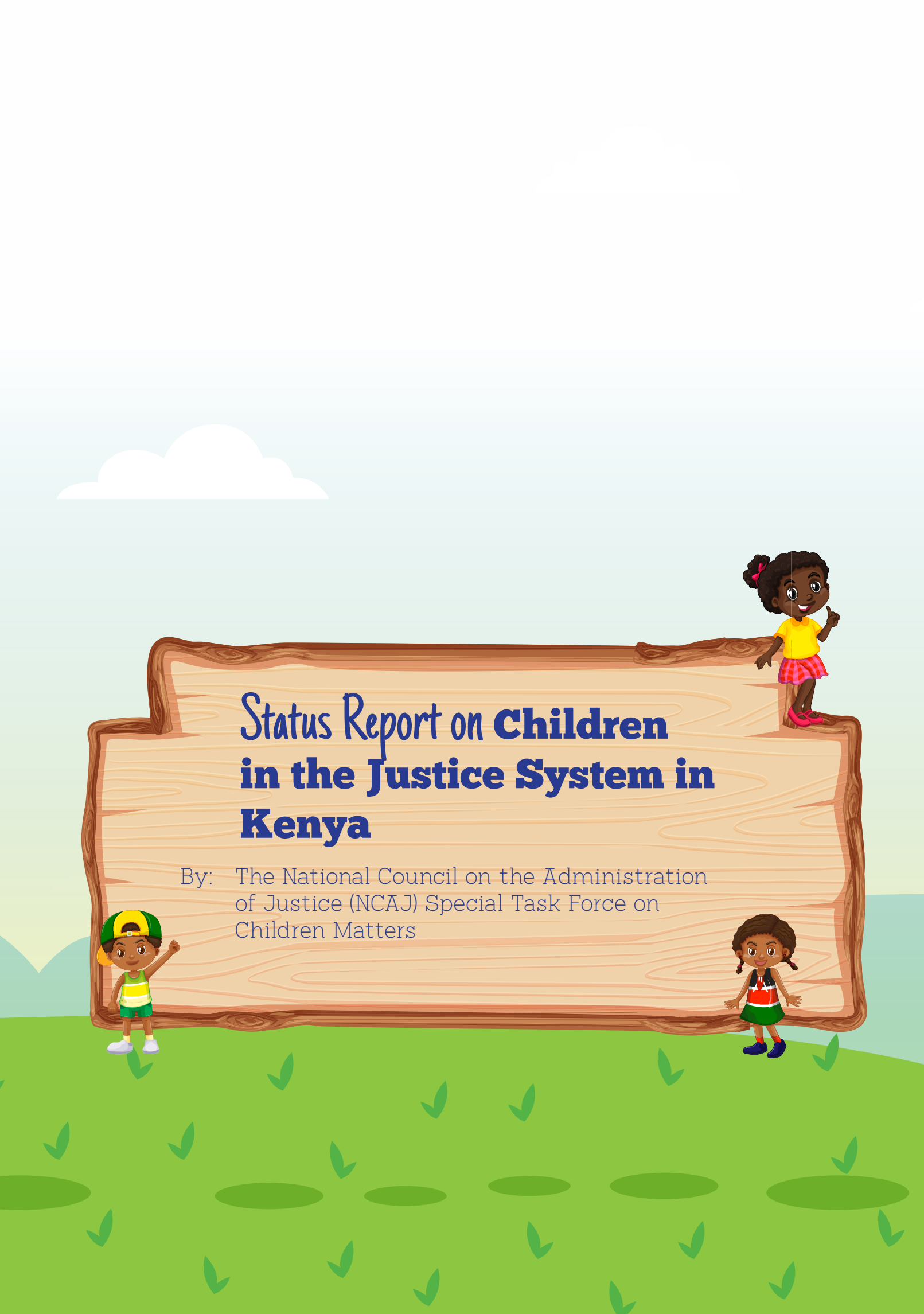
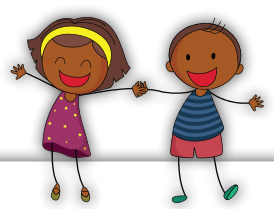


Status Report on **Children in the Justice System in Kenya**

By: The National Council on the Administration of Justice (NCAJ) Special Task Force on Children Matters

About the NCAJ



The National Council on the Administration of Justice (NCAJ) is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a high-level policy making, implementation and oversight coordinating mechanism as reflected in its membership comprising State and Non-State Actors from the justice sector.

Its mandate is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system. This runs against the grain of the culture of working in silos, which is detrimental to the administration of justice.

Through its multi-sectoral design, the NCAJ works through various Task Forces, Committees and working groups to perform the following functions:

1. Formulate policies relating to the administration of justice;
2. Implement, monitor, evaluate and review strategies on the administration of justice;
3. Facilitate the establishment of Court Users Committees at the County Level; and
4. Mobilise resources for purposes of the efficient administration of justice.

The NCAJ was constituted in recognition of the fact that the justice system is a chain-link comprising many actors that must coordinate their actions in order to ensure effective and efficient delivery of justice for Kenyans. This is reflected in its diverse membership and co-option of state and non-state actors. The State Law Office and the Department of Justice and various Ministries, Office of the Director of Public Prosecutions National Police Service, Kenya Prisons Service, Office of the President Cabinet Office, Probation and Aftercare Services, Witness Protection Agency, Community Service Orders Programme, the Kenya National Commission on Human Rights, and National Council for Law Reporting are some of the bodies represented in the NCAJ.

The NCAJ Special Task Force on Children Matters

The NCAJ Special Task Force on Children Matters was appointed by the Hon. Chief Justice vide Gazette Notice No. 369 of 29th January 2016 with a mandate to address gaps regarding the administration of justice with regard to children.

This Task Force is chaired the Hon. Lady Justice Martha Koome, Judge of Appeal.

It is mandated to deliver on sixteen terms of reference which are collapsed into three broad thematic areas:

(i) Legislative and policy reforms;
(ii) Quality of care, infrastructure and data; and
(iii) Coordination and sensitisation of all child justice actors.

REPORT OF THE NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE (NCAJ) SPECIAL TASK FORCE ON CHILDREN MATTERS

SUBMITTED BY

THE NCAJ SPECIAL TASK FORCE ON CHILDREN MATTERS

TO THE HONOURABLE CHIEF JUSTICE OF THE REPUBLIC OF KENYA & PRESIDENT OF THE SUPREME COURT OF KENYA,

HON. MR. JUSTICE DAVID MARAGA, E.G.H.

Transmittal Letter

DATED THIS 20TH DAY OF NOVEMBER 2019

Hon. Mr. Justice David K. Maraga,
Chief Justice of the Republic of Kenya
Supreme Court Building,
City Hall Way,
NAIROBI.

20th November, 2019

Dear Sir,

RE: LETTER OF TRANSMITTAL

The NCAJ Special Task Force on Children Matters was appointed by the Hon. Chief Justice vide Gazette Notice No. 369 of 29th January 2016 with a mandate to address gaps regarding the administration of justice with regard to children. This Task Force is chaired the Hon. Lady Justice Martha Koome, Judge of Appeal. It is mandated to deliver on sixteen terms of reference;

1. To review and report on the status of children in the Administration of Justice.
2. Examine the operative policy and legal regimes as well as the emerging case law to identify the challenges and make appropriate recommendations.
3. Assess, review, report and recommend on the service standards of each of the justice sector institutions with respect to children matters.
4. Prepare draft rules of procedure for enforcement of fundamental rights of children.
5. Conduct a situation analysis of the existing infrastructure and equipment in the criminal justice system in regard to children matters and develop guidelines for the monitoring, supervision and inspections for holding facilities.
6. Develop guidelines for Child Protection Units and propose mechanisms for the establishment of Child Police Unit in the National Police Service.
7. Develop the Court Practice Directions on children cases.
8. Develop the Diversion Regulations.
9. Develop a Policy on Mandatory Continuous Professional Development program on child rights for Justice and examine, review the training curricula on children.
10. Develop policies on re-integration of children accompanying imprisoned mothers.
11. Develop policies on separated cells for children.
12. Development of the guidelines for children with special needs.
13. Develop guidelines for inclusion of children with special needs in the Juvenile Justice Actors procedure to be included in the practice guidelines.
14. Develop a coordinated sensitisation and awareness strategy.
15. Develop a form for presenting the P&C cases in court.
16. Improve coordination of the Juvenile Justice Actors at the National and County level.

In exercise of its mandate, the Task Force was required to review and report on the status of children in the Administration of Justice to the Hon. Chief Justice and execute the 15 terms of reference. There was no time line given to the task force on when to report. However, the members of the NCAJ Special Task force on Children matters chose 20th November 2019, a date that coincides with the 30 year celebrations of the United Nation Convention on the Rights of the Child.

The Task Force has implemented and executed its mandate, finalized its report which entails the Status of the Child in the Justice System in Kenya and specifically highlights “The Big 7” which are the key recommendations for implementation by the Juvenile

Justice actors. Consequently, the Task Force looks forward to become a standing committee on implementation so as to ensure that the best interests of the child are fulfilled. We are humbled by the trust which was bestowed on us to serve in the Task Force and thank the Honourable Chief Justice for his leadership and support.

The Task Force is honoured to present this report to your Lordship, the

Chief Justice of Kenya.

.....

Hon. Lady Justice Martha Koome, JA – Chairperson

.....

Grace Ndirangu, SSP – Vice Chair

.....

Mr. Noah Sanganyi – Secretariat

LIST OF TASK FORCE MEMBERS

Hon. Lady Justice Martha Koome	Chairperson, Judge of Appeal NCAJ Special Task Force on Children Matters
Grace Ndirangu	Vice Chair, Children Task Force SSP, Head DCI Anti-Human Trafficking and Child Protection Unit, Directorate of Criminal Investigations
Noah Sanganyi	Director of Children's Services
Hon. Lady Justice Lucy Gitari	Judiciary, Judge of the High Court
Hon. Lady Justice Teresia Matheka	Judiciary, Judge of the High Court
Hon. Moses Wanjala	Registrar, Mediation Accreditation Committee
Hon. Anthony Mwicigi	Judiciary, Magistrate
Hon. Manuela Kinyanjui	Judiciary, Magistrate
Hon. Jackie Kibosia	Judiciary, Magistrate
Hon. Teresa Nyagena	Judiciary, Magistrate
Hon. Kadhi Abduljabar Ishaq	Judiciary, Kadhi
Carolyne Atieno Adero	Probation and Aftercare Services
Veronica Wambui Mwangi	Kenya National Commission on Human Rights, Deputy Director
Mary Inyuma Wang'ele	Office of the Director of Public Prosecution
Teresa Omondi-Adeitan	Federation of Women Lawyers Kenya (FIDA)
Marysheila Onyango	Law Society of Kenya
Florence Kerubo Omundi	Kenya Prisons Service
Ruth Juliet N. Gachanja	Technical Advisor, NCAJ Special Task Force on Children Matters
Duncan Okello	NCAJ
Martha K. Mueni	OCJ, Facilitator
Wilfred Makori	National Police Service
Carol Karimi Kariuki	Office of the Director of Public Prosecutions, Head of the Children's Division
Marygorret Mogaka	Department of Children's Services, Deputy Director
Caroline Towett	Department of Children's Services
Anne Thiongo	Department of Children's Services, Children Officer
Dr. Miriam Nyamwamu	Kenya Prisons Service
Samuel Munyuwiny	African Institute Child Studies, Executive Director
Lenson Njogu	Legal Resources Foundation
Jennifer Kaberi	Mtoto News, Founder/CEO
Dr. Osewe Ouma	Directorate of Planning and Organisational Performance, Assistant Director
Juliet Maganya	The CRADLE
Lilian Mueni	Judiciary, Directorate of Public Affairs and Communications
Sabastian Katungati	National Crime Research Centre
Anne Wairimu	National Legal Aid Service (NLAS), Deputy Registrar
Everlyne Simiyu	Directorate of Planning and Organisational Performance
James Nombi	Kenya Law Reform Commission
Dr. Jane Wathuta	Strathmore University

Foreword by the Chief Justice and Chairperson, NCAJ

PERSISTENT and multi-faceted challenges in the administration of justice in children matters led my predecessor, Chief Justice (Rtd.) Hon. Dr. Willy Mutunga, to establish the Special Task Force on Children Matters in January 2016, under the auspices of the National Council on the Administration of Justice (NCAJ). The nature of the challenges that children in the justice system faced required a multi-agency approach in developing solutions and the NCAJ membership and agencies provided the appropriate avenue to confront these challenges.

The Task Force, which is ably chaired by Hon. Lady Justice Martha Koome, was tasked to seek ways of achieving a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system. Among specific responsibilities that were vested in the Task Force included: identifying the specific challenges (especially legislative and policy gaps) that impede the administration of justice in children matters and provide appropriate recommendations. Members of the Task Force were drawn from agencies and actors concerned with the rights and the welfare of the Kenyan Child, which aided the development of recommendations.

The report documents the journey of the Task Force towards realizing the terms of reference, which formed the basis of engagements and activities that were undertaken. The Task Force has developed recommendations and products that address the gaps identified. These include the Children Bill, Rules of Procedure, Protocols, Policies and several reports on different aspects of children matters in the administration of justice.

One of the innovations of the Task Force is the "Children Service Weeks" that later became "Judicial Service Month for Children Matters." Activities during this period include: the training of Court User Committees on child protection, and the hearing and disposal of children matters, which significantly reduced the number of children matters pending in courts across the country. It is my hope that this practice will be carried beyond the life of the Task Force and become an annual Judiciary event.

The report contains "the Big 7 call to action", which are extensive and detailed recommendations that are specific to the respective mandates of the member agencies of the NCAJ. It is important that each agency engages with these recommendations and develop plans to sustain the work already done through the Task Force. The report includes a recommendation on the enactment of the Children Bill, an important measure that will anchor most of the recommendations in a legal framework and ensure sustainability.

The work of the Task Force has demonstrated the need for a collaborative and collective approach to addressing access to justice challenges. I commend Lady Justice Martha Koome and indeed the entire Task Force for the work that has been done over the last four years. It is my hope that this approach and work will be replicated across the NCAJ in order to have a coordinated approach in the efforts to have an efficient system of administration of Justice.

Hon. Justice David K. Maraga, E.G.H.,
Chief Justice and President of the Supreme Court of Kenya
Chairman, National Council on the Administration of Justice

November 2019

Message from the Chairperson

ON behalf of the National Council on the Administration of Justice Special Task Force on Children Matters, I am greatly honoured to submit this report that encompasses not only the state of children in the administration of justice, but also key recommendations on reforms needed in legislation, policy, practice directions, institutional reforms and mechanisms that are necessary to secure the best interest of the Child. Children are vulnerable due to their age, and when they come into contact or in conflict with the law, it is readily accepted that this happens because of systemic failures. The manner in which children are handled by the various institutions has a lifelong impact on their lives which in most cases may be negative.

This being a multi-agency Task Force, we benefited in a big way by harnessing the expertise, skills and knowledge of the members who represent all key child justice institutions. Members did not just sit in boardrooms to make recommendations on the various reforms but traversed this country assessing the situation of children in the justice system and the holding institutions and offered grounded solutions for the protection and promotion of their rights. Noting that the Children Act, enacted in 2001, is yet to be aligned with the provisions of the Constitution of Kenya 2010 and emerging issues affecting children today, we took a conscious decision to prioritise law review, actively supporting the drafting of the Children Bill 2018 and developing various policies, practice directions and standard operating procedures. The draft Children Bill 2018 and documents generated by the Task Force accompany this report. It is our earnest prayer that they shall be implemented and enforced by the State and other duty bearers in the best interest of the Kenyan child.

Sexual violence against children especially girls, some even below the age of 6 years, remains disturbingly high, persistent and pervasive despite the stiff penalties provided by the law. There is inordinate delay in hearing of these cases in courts across the country, poor investigations, inadequate training of the officers handling children's matters and lack of coordination among the child justice agencies. A huge number of children – almost 80 per cent – who are classified as children in need of care and protection are incarcerated in various institutions despite not having committed any offence known to law.

The lack of reliable data to inform decision making remain a persisting challenge and contributes to low budgetary allocations to child justice institutions. Ultimately, inadequate budgetary has negative implications for the care and wellbeing of children in the justice system. As a Task Force, the Juvenile Justice Information Management System (JJIMS) that we have initiated, provides an opportunity to address this critical challenge.

We present this report and the accompanying key documents to aid reforms, which if implemented, will guarantee protection and promotion of the rights of children as enshrined in the Constitution of Kenya 2010. We also offer these recommendations as a sign of introspection and to renew the commitments made by Kenya and other member states 30 years ago when the United Nations Convention on the Rights of the Child was enacted as a legal instrument to protect the rights of the child.

Hon Lady Justice Martha Koome, E.B.S.
Judge of Appeal
Chairperson of the NCAJ Special Task Force on Children Matters

Acknowledgement

The Report on the Status of Children in the Justice System in Kenya represents collaborative efforts among a number of people and organizations to whom we are indebted. First and foremost we would like to thank the following members of the Task Force for their unwavering support and commitment: Grace Ndirangu, Mr. Noah Sanganyi, Lady Justice Lucy Gitari, Lady Justice Teresia Matheka, Hon. Tony Mwicigi, Hon. Manuela Kinyanjui, Hon. Jackie Kibosia, Hon. Kadhi Abduljabar Ishaq, Hon. Moses Wanjala, Caroline Towett, Carol Karimi Kariuki, Florence Omundi, Dr. Miriam Nyamwamu, Carolyne Adero, Veronica Mwangi, Samuel Munyuwiny, Mary Wang'ele, Jennifer Kaberi, Lenson Njogu, Teresa Omondi Adeitan, Juliet Gachanja, Lilian Mueni, Marysheila Onyango, Wilfred Makori, Dr. Osewe Ouma, Juliet Maganya, Sabastaian Katungati, Marygoret Mogaka, Anne Wairimu, Dr. Jane Wathuta, Kieya Kamau, Evelyne Kogi Everlyne Simiyu, James Nombi, Martha Mueni (Secretariat), James Kyeni (Secretariat), Irene Omari (Secretariat), Diane Otieno (Secretariat), Angelica Awiti (Secretariat), Anne Thiong'o (Secretariat) and Sophie Kabiriria. I also wish to acknowledge the great leadership by the Chairperson Hon. Lady Justice Martha Koome.

The members of the Task Force went beyond the call of duty as they offered their professional services and skill in the committee work, they traversed the country to visit the courts during service weeks that were organized to reduce backlog of children matters and visited child holding institutions besides attending numerous committee meetings where they developed several documents that are part of this report.

We thank the following institutions; UNICEF for supporting the legislative drafting of the Children Bill, service weeks and Report Writing; International Development Law Organization (IDLO) for giving us technical and secretarial support, US Embassy-Department of Justice for supporting the service weeks and the training of the Court User Committees, Legal Resources Foundation (LRF) for supporting meetings of the task force to develop the various documents, CEFA for supporting the Juvenile Justice Information Management System (JJIMS) and drafting of the diversion toolkit, Kaplan and Stratton Advocates for donating the witness protection screens for the courts and the African Institute for Children Studies co-hosting with Daystar University the first ever International Conference on the Best Interests of the Child.

We acknowledge the technical support of Dr. Sheila Wamahiu who led the report writing team, Kieya Kamau- Assistant report writer, and Roselyne Kabata- Program Assistant, Ruth Juliet N Gachanja- technical advisor of the Task force and Dr. Kibaya Laibuta for offering his professional services in legislative drafting of the Children Bill.

Special thanks to the Honourable Chief Justice who is also the Chair of the NCAJ, the Chief Registrar of the Judiciary and Secretary of the NCAJ, Dr. Conrad Bosire, Ag. Executive Director of NCAJ, Anthony Sissey and John Muriuki from the Directorate of Public Affairs and Communications, the entire Judiciary and justice sector agencies for their various kinds of support to the activities of the committee.

We wish to acknowledge and appreciate all other individuals and organizations that contributed to this report and the work of the Task Force, we offer our sincere gratitude.

Dr. Conrad Bosire,
Ag. Executive Director, National Council on the Administration of Justice

Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ADR	Alternative Dispute Resolution refers to procedures for settling disputes without litigating in court, for example reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms. Article 159(2) (c) of the 2010 Constitution of Kenya promotes alternative forms of dispute resolution.
AG	Attorney General
CCI	Charitable Children's Institution. Commonly referred to as 'children's homes' or 'orphanages', this refers to a home or institution established by a person, religious organisation or non-governmental organisation and has been granted approval by the Council to manage a programme for the care, protection, rehabilitation or control of children, under section 58 of the Children Act.
CCPO	Child Care and Protection Officer
CPC	Child Protection Centre. This is a non-residential institution managed by the Department of Children's Services that provides services related to child protection, such as child and family counselling, legal aid assistance, tracing of lost children and sensitisation on child rights.
CPD	Continuous Professional Development
CPIMS	Child Protection Information Management System. This is a case management database that keeps records, tracks, and manages data on individual cases of child protection.
CPU	Child Protection Unit
CRC	Convention on the Rights of the Child, United Nations
CUC	Court User Committee. CUCs are forums used to bring together all court participants and justice actors to resolve shared problems, improve the operation of the courts, and coordinate responses in the administration of justice.
DCI	Directorate of Criminal Investigations
DCRT	Daily Court Return Template. It is a data entry tool developed by the Judiciary and used by the court clerks to make daily returns on how many cases have been heard in a particular day, the number of witnesses that testified and the way forward for the case.
DCS	Department of Children's Services
DPP	Director of Public Prosecutions
ICT	Information Communications Technology
IDLO	International Development Law Organization
JICA	Japan International Coordination Agency
JJA	Juvenile Justice Actor. This refers to all government agencies that come into contact with children and thus have a responsibility to uphold children's rights.
JJIMS	Juvenile Justice Information Management System
KNCHR	Kenya National Commission on Human Rights. This is an independent constitutional body that acts as a watchdog over the government and is the state's lead agency in the promotion and protection of human

	rights.
MOU	Memorandum of Understanding
NCAJ	National Council on the Administration of Justice
NGO	Non-Governmental Organisation
NPS	National Police Service
ODPP	Office of the Director of Public Prosecutions. This is a constitutional office established under article 157 of the 2010 Constitution of Kenya, to institute and undertake criminal proceedings in court.
PBC	Pending Before Court
P&C	Protection and Care
SOP	Standard Operating Procedure
TF	Task Force. Referring to the NCAJ Special Task Force on Children Matters.
TOR	Terms of Reference

Glossary

Cause list	The list of cases to be heard by a court on a particular day.
Child Justice Actor	This is used synonymously with the term juvenile justice actor to refer to both State and non-State agencies involved in the child justice system.
Committal	This refers to an order of the court for a child to be placed in the care of a fit person or an institution e.g. a rehabilitation school or borstal institution. The word 'committal' is used as an alternative to the word 'sentence' and 'conviction' which should not be used in relation to a child according to section 189 of the Children Act.
Court-annexed Mediation	This is a form of alternative dispute resolution (ADR) whereby parties resolve their disputes with the assistance of an independent, neutral person. This mediation process is conducted under the umbrella of the court.
Daily Occurrence Book	This is a book used to record reported cases at a Police Station.
Diversion	This refers to interventions and programmes designed to divert children from the criminal justice system with the aim of providing support and rehabilitation to the child in order to reduce the likelihood of further antisocial behaviour and prevent them from progressing further into the criminal justice system.
Intermediary	A person who facilitates communication between a vulnerable witness and the court to obtain evidence.
Intersex	This refers to a person who is conceived or born with a biological sex characteristic that cannot be exclusively categorised in the common binary of female or male due to their inherent and mixed anatomical, hormonal, gonadal (ovaries and testes) or chromosomal (X and Y) patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood. (Definition by the Task Force on Legal, Policy, Institutional and Administrative Reforms regarding Intersex Persons in Kenya, December 2018)
Kafala	An alternative care option under Islamic law; a form of adoption.
Madrassahh	An Arabic word for any kind of educational institution, whether secular or religious. However, in Kenya, it is commonly associated with the teaching of Islam in an Islamic school or education centre, which is often part of a mosque.
Pauper brief	This refers to a case that is conducted by a volunteer advocate at the expense of the State.
Plea Bargain	This is a voluntary agreement between the accused and the prosecution to resolve a case under terms accepted by the accused, for example, to agree to plead guilty on lesser charges. This is done with the approval of the court and reduced to writing in the form of a 'plea agreement' under the Criminal Procedure Code.
Pro bono	This refers to professional services provided by an advocate or lawyer voluntarily and without payment by the client.
P3 Form	A free medical examination report filled out by a police officer and medical officer. It acts as evidence that a violent act occured including sexual violence.
Restitution	This refers to compensating the victim(s) of one's wrong-doing by payment to the victim or giving of a service, returning of a thing to its lawful owner, or restoration of damaged property to its original state.
Restorative Justice	This is an approach to justice that focuses on the needs of the victims, the offenders and the involved community.

Executive Summary

The Call to Action

This report presents findings of the NCAJ Special Task Force on Children Matters on the situation of the children in the Kenyan justice system. Based on insights gained by the Task Force over the last four years, the report paints a picture of a broken justice chain-link that is not working seamlessly, and therefore failing to deliver efficient and effective services to protect and safeguard the rights of child victims and those who are accused. The report contends, however, that this broken chain-link can be urgently fixed if State and non-state actors in the child justice system join hands and work together accountably - with integrity and dedication. It argues that the broken chain-link can be fixed if the State and the non-state actors move out of their silos, reaching out to each other, creatively and in humility, coordinating their efforts in recognition of the fact that they are all focusing on the same child. This child cannot be compartmentalised.

The report makes the following **7-point call to action**, urging the State and non-state actors to remove the bottlenecks by working collaboratively, building on their individual mandates and strengths, in the best interest of the child:

1. Immediate enactment of the Children Bill 2018.
2. Establishment of a standing commmitee on Child Justice Policy Implementation and Quality Control by NCAJ with a 3-year reporting mandate to ensure implementation of the recommendations of the Task Force on Children's Matters. Membership of the Committee to be expanded to include the education and health sector, local administration, community leaders, Nyumba Kumi Initiative and the academia.
3. Adoption of the annual service month for children matters in November and service week protocols in all courts in Kenya by the Registrars of the Judiciary, and provision of the necessary budgetary allocation for hearing cases.
4. Provision of primary and secondary school education and secondment of teachers to statutory children's institutions (rehabilitation schools, borstal institutions, remand homes) by the Ministry of Education in coordination with the Department of Children's Services in compliance with the constitutional right of every child right to education and the decision of the Eldoret High Court ruling in Eric Githua Kiarie v. Attorney General & 2 Others [2016] eKLR.
5. Use of ADR (alternative dispute resolution) mechanisms, court-annexed mediation, diversion and plea bargaining as critical tools for expediting access to justice for children in Kenya, in order to ensure that detention of the child is a measure of last resort.
6. Strengthening of child rights institutions through adequate budgetary allocation, resources and oversight mechanisms in order to improve the conditions of detention in children's holding facilities and institutions.
7. We call all public and private sector institutions and agencies at the national and county government level to report abuse of children to the Police, Courts and relevant authorities, and to create safe spaces for children to report abuse, in accordance with their constitutional duty to safeguard child rights.

Honourable Anne A. Amadi,
Chief Registrar of the Judiciary
Secretary, National Council on the Administration of Justice

Background

What should be done to make the administration of justice to children in Kenya effective, efficient and accountable? This was the central question investigated by the NCAJ Special Task Force on Children Matters. The Task Force was appointed via Gazette Notice No 369 of 29th January 2016 by the Chief Justice of the Republic of Kenya and the Chairperson of the National Council on the Administration of Justice (NCAJ). Justice Martha Koome of the Judge of Appeal, who was appointed its Chair, led a diverse group of thirty-seven State and non-state actors to deliver on sixteen tasks specified in the Terms of Reference broadly categorised into three thematic areas, namely: (a) Legislative and policy reforms; (b) Quality of care, infrastructure and data; and (c) Coordination and sensitisation. This two-volume report documents the findings and outputs of the Task Force.

The first volume targets the lay readership, synthesising key findings of the Task Force. Specifically, the substantive content of the report is organised into three main chapters: Chapter Two highlights the key findings of the Task Force, identifying gaps and proposing recommendations under each of the three thematic areas. Chapter Three documents its achievements, describing the successes related to the execution of its mandate, including but not restricted to the attainment of the Terms of Reference. Finally, the report concludes with a Call for Action to the State and other key child justice actors to each take up their mantle, build on their comparative strengths and work individually and collaboratively to make the justice system more effective, efficient and accountable in the best interest of the child.

Volume two compiles 23 documents generated by the Task Force over the last four years. It includes the draft Children BIll 2018 and the policies and guidelines that it developed. This second volume targets stakeholders who are interested in more technical details and outputs achieved by the Task Force.

Situation of Children in the Justice System

The Task Force findings reveal multiple disconnects between the theory and practice of the law to the detriment of children putting into the spotlight a broken child justice chain-link. It shows that the majority of children's matters handled by the police and judiciary are related to sexual offences (60%) in which children are largely the victims though male children sometimes also stand accused. To a much lesser extent, offences such as stealing and assault bring children into the justice system. Significantly, 20 per cent of children's cases handled by the police are those needing care and protection.

Analysis of administrative data from the National Police Service, the Judiciary and the Department of Children Services reveal a pattern of injustice and delays in the administration of justice for children. Almost 80 per cent of the children in the statutory children's institutions under the Department of Children Services have never committed an offence. Many of the children languish in these institutions, sometimes growing into adulthood as they await the resolution of their cases. Coordination between the different child justice actors is weak, aggravated by critical knowledge and capacity gaps, and sometimes even apathy of judicial officers and others entrusted with the care and protection of children.

The Task Force found the quality of care and infrastructure in child holding institutions and facilities to be uneven. The dilapidated buildings, mismanaged, dirty and unsafe premises, ill-equipped and sparsely furnished dormitories caught the eyes of Task Force

members, as they criss-crossed the country assessing the status of children in the justice system. Often they were found to violate the fundamental rights of the child to be treated with dignity and to access health care and nutrition, education and recreation. In a majority of police stations across the country, and in court stations, they discovered environments that were simply not friendly to the child.

While negative attitudes, apathy and ignorance of the law no doubt heighten the vulnerability of children in the justice system, inadequate investment is a major contributory factor. The under-funding of child justice institutions limits development of child friendly infrastructure and facilities. The Probation of Offenders Act Cap. 64, which governs the Department of Probation and Aftercare Services does not provide for juvenile justice, while in Prisons, the budget does not cater for children accompanying their imprisoned mothers. The resource constraints in child justice institutions notwithstanding, they found instances of misuse of resources and wastage, which if plugged would go a long way toward improving the condition of children in the justice system.

The Achievements of the Task Force

The Task Force has succeeded in delivering on 90 per cent of the expected outputs, and has initiated work on the remaining 10 per cent. It also gone beyond its mandate by influencing strategic institutional and attitudinal changes in the way key child justice agencies conduct business, triggering "quick fixes" to improve the living conditions for children in some child holding institutions. As a result of its strategic vision and the way it conducted its business, there is greater appreciation of children in conflict with the law, and an understanding that positive change is possible within the confines of the current laws and resources.

Nevertheless, there are persisting gaps and challenges. To plug these gaps, the Task Force underscores the institutionalisation of good practices and the 17 policy directions, guidelines and procedures by anchoring them in the law – the proposed Children Bill of 2018.

The Call for Enactment of the Children Bill 2018

The Kenyan Constitution 2010 is progressive and protects the rights and well-being of all children under article 53 regardless of their status in law. Though the Children Act 2001 is largely guided by the principle of the Best Interest of the Child enshrined in the UN Convention on the Rights of the Child, it predates the Kenyan Constitution, and is therefore not fully aligned with it. Neither does it reflect emerging concerns arising from changes in the technological, socio-cultural, economic, and political environments of the child since 2001, when the Children Act was enacted. The Children Bill 2018 aligns itself with the Constitution, addressing inconsistencies and the emerging issues affecting the rights and welfare of children in this country. While the Bill has been in the making for more than a decade, the Task Force brought fresh energy to the table and supported its finalisation, through inclusive, consultative and participatory processes.

The Children Bill 2018, anchored in the Constitution provides the legislative framework for all policy and practice relating to children's matters in the country. The seventeen or so policies, practice directions, guidelines and procedures drafted with the support of the Task Force cannot be fully enforced without the legislative backup of the Children Bill 2018. The Task Force therefore makes an urgent appeal to the Legislative and Executive arms of the government to prioritise the enactment of the Children Bill into law.

Conclusion

Finally, the analysis of the status of children in the justice system reinforced the raison d'etre for the appointment of the Special Task Force on Children's Matters in January 2016. It revealed a broken chain-link that prevented children, both victims and accused, from exercising their rights guaranteed under the Constitution of Kenya 2010, the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The Task Force is confident that with vision, commitment, collaboration and political will, this chain-link can and should be fixed.

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The stories of **Kibet**, **Atieno** and **Kamau** are not unique. Their experiences exemplify those of hundreds of children from different parts of Kenya who come in contact with and are in conflict with the law every year. They testify to multiple violations of the rights of children not only at home and in the community, but also in the very institutions within the child justice system that are expected to protect and safeguard them.

01 | Introduction

Kibet[1] was only 10 years old when he fell afoul of the law for stealing a radio and selling it for Ksh. 1000 (USD 10). Convicted in his home area Molo in the Rift Valley, he ended up in the Shanzu Boys Probation Hostel in the Coast region. Shanzu is located more than 700 km away from Molo.

Atieno is a survivor of sexual violence. She was 13 years old when she was defiled. In addition to the physical and psychological trauma that she experienced, she became pregnant as a consequence of the defilement. It has been a long wait for her in the justice system; by the time an aspect of the case reached the Court of Appeal to determine whether DNA testing should be carried out on the alleged perpetrator, more than five years had already passed.

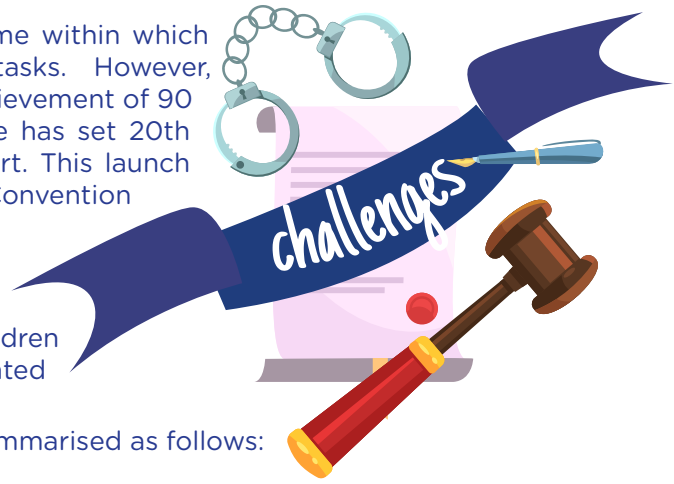
Kamau, whose initial "crime" was refusing to go to school, ended up with a serious charge of defilement while under the care and protection of the Likoni Remand Home. Before his encounter with the justice system, he was employed as a porter, earning a living through fetching water for his neighbours instead of attending school. Upon assessment at the Getathuru reception centre in Nairobi, he was classified as low risk and committed to the Likoni Remand Home in Mombasa county, a distance of over 600 km from his home location in Nyeri county. Kamau was not adequately supervised while in Likoni. In addition, there were no programmes to keep children at the Home productively engaged. So he continued doing what he knew to do best – fetching water for neighbours but this time in Likoni! Somewhere along the line an accusation of defilement changed his status as a child in contact with the law to someone in conflict with the law.

[1] Pseudonyms are used in this report to maintain the anonymity and safety of the children whose stories are shared. This in conformity with section 76 (5) of the Children Act and international child protection and safeguarding norms and practices.

Background

The Chief Justice of the Republic of Kenya and the Chairperson, National Council on the Administration of Justice (NCAJ) appointed Lady Justice Martha Koome of the Court of Appeal to chair a Special Task Force on Children Matters (henceforth referred to as the 'Task Force') via Gazette Notice No 369 of 29th January 2016. The decision of the Chief Justice and the NCAJ to appoint the Task Force was informed by a recognition that all is not well in the child justice sector; that there are myriad challenges facing children like Kibet, Atieno and Kamau in the justice system that needs to be urgently addressed.

The Gazette Notice did not specify a time frame within which the Task Force should complete its assigned tasks. However, after almost four years of operation and the achievement of 90 per cent of its mandated tasks, the Task Force has set 20th November, 2019 as the launch date of its report. This launch coincides with the 30th anniversary of the UN Convention on the Rights of the Child (CRC).



The Task Force was mandated to address gaps in the administration of justice with regard to children and to deliver on sixteen specific areas highlighted in the Terms of Reference. Broadly, the tasks as articulated in the Terms of Reference may be summarised as follows:

- To report on the status of children within the justice system.
- To provide guidance to key actors in the administration of justice by drafting essential guidelines, regulations, policies and the Protection and Care (P&C) tool.
- To develop a strategy for improving coordination of the child justice actors.

Based on the **sixteen tasks** contained in the Terms of Reference, the Task Force formulated two main objectives: First, to mainstream children's rights in the justice sector, thereby improving the situation of children in the administration of justice. Second, to promote efficient service delivery within the justice system and improve the coordination of the child justice actors at the national and county levels. Ultimately, its vision, guided by the principle of the Best Interest of the Child, is a society where justice is accessible to all children and is dispensed expeditiously and effectively.

Task Force Membership Profile

The membership of the Task Force is inclusive and diverse[2]. Through co-options, the membership was doubled from the nineteen in the Gazette Notice to thirty-seven, to allow for the participation of more child justice actors. It now comprises judges and magistrates from different jurisdictions, including from the Kadhis' Court; officers from various departments and directorates of the Judiciary, the Office of the Director of Public Prosecution (ODPP), Police, Prison, Probation and Aftercare Services, Department of Children's Services, and a variety of statutory bodies and state agencies such as the Law Society of Kenya, Kenya National Commission on Human Rights, National Crime Research Centre and the National Legal Aid Services. It also has a strong presence of non-state actors. Apart from the institutional representation, individual members bring to the deliberations their commitment, rich experience, expertise, and complementary skills on children's matters.

Approach and Process

Right from the outset, the Task Force deliberations and activities have been values-driven, strategically designed to have maximum impact. A large part of its success may be attributed to the collaborative, experiential and action-oriented work style adopted by members, anchored in the principle of the Best Interest of the Child. Members co-created content and used retreats and workshops to validate guidelines, tools, policies, protocols and procedures. Building on their personal experiences working in the child justice sector, they were guided by Kenya's national and international commitments to the realisation of children's rights.

The Task Force worked through three thematic committees. This greatly assisted the Task Force to dig deep into a wide range of issues affecting children in the administration of justice. The three committees focused on:

1. **Legislation and policy reforms**
2. **Quality of care, infrastructure and data**
3. **Coordination and sensitisation**

Experiential learning through circuit and service week visits informed the deliberations of the Task Force. Between 2016 and 2019, the members visited fifty-eight child holding facilities and related institutions in fifteen counties. The field visits helped them to discover practices and validate the situation on the ground, gain deeper insights, prioritise and address issues of concern and monitor changes (positive and negative). Both individualised and collective knowledge gained on children's matters through these visits were shared among the Task Force members through a dedicated WhatsApp group and exchange of field reports.

The Task Force participated in various fora, including consultative meetings to validate the Children Bill, and the inaugural Conference on the Best Interest of the Child, which it co-hosted with the Nairobi-based Daystar University in 2016. Through these, they were able to capture the perspectives of diverse interest groups, including children. They learnt of the hopes, aspirations, expectations and fears of children and adults regarding various provisions of the proposed Bill and reasons why they agreed or disagreed with them. High level advocacy meetings were embraced as a key strategy to directly and indirectly influence decision-makers to support and implement actions to improve the status of children in Kenya in general and within the justice system in particular.

[2]The list of members is presented in the transmittal page of this document. The list of Secretariat Members and the report writing team are attached as Annex A.

Report Methodology and Organisation

The report of the Task Force is presented in two volumes. The main sources of information for the two volumes are the over 100 documents and data generated by the Task Force over the period of its operation. They include information obtained from multiple sources: Field data gathered during circuit visits, a facilities questionnaire administered online to core child justice agencies in 2019, and administrative data received from the National Police Service, Judiciary, Prisons as well as the Probation and Aftercare Services. The data from the primary and secondary sources were analysed by the consultancy team contracted to draft the report.

The team generated additional information through:

- Targeted in-depth interviews with thirteen key informants, ten of who were Task Force members, and two non-members (from a magistrate's court in a rural county, and the other from the Kadhis' Court).
- Two open-ended online questionnaires administered to all Task Force members. The first questionnaire centred on perceptions of enabling environment for the best interest of the child. The second focused on identifying gaps, challenges and opportunities and proposing recommendations for improving the situation of children in the justice system.
- Desk review of selected research reports and related literature.

Volume One provides a synthesis of the work undertaken by the Task Force over the period of its operation. Specifically, the substantive content is presented in three chapters. Chapters 2 is organised around the three thematic areas as follows:

Chapter 2.1 describes the legal and policy context, identifies the lacuna in the law and presents recommendations on legislative and policy reforms.

Chapter 2.2 presents the status of the child under the theme of quality care, infrastructure and data, highlights the data crisis and presents recommendations.

Chapter 2.3 focuses on the third theme, that is coordination and sensitisation, highlighting key capacity development and knowledge gaps and makes relevant recommendations.

In **Chapter 3,** the report turns the spotlight on the successes of the Task Force in the execution of its mandate. Finally, in Chapter 4, it makes calls for action, holding the government and all child justice actors accountable for the implementation of recommendations in the best interest of the child.

Volume One also contains four appendices, that are critical to an understanding of the process adopted by the Task Force and contextualising the outcomes.

Volume Two of the report, which is a compilation of twenty-three documents, is recommended for stakeholders in the administration of justice, looking for more technical details. It contains specific outputs as well as by-products of the Terms of Reference, including the Task Force generated data collection tools, laws, rules of procedure, practice directions, guidelines and protocols. Annex B of this report presents a list of documents included in Volume Two.

"**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 marginalised communities, and the members of particular ethnic, religious or cultural communities". - *Bill of Rights, The Constitution of Kenya, 2010 Chapter 4 Article 21 (3).*

02 | The Situation of the Child in the Justice System

"All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat **the interests of the child as the first and paramount consideration** to the extent that this is consistent with adopting a course of action calculated to — (a) safeguard and promote the rights and welfare of the child; (b) conserve and promote the welfare of the child; (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest." - *Section 4 (3), Children Act, 2001*

The Legal and Policy Landscape

The Constitution of Kenya 2010, which is the supreme law of the land, makes the State the primary duty bearer in the care and protection of children. Children with disabilities, intersex children, children from minority and marginalised groups, especially ethnic, religious and cultural communities, and children living in poverty are doubly vulnerable. Many of these children, growing into adulthood without adequate care and protection, may find themselves in the justice system, with their needs going largely unattended.

Children in the Kenyan justice system are categorised by the Children Act 2001 either as offenders or in need of protection and care (P&C). It defines a child offender as a person below the age of 18 years, who has been accused or punished for being in contravention of any law in Kenya. While the Children Act uses the word 'child offender' to refer to such a child, the more universally accepted term is 'child in conflict with the law', which is the language adopted by the Task Force and used in this report.

Generally, children who are in need of care and protection are vulnerable to abuse, neglect, cruelty, violence and violation of their constitutional and human rights. Part X of the Children Act 2001 defines them in Section 119. Annex C contains the full list of children requiring care and protection according to the Children Act 2001. However, it is the informed view of the Task Force that all children who enter the justice system are in need of care and protection regardless of whether they are in contact or in conflict with the law.

The Constitution of Kenya 2010, Children Act 2001, related legislations and applicable international laws, policies and procedures provide special protection and safeguards for children, and entrench the principle of the best interest of all children, including those in conflict and in contact with the law. Among the safeguards provided is the right of every child not to be detained; and to be given legal representation where a child is unrepresented with expenses to be defrayed by the State. Despite some backward precedents, a growing body of case law upholds child rights under the Constitution and children's legislation. A compendium of emerging case law on children matters is in Volume II of this report.

The Children Act established the Children's Courts, which are special courts to hear cases involving children in contact and in conflict with the law other than charges of murder or cases where a child is charged together with adults. This is aligned with the provisions of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. This notwithstanding, there are only two gazetted Children's Courts, namely the Milimani and Tononoka Children's Courts in Nairobi and Mombasa respectively, although all magistrates in the country have been gazetted to handle children's matters. Some courts, such as the Makadara and Nakuru Law Courts located in Nairobi and Nakuru counties respectively, have taken the initiative to provide child-friendly environments in which justice may be administered to children in contact and conflict with the law. These courts have designated court rooms for children, children's registries and play/counselling rooms.

There is uncertainty as to the jurisdiction of the Kadhis' Courts to handle children's matters. Article 170 (5) of the Constitution of Kenya limits their jurisdiction to "the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhis courts". However, maintenance and custody jointly constitute the bulk of the matters touching on children that are heard before the Kadhis' Court in Nairobi. Analysis of a sample of 155[3] matters handled by this court between 2016 and 2019 show that 99.37 per cent of the cases involving children were related to maintenance and/or custody issues. In the words of one Kadhi, the Court deals with the "welfare of the children in regard to those who appear before us [Kadhis' courts] in divorce matters and custody issues" (Key Informant #9).

Gaps in the Law and Missing Policies

> **"There is a hue and cry in the children's sector that we do not have an updated legislation".** - Key Informant #9

The Constitution of Kenya 2010 enshrines child rights specifically through article 53 on Children and the Bill of Rights in Chapter 4, which apply to all persons, young and old. The Children Act 2001, however, was enacted 9 years before the 2010 Constitution and therefore is not fully aligned to it. Though it makes the best interest of the child a primary consideration, it does not make it the overriding consideration, falling short of Article 53(2) of the 2010 Constitution, which states that "A child's best interests are of paramount importance in every matter concerning the child." Consequently, there are critical gaps in the law. For instance, the Children Act 2001 is not aligned to article 53(1)(e), which requires equal parental responsibility of both parents to provide for the child.

In some instances the Act uses language that is not rights sensitive and has provisions that do not adequately protect children and safeguard their rights. For example, it refers to a child in contravention of the law as a 'child offender' instead of a child in conflict with the law; 'early marriage' instead of child marriage; and 'female genital cutting' instead of female genital mutilation. Further, the age of criminal responsibility is low; the Children Act 2001 makes a child as young as eight years criminally culpable (section 14, Penal Code). As one key informant observed, this has resulted in children as young as 9 to 12 years languishing in child holding institutions (Key Informant #9).

[3]This represents approximately 15 per cent of the total number of cases handled by the Kadhis' Court between 2016 and 2019.

There are also some critical gaps in the Children Act. It is silent on emerging issues such as radicalisation, child trafficking and intersex children. Furthermore, it does not provide for alternative dispute resolution mechanisms like diversion, and makes inadequate provision for alternative care options such as kinship care and kafala, an alternative care option under Islamic law. Yet, according to the Chairperson of the Task Force, "More than 90 per cent of cases ought to be diverted" (Key Informant #9). The Children Act 2001 does contain some provisions that are anchored in the UN Convention on the Rights of the Child. However, despite some good legislation, the Task Force noted the absence of a comprehensive child justice policy for all stakeholders, as well as specific rules, regulations and policy guidelines, posing barriers to the implementation of the existing laws, especially in addressing issues on children in conflict with the law. The Chair of the Task Force regretted that the Act was enacted without rules of procedure, which are a vital part in directing the users on how to execute the provisions of the Act. This has resulted in the use of the old rules by relevant authorities (TF Retreat Report, 30th November 2016).

The Task Force Terms of Reference identifies some of the key missing policies and guidelines as:

- Rules of procedure for enforcement of fundamental rights of children;
- Guidelines for the monitoring, supervision and inspections for holding facilities
- Guidelines for Child Protection Units (CPUs);
- Court Practice Directions on children's cases;
- Regulations on Diversion. (Limited application of diversion mechanisms has been resulting in increased number of cases involving children in the legal system);
- Policy on Mandatory Continuous Professional Development programme on child rights for justice actors;
- Policies on re-integration of children accompanying imprisoned mothers; and
- Policies on separated cells for children; and
- Guidelines for inclusion of children with special needs in the child justice system.

In addition to the above, the following policy gaps were identified:

- Child protection policies and guideline for the Department of Children's Services;
- Guidelines on plea bargaining for children;
- Child protection policies and guidelines for madrassahs;
- Legal provisions and procedures/guidelines for children with mental health issues;
- Procedures/guidelines and capacity on how to deal with children with HIV/AIDS, autism, epilepsy, and the hearing impaired; and
- Guidelines on the handling of child victims by prosecution.

Recommendations

Children Bill and Related Law

1. Enact the Children Bill 2018 to repeal and replace the Children Act 2001 in order to effect wide-ranging reforms in the best interest of the child.
2. Harmonise laws, eliminating the contradictions between Children Act, Employment Act, Penal Code and the Basic Education Act, and align all legislation concerning children to the Constitution of Kenya, 2010.
3. Review relevant laws and policies to provide a comprehensive guide on handling, care and protection of children with special needs.
4. Undertake periodic evaluation and sensitisation on legislation.

Policy Reforms

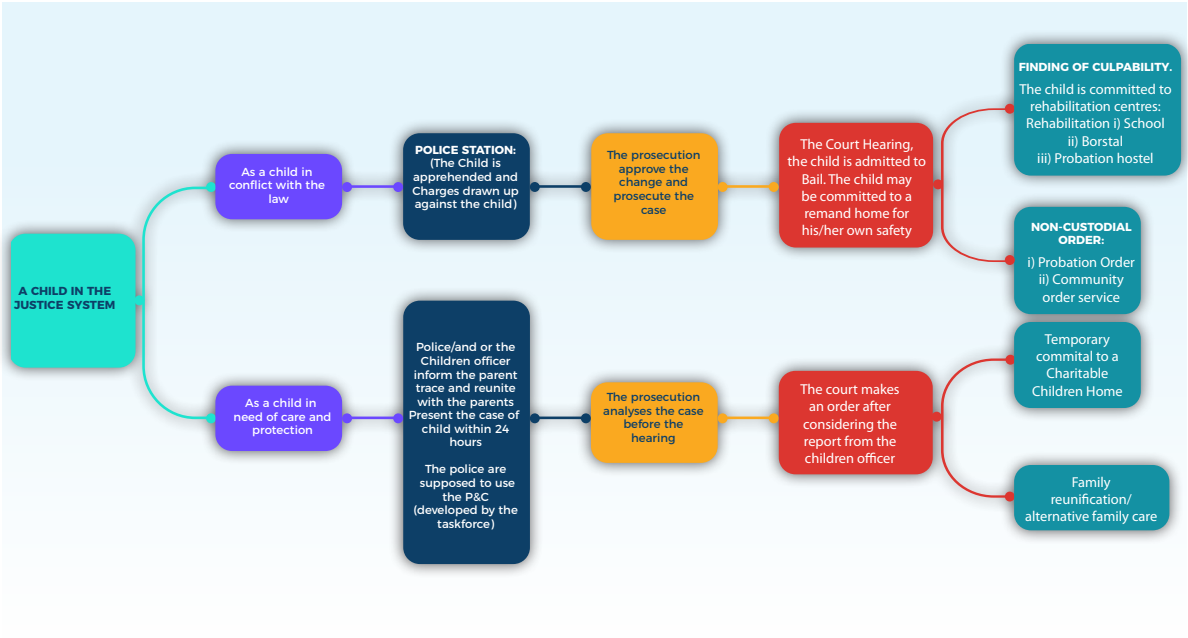
1. Gazette and implement the Court Practice Guidelines, Protection and Care (P&C) Form, the Operational Standards for Police Child Protection Units, Children's Court Protocol, the Policy on Mandatory Continuous Professional Development for Juvenile Justice Actors, and the Diversion Toolkit developed by the Task Force to ensure that children's rights are upheld by all State agencies and public officers that form the chain-link in the administration of justice.
2. Develop, adopt and disseminate various policies and guidelines for the protection and upholding of child rights in the justice system including county child protection policies, standardised Diversion Guidelines, policies for the effective reintegration of children back to the community, plea bargaining guidelines, mediation rules, and standard operating procedures for the handling of children's matters specific to all child justice actors.
3. Promote application of restorative justice and alternatives to imprisonment of child offenders through use of diversion mechanisms and alternative dispute resolution.
4. Review various guidelines and policies on children's matters including the Through Care Guidelines, the Curriculum for Child Protection Officers, Practice Directions for the different child justice actors, and the national standards for institutions to promote appreciation and implementation of quality care services for children in the justice system.
5. Promote collaborative actions between relevant government departments and ministries to develop a policy for transporting children to and from courts, or any other institution safely, in a child friendly vehicle separate from adults.
6. Encourage Public Interest Litigation in the best interest of the child and promote rights-based interventions, policy-making and quality of service for children.
7. Adoption of child-centred and human rights based approaches in development of policies related to rehabilitation of children involved in violent extremist activities such as terrorism and gangsterism. Further, implement the National Strategy on Countering Violent Extremism through drafting of county policies such as Kwale County Plan for Countering Violent Extremism.

Quality of Care, Infrastructure and Data

The Child Justice Chain-Link

The child justice system consists of six core inter-linked agencies: the police (and sometimes the local authorities represented by the chief), children's services, prosecution, courts and corrective services comprising the prisons and probation and aftercare services. Ideally, these agencies should function seamlessly, joined together like a chain-link, serving the child in the administration of justice efficiently and effectively. Which pathway the child takes once she or he has entered the justice system depends on how they are categorised: as a child in conflict with the law, or as a child in contact with the law. Figure 1 describes what should happen as the child moves along each step of the pathway.

Fig 1: *The Child Justice Chain-Link*



Each of the six agencies have specific mandates within the child justice system as shown in Table 1.

Table 1: *Snapshot of statutory child justice institutions*

Name of Agency	Legislation	Mandate
Department of Children's Services	Children Act 2001	Ensures safety and care of children in response to cases of child violations and during court process; works with Probation and Prisons in cases of children in conflict with the law; ensures child receives appropriate rehabilitation services; responsible for reintegration of child after rehabilitation.
National Police Service	Article 243, Constitution of Kenya, 2010 National Police Service Act, 2011	Investigates and documents of criminal cases; arrests and presents suspects in court; collects, preserves and presents evidence in court.
Judiciary/Courts	Article 159, Constitution of Kenya, 2010	Conducts child-friendly evidence-based judgement for cases of both children in need of care and protection and those in conflict with the law; makes orders to facilitate child justice and guarantee the welfare of the child; expeditious administration of justice guided by constitutional principles including alternative dispute resolution.

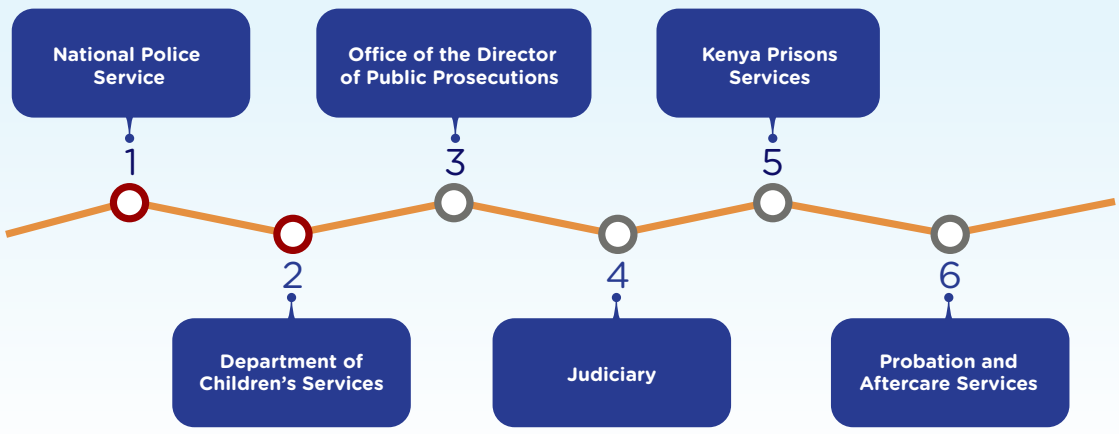
The Office of the Director of Public Prosecution (ODPP)	Article 157, Constitution of Kenya, 2010	Institutes, continues and undertakes prosecution of criminal matters; undertakes criminal proceedings; has power to terminate a case at any stage before judgement with court's permission.
Kenya Prisons Service (KPS)	The Prisons Act (Cap. 90); Borstal Institutions Act (Cap. 92)	Provides youth corrective training centres and borstal institutions for children in conflict with the law aged 16 to 18; facilitates rehabilitation of custodial sentenced offenders for community reintegration, including child offenders.
Probation and Aftercare Services	Probation of Offenders Act (Cap. 64) Community Service Orders Act No. 10 of 1998	Plays a key role in the rehabilitation of a child in conflict with the law; ensures safety and care for the child during the court process; facilitates community level reconciliation and conducive home/community environment to enhance long-term reintegration and aftercare

The Broken Chain-Link

"There"After Police is when you hand the Department of Children to take over, when you hand over to Prosecution, when you hand over to other sections." - Key Informant # 7

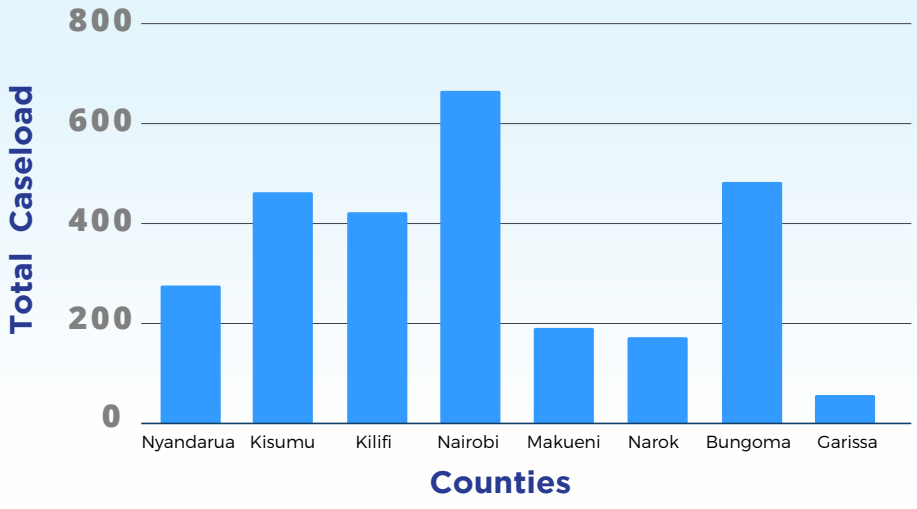
The Task Force reveals a chain-link that is broken at multiple points, confirming a wide disconnect between the ideal situation and the reality on the ground. The key government institutions assigned the duty of taking care of the children in the justice system and protecting them are simply not talking to or working with each other. Children, regardless of whether they are in conflict with the law or in contact with the law are, as a result, falling through the cracks. Figure 2 illustrates the broken points in the chain-link between each key government child justice actors in Kenya: The National Police Service, Department of Children's Services, Office of the Director of Public Prosecution, Judiciary, Prisons and Probation and Aftercare Services.

Fig 2: *Institutions in the Child Justice Chain-Link*



The provisions in the Constitution and in the Children Act relating to the treatment of children in conflict with the law are stringent and "indicates the societal concerns for enhancing the protection of children due to their vulnerability and developmental challenges" (NCAJ, 2016). The birth of the Task Force was grounded in a realisation that despite these provisions, the practice is very different; that there are multiple disconnects between the theory and practice of the law to the detriment of children, revealing a child justice chain-link that is broken[4] and needs to be fixed urgently. In the chain-link, the police are the first to handle children; they are "the beginner in the process" (Key Informant #7). Analysis of data from eight sampled counties show the police handled 2757 cases involving children between 2016 and 2018. The data, disaggregated by county and year, is presented in Figure 3. It shows the highest number of cases in Nairobi (691), followed by Bungoma (549), Kisumu (484) and Kilifi (427). There were relatively fewer cases in Nyandarua (279) and Makueni (195) with the lowest recorded in Narok (176) and Garissa (61).

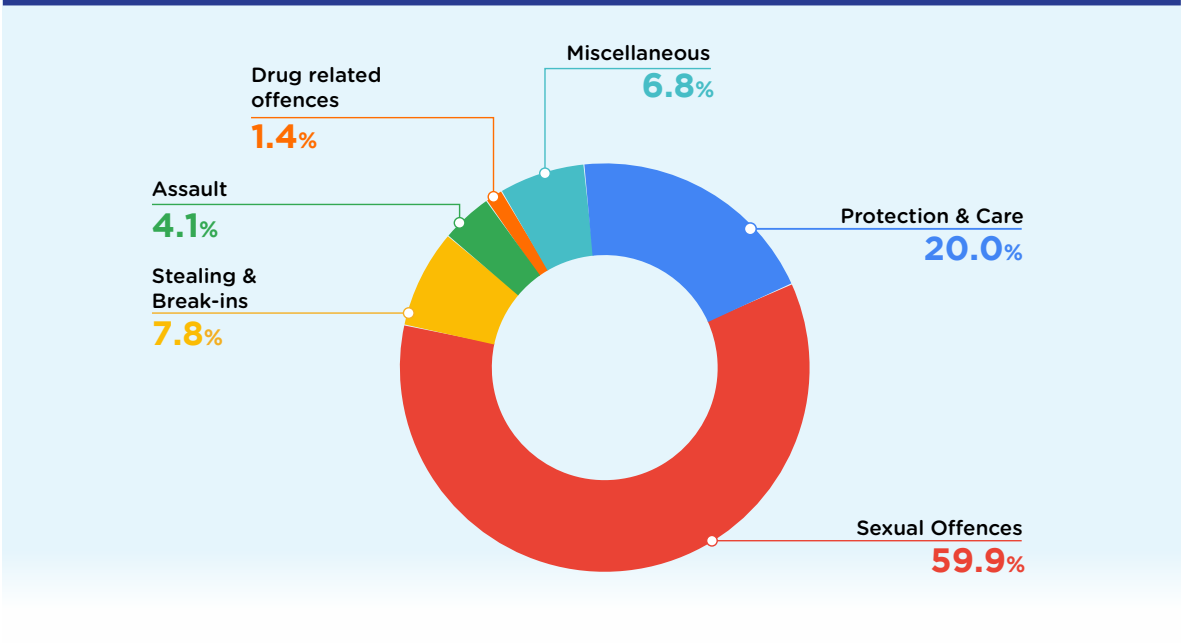
Fig 3: *Number of cases involving children handled by police in eight selected counties 2016-2018*



Source: Computed from National Police Service data 2016-2018

[4]Interview #2, 3rd August 2019

Fig 4: *Types of children's cases handled by police in eight counties, 2016-2018*



Source: Computed from National Police Service data, 2016 -2018

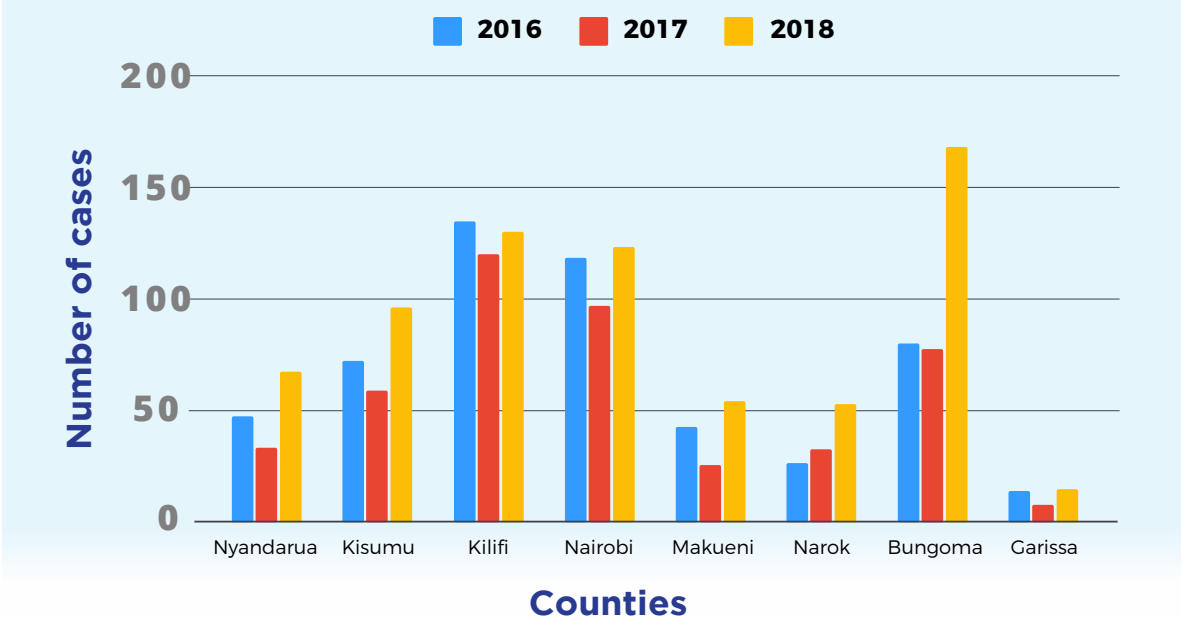
As Figure 4 indicates, in the eight counties, sexual offences accounted for approximately 60 per cent of the total number of cases involving children that the police handled during the three-year period. One-fifth of the cases handled are of children in need of care and protection, who have not committed any offence. Stealing (together with break-ins and burglaries), assault, drug-related offences constitute less just over 13 per cent of the cases handled, while other miscellaneous offences like child neglect and cruelty, arson, murder, threatening violence, suicide, abductions, felony, creating disturbances as well as a few cases of truancy and fraud make up less than 7 per cent of the cases involving children. Missing from the police and court records on children's cases in the eight counties are minors involved in violent extremist/terrorist acts, though during service weeks, Task Force members came across a few pending cases of children (boys) accused of violent extremism/ terrorism.

Among the different types of sexual offences, defilement is the most frequently mentioned. Other related charges include incest, sexual assault, rape[5], indecent and unnatural act, and one instance of sodomy. We have also classified abortion and infanticide here under sexual offences to acknowledge that the pregnancy must have resulted from unreported instances of defilement of the girl in the first place. The girl accused of abortion or infanticide suffers double victimisation, initially as a victim of defilement, and afterwards as an offender.

Analysis of the sexual offence cases reveal wide variations in incidence by year and location. As Figure 5 demonstrates, there was an increase in cases registered by the police in 2018 in all the counties, with the exception of Kilifi. The highest incidence of sexual offence cases in any one year was recorded in Bungoma (167 cases) in 2018. However, cumulatively Kilifi registered the highest number of sexual offence cases (383) over the three years, followed by Nairobi (341) and Bungoma (326). It is important to note that these are only the reported cases; the actual number of cases of sexual offences that go unreported could be much higher.

[5]In Kenyan law, sex with an underaged child is referred to as defilement. However, in the police data, the term 'rape' was sometimes used instead of defilement to describe the charge against the accused.

Fig 5: *Sexual offence cases involving children in eight selected counties 2016-2018*

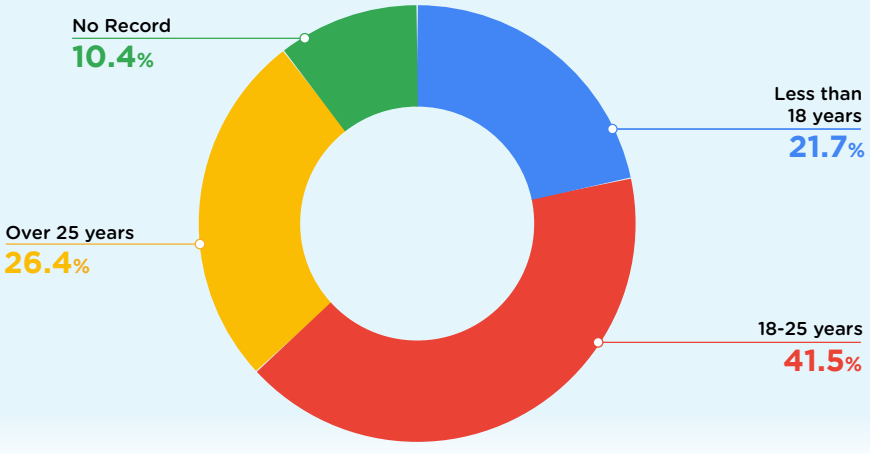


Source: Computed from data from National Police Services, 2016 - 2018

Between 2016 and 2018, sexual offences accounted for 89.70 per cent of children's cases handled by the police in Kilifi County. Cases of children in need of care and protection were 4.22 per cent while the remaining 3.28 per cent included offences such as stealing, burglary and house break-in; grievous harm, malicious damage to property, attempted arson, murder, abduction and malicious damage to property.

Those accused of sexual offences across the eight counties are overwhelmingly male. What stands out in Kilifi, however, is the young age profile of the alleged perpetrators - almost two-thirds are boy children (21.7%) and young adults between the ages of 18 and 25 (41.5%), as Figure 6 illustrates.

Fig 6: *Age profile of perpetrators of sexual offences in Kilifi, 2016-2018*



Source: Computed from National Police Services 2016 - 2018

In Kilifi, the age difference was not more than three years between the victims and accused in at least a quarter of the sexual offences involving children that were reported to the police over the three years under consideration. A fifth of these were possible "Romeo and Juliet" cases in which both the complainants and the accused were below the age of 18. In this report, "Romeo and Juliet" cases refer to non-violent sexual relationships between two minors where the age difference is not more than three years.

Eight per cent of the victims of sexual abuse in Kilifi over the three year period were young children aged 5 and below, while 2 per cent of the perpetrators were aged 60 and above with the oldest aged 70. Incest accounted for 4.69 per cent of all sexual offence cases over the three years.

Not all complaints registered with the police get to the next level, however. Many cases are withdrawn, although it is not clear whether they are withdrawn irregularly or by the Director of Public Prosecutions.[6] For example, in Kilifi, where 9 out of 10 cases involving children handled by the police are linked to sexual offences, almost a quarter (23.70%) were withdrawn between 2016 and 2018. The withdrawals included six cases of defilement of children 5 years and below, constituting approximately 16 per cent of all defilement cases in this category. In Bungoma, the withdrawals constituted 13.54 per cent of sexual offence cases registered over the same period.

The high incidence of sexual offence cases handled by the child justice agencies was confirmed by the Task Force. For example, during a service week, they noted that an average of three pleas on defilement were taken daily in the Molo court. At Makindu Police Station, it was found that the majority of cases were of defiled girls aged 15 to 17.

There are other signs of the broken chain-link. Child holding institutions do not always receive a copy of the child's file when they admit her or him. Because of the lack of age assessment during trial, it is not unusual to find individuals over 18 years being held in children's facilities and children below the age of 12 committed to probation hostels. An additional concern is the commitment of children to adult institutions, which is not only contrary to the law, but also fails to take into account their particular needs and rights.

State of **Infrastructure and Facilities**

Child holding institutions include both statutory and charitable children's institutions. While the former are under the government, the latter are owned and managed by various civil society organisations and religious bodies.

Statutory children's institutions are commonly categorised into six. They include the rehabilitation schools (inclusive of reception centres) and remand homes established under sections 47 and 50 of the Children Act 2001 respectively; borstal institutions under section 3 (f) of the Borstal Institutions Act (Cap. 92), youth corrective centres under section 66 of the Prisons Act (Cap. 90) and probation hostels under the Probation of Offenders Act (Cap. 64). There are more institutions catering for boys than girls as Table 2 indicates. Child Protection Centres (CPC) are non-residential institutions managed by the Department of Children's Services that act as a 'one-stop-shop' for diverse services related to child protection. CPCs are staffed with personnel such as children's officers, counsellors and advocates who work to protect children from violence, abuse, exploitation and separation from family. Services provided in CPCs include child and family counselling, legal aid assistance, tracing of lost

[6]The decision to discontinue the prosecution or investigation by any police officer of a sexual offence complaint rests solely with the Director of Public Prosecutions. Although section 40 of the Sexual Offences Act gives the Attorney General power to withdraw sexual offence cases, this has been overridden by the Constitution of Kenya Article 157, which transferred this power to the Director of Public Prosecutions.

Table 2: *Statutory children's institutions by managing authority and gender of target children*

Type of Institution	Managing Authority	Boys	Girls	Both Girls & Boys	Total
Remand homes	Dept of Children's Services	0	0	14	14
Rehabilitation schools	Dept of Children's Services	8	2	0	10
Reception centres[8]	Dept of Children's Services	1	1	0	2
Rescue centres	Dept of Children's Services	1	2	1	4
Borstals	Kenya Prisons Services	3	1	0	4
Probation hostels	Probation & Aftercare Services	2	1	0	3
Child Protection centres	Dept of Children's Services	0	0	6	6
Total		**15**	**7**	**21**	**43**

children and family reunion, referral to other service providers and community sensitisation on child rights.[7] Charitable children's institutions though not government institutions, are established and regulated under the Children Act to manage programmes for the care, protection, rehabilitation or control of children.

When the Task Force members criss-crossed the country visiting children's holding institutions and facilities to assess the status of children in the justice system, dilapidated buildings and infrastructure often greeted them. They found Malindi and Kiambu remand homes and Dagoretti Girls Rehabilitation School with infrastructure dating back to colonial and early post-colonial times. In the Runyenjes Police Station, the Task Force discovered "children held in the cells where the conditions were not favourable. The cells were dirty, dark and humid as of the day of the visit". In Makindu Police Station, four boys (one of whom was charged with sodomy) were sleeping on a matress in a 4ft x 6ft cell, which functioned both as sleeping quarters and washroom. In the absence of a remand home in close proximity, the Naivasha court sends children to the police station to be held in the cells as it is illegal to send them to the prison. Some of the children remain in the cells for as long as 3 months awaiting their next hearing. One child charged with stealing was held in the Naivasha police station for 6 months pending determination of his case. In the remand homes, boys and girls in contact with the law are often mixed with children in conflict with the law. The Task Force found a 5-year old boy, whose parents were in prison, living with older boys in a remand home. Children older than four are separated from their mothers serving jail terms. There is no provision for the care of such children by the State.

In addition to these institutions, police and court stations are expected to provide temporary holding facilities for children in contact and in conflict with the law. These facilities are supposed to be child-friendly, taking into consideration the special needs of children. The Fifth Schedule section 194 (6) (1) of the Children Act 2001 is categorical on the separation of children detained in police stations from adults. Section 194 (6) (2) further specifies that

[7]There are currently 6 Child Protection Centres in Kenya located in the following counties: Nakuru, Kilifi, Garissa, Siaya, Kakamega and Nairobi.

[8]Officially, reception centres are classified under rehabilitation schools.

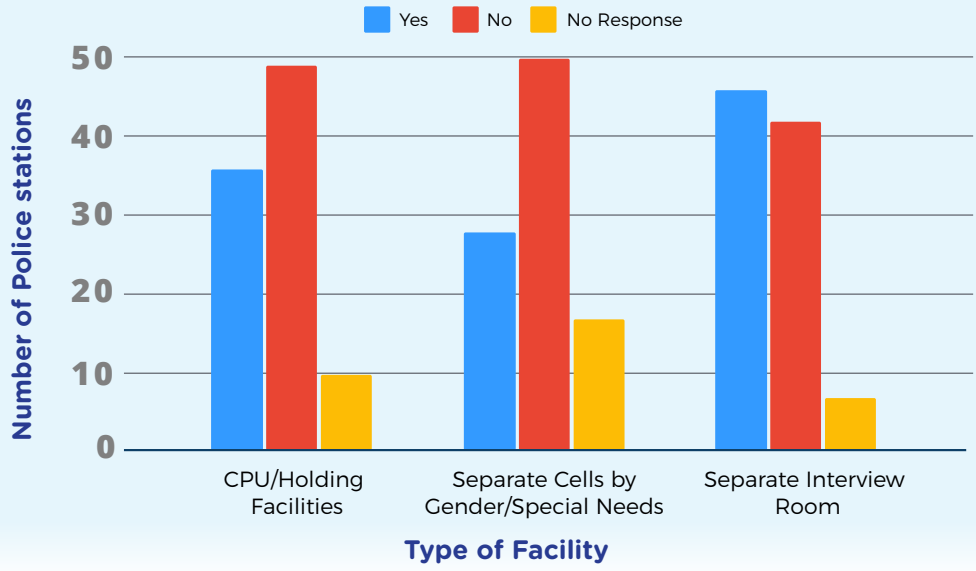
provision be made for child offenders to be detained either in a separate institution or in a separate part of the police station. The Child Protection Unit (CPU), which is a formalised structure for the protection and care of children held in police stations, speaks to these provisions; they serve as "holding facilities for children for the shortest time possible as cases are being processed totally separating children from the rest of the prisoners in order to enhance protection, privacy and a child friendly environment" (NCAJ et al, 2016).

However, an audit of the criminal justice sector in Kenya commissioned by the NCAJ in 2015 revealed that the CPUs within the police stations were insufficient. Data from police sources confirm this; there are only twenty-three CPUs in the entire country distributed across police stations in sixteen counties. Essentially, this not only means that the majority of police stations in the country do not have CPUs, but also that over two-thirds of the counties do not have even a single one. Similarly, very few of the court stations provide environments that are friendly to the child, as the Task Force discovered.

In the fifteen police stations that the Task Force members visited during the circuit visits, they found children held in police stations alongside adult offenders either because no separate facility had been established to hold them (for example, Makueni, Kibwezi, Makindu, Gilgil, Kongoni and Runyenjes) or the facilities were non-functional (as in Naivasha and Garissa Police Stations) or the child holding stations were far from court, in the Nairobi industrial area for example. At Makindu, the Task Force learned that there were no children's remand home or Child Protection Unit (CPU) between Machakos and Mombasa. Though in neighbouring Machakos, the Department of Children's Services does have a remand home that doubles as a rescue home, it is over a 100kms away, leaving the concerned authorities in Makueni County with no option but to hold the children in police stations together with the adult offenders.

Only 37.89 per cent of the 95 police stations for which the data is available, had some form of holding facilities for children, albeit not all were fully operational, compliant with CPU standards or child friendly (TF Facilities Questionnaire, 2019). Gender and special needs segregated facilities are even fewer, though relatively higher number of police stations reported having separate interview rooms for children. The data on facilities for children in police stations are summarised in Figure 7.

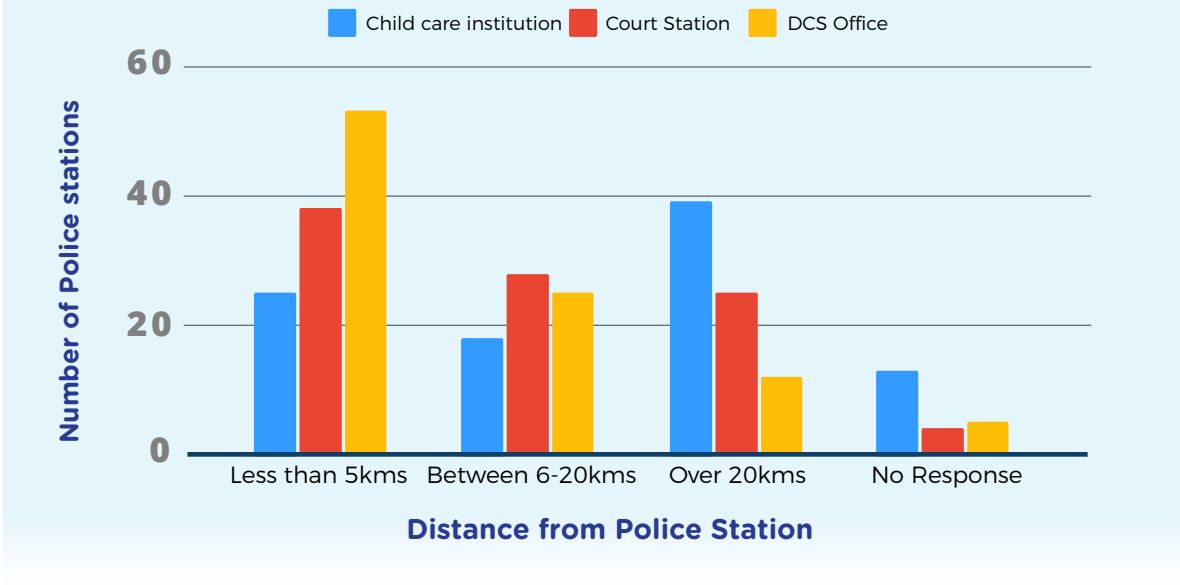
Fig 7: *Number of police stations with separate facilities for children*



Source: Computed from Facilities Questionnaire Responses, NCAJ Special Task Force on Children Matters, 2019

The distances between the police stations and vital child care and justice services are generally wide. The data presented in Figure 8 highlights the gravity of the problem: The nearest child care institutions in the case of 60 per cent of the police stations are least 6kms one way. Similarly, 56 per cent of the police stations are located more than 6kms from the nearest court stations. There are those who need to travel 10kms or 20kms or even more. The offices of the Department of Children's Services are relatively more accessible, however, with 56 per cent of them within 5km radius of the police stations.

Fig 8: *Distance of police stations from key child care and justice institutions*



Source: Facilities Questionnaire, NCAJ Special Task Force on Children Matters, 2019

Like the police stations, child friendly facilities for children in the court stations are rare. During the service weeks and circuit visits, Task Force members found Malindi and Thika law courts had a designated, child-friendly courtroom for addressing children's matters. Nevertheless, the Malindi child-friendly courtroom was not in use because it did not have a safety barrier to prevent children from escaping or hurting themselves by falling from the balcony into the play area below. A screen to protect children when they testify was still to be purchased. Other law courts, like the Meru Law Court lacked child-friendly infrastructure (TF Retreat, Report, 20th April 2018).

Only two reception centres in the whole country assess the risk level of child offenders. These are Getathuru in Nairobi County and Kirigiti in Kiambu County. While the former is a standalone reception centre, the latter doubles as a rehabilitation school. One is reminded of Kibet, who had to be brought all the way from Molo, and Kamau from Nyeri to Nairobi and Kiambu, to be assessed.

Invisible and **Missing Children**

There are several categories of children who are not well documented or identifiable in the police and judiciary records and whose special needs often go unmet. The Kenya National Commission of Human Rights identify these special needs groups as children with disabilities and mental health conditions, intersex children, children on the move and children with HIV. It is also recognised that girls have special needs, which are not always catered for.

Children with Special Needs

Some institutions under the Department of Children's Services receive children with special needs including those with mental health issues. For example, child holding institutions in Machakos and Taita Taveta counties report handling 10 girls and 32 children with mental health challenges respectively since 2016. Disability sensitive infrastructure in these institutions are rare, the random ramp notwithstanding. More importantly, generally the personnel in these institutions are neither trained nor do they have the sensitivity to take care of children with special needs. Without customised facilities, sensitivity and training to handle children with physical and mental health issues, the needs and challenges of these children go unmet and become aggravated.

Female Children

As already mentioned, facilities in child justice institutions are not gender friendly. Even where gender segregated facilities exist, the needs of girl-mothers, girls who are pregnant and menstruating girls are rarely addressed. In some police stations and courts, empathetic police and court officers use their own resources to buy sanitary pads for affected girls and diapers and food for their babies.

During one visit, the Task Force came across three pregnant girls at the Likoni Remand Home. In the absence of any female staff in the Home, the health and psychosocial needs of these girls were completely ignored.

Children on the Move (Migrant Children)

Kenya is a destination and a transit country for both regular and irregular migration of refugees, asylum seekers, internally displaced persons (IDPs) and economic migrants from other countries in the East African region. Migrant children are especially vulnerable to human rights violations as victims of trafficking and exploitation for cheap labour and sexual exploitation. This is exacerbated by the poor documentation of these children, causing them to be invisible in the justice system, with their special needs being largely ignored. There was mention of refugee children by police in just one of eight counties for which data was available.

The Task Force recognises the need for a victim-centred, human rights based approach to investigations and child protection to avoid criminalising and further victimising such children.

Child Abuse and Neglect in Children's Institutions and Facilities

Justice Martha Koome, the Chair of the Task Force, citing the Criminal Justice Report (NCAJ et al, 2016) describes children in institutions as suffering the greatest injustices while they are there. Her view is confirmed by the experiential knowledge of those working in the child justice sector, and backed up by field observations during the circuit visits: The Task Force discovered practices and policies within the justice system that continue to deny children their fundamental rights - their right to education, health and nutrition, and play and recreation among others, which are enshrined in the Constitution of Kenya 2010, the African Charter on the Rights and Welfare of Children and United Nations Convention on the Rights of the Child. It documented the unjust treatment of children by the police, in the courts, prisons and in the holding institutions, some of which were operating without service charters and standardised procedures.

The sub-human conditions in one remand home remained etched in the minds of the Task Force members who visited the institution. Recalled one key informant who was part of that particular mission, "children were eating horrible food – out of dirty sufurias (cooking pots). The food looked like it was spoilt. Children had scabies" (Key Informant #8). In another rehabilitation school, there was no running water in bathrooms as taps were not operational. There were gaping holes and cracked glass in the windows of the dormitory for girls in remand, allowing draughts and mosquitos into the room. Girls had multiple bites on their bodies, due to the lack of mosquito nets. Shockingly, the Task Force found large piles of roof debris containing asbestos on the ground floor of the building occupied by the girls in remand, exposing them to chronic health problems. Exposure to broken asbestos is highly dangerous for anyone coming into contact with it.

Boys from one rehabilitation school shared harrowing stories of being subjected to physical and psychological abuse by the police officers, adults who they were locked up with, and by staff in the institutions. They talked of not only being beaten but also of being "locked up in a small dark room in the library an entire day for several days". Some of the boys complained of being prevented by staff from talking to their parents. The children's stories echoed the findings of a baseline survey on violence against children in the Kenyan justice system. The survey indicates that violence is a component of children's lives across all stages of the justice system, with 79.8 per cent of the respondents, reporting having witnessed violence perpetrated on other children and 72.2 per cent having been subjected to violence, regardless of their age, gender and category, with both immediate and long-term consequences (Ottolini, 2016).

A recent high profile media exposé drew attention to violations of child rights including child abuse and neglect, by the Child Welfare Society of Kenya (CWSK), a state corporation for the care, protection and adoption of children.[9] The state corporation is also being investigated by the ODPP for embezzlement of public funds; this is in addition to previous findings by the Auditor-General on CWSK's failure to account for public funds.[10]

Not all children in the justice system have access to education. On 29th September 2016, the Eldoret High Court made a ruling compelling the Cabinet Secretaries of Education and Labour, Social Security and Services to make available educational programmes that are integrated with the public education system for all children in child holding institutions.[11] The ruling further gave them 120 days to clearly set out a comprehensive framework through which basic education will be provided to children who are in detention facilities in Kenya. Despite this ruling, concerns were raised by child justice actors over the continued exclusion of children in some institutions from participating in basic education. For example, at the Kirigiti and Wamumu Rehabilitation schools, the curriculum offered was only focused on the lower classes forcing children who had been in high school to repeat primary school. In addition, the Ministry of Education support to these schools were limited to provision of some materials; they did not have any teachers deployed from the Teachers Service Commission (TSC). At the Nairobi Children's Remand, there was no provision for formal education. Some of these concerns were expressed by children in rehabilitation schools during a question and answer session with Chairperson of the Task Force during a service week event.

Children staying in police cells

"I've come to learn that as children we are not supposed to stay at the cells but you find that we stay in the cells even for a period of 5 months, sleeping on the cement. You have no sweaters, nothing, and your parents don't even come to see you. And most of us we go to the rehabilitation schools. Like mine, all the children who are in Dagoretti Girls, we are under the care of love, care and protection, and it wasn't our wish [but] the others, they take us like criminals. We are not criminals, we are just kids like you. Our parents are the ones who made us do all the bad things and they contributed a lot."

Education for children in the justice system

"In the juvenile system like in the rehab I'm in, we have few books, and we have three teachers only, and one teacher is expected to take up to seven subjects. And you expect us to sit for the same national exams? What's that? And if we fail we won't go to high school, that's the truth. We need more teachers and we need books."

"I was in Form 2 and when I went [to the rehabilitation school] I don't go to class because there is no high school. We need high schools. We need equal formal education. We need to be equalised with all the others."

"Why are we not registered with the Ministry of Education? We are being examined as juveniles but we don't go to Secondary school."

Few rehabilitation schools

"...we have only two rehab schools...so we are praying that you build some rehabilitation schools because some of us are coming from Western to Kiambu. It's not fair because they are using a lot of fuel. If a parent wants to come and visit you they are wasting their money."

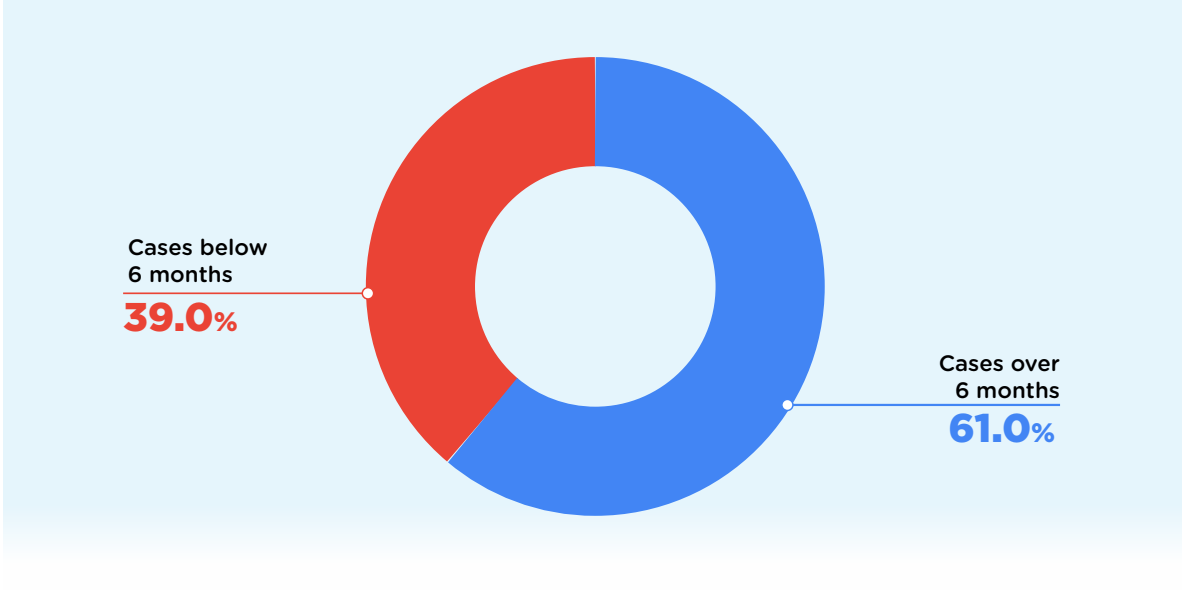
Many children in the justice system also do not have access to adequate healthcare. This has been heightened by the withdrawal of nurses in child holding institutions following the devolution of health services from the national government to the county governments.

Justice Denied

Confused, scared and ignorant of the laws and procedures, children in the justice system do not always understand the court proceedings and the judgements that incarcerate them. Though every child accused of an offence is guaranteed legal representation under article 50 (2) (g) of the Constitution 2010 and section 186 (b) of the Children Act 2001, most do not have access to defense lawyers. Where lawyers are available, they may not always have the interest of the children at heart. One boy recalled being advised by his lawyer to plead guilty in exchange for a lesser charge but he still ended up in the rehabilitation schools for three years. Some children complained that once arraigned in court, they were advised by the police officers not to say anything before the magistrate.

Children in the justice system suffer unacceptable delays. Kibet, Kamau and Atieno's cases took way more than the maximum of six months allowed by the law to resolve. As Figure 9 illustrates, their experiences are not exceptional. The analysis of data from law courts in six counties reveal that the vast majority of children's matters (over 60 per cent) before the courts were pending for six months or more.

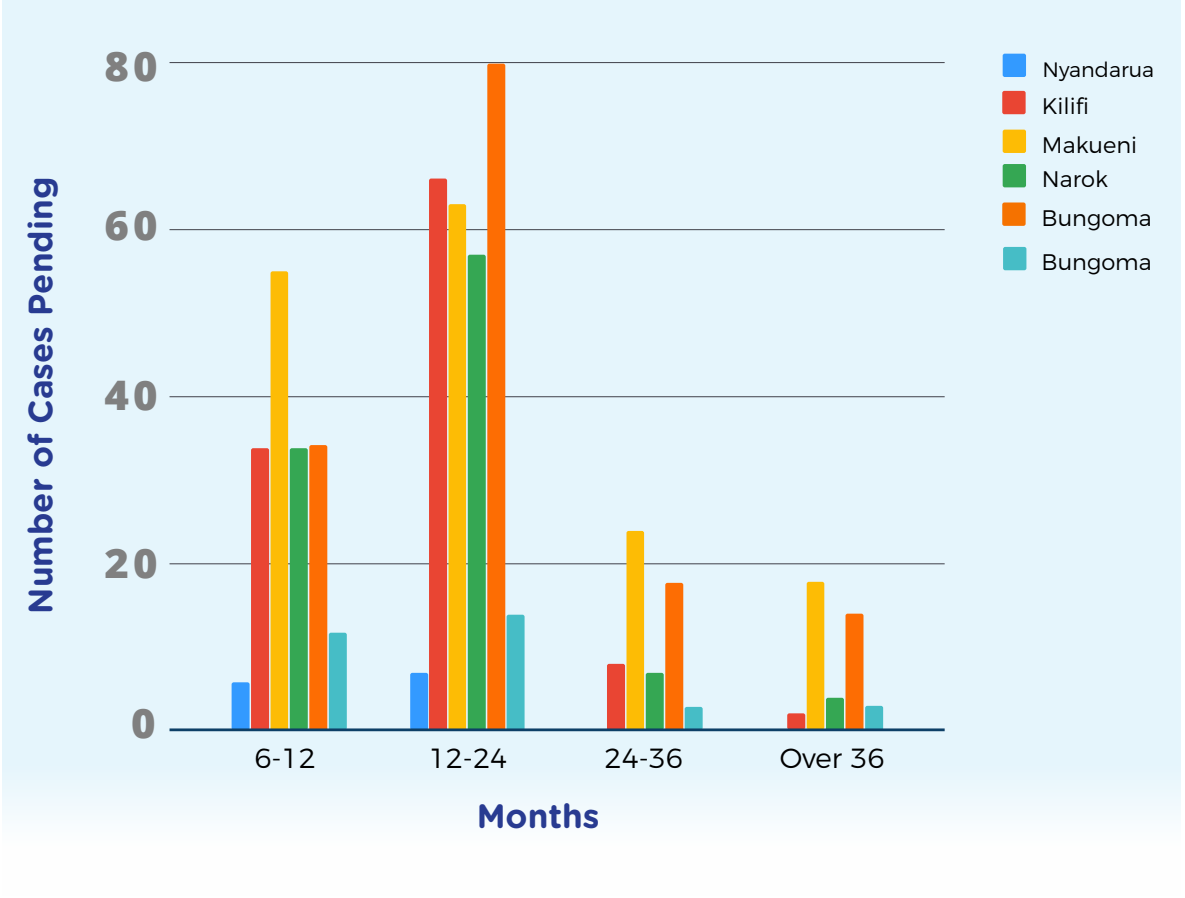
Fig 9: *Percentage of children's cases pending in court for over six months and less than six months in Law Courts in six counties*



Source: Computed from courts handling children's matters in six counties, 2019

Figure 10 disaggregates the data by counties, highlighting how long cases have been pending. Only cases that are over the maximum six months allowed by law are considered in the analysis.

Fig 10: *Pending cases in courts in selected counties 6 months and above*



Source: Computed from courts handling children's matters in six counties, 2019

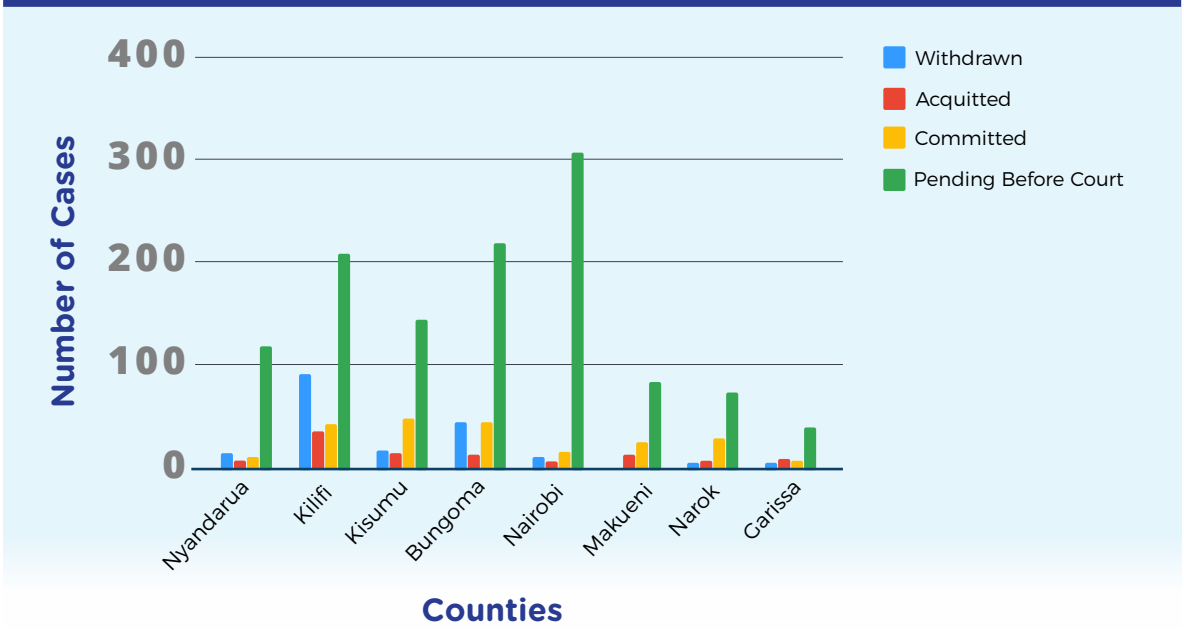
During circuit visits, Task Force members found cases frequently took longer than six months to resolve. In some courts, the Task Force members discovered cases that had lasted for more than two and a half years.

> That means there is a child who is a victim, who was called to go and testify two and a half years after whichever abuse happened to the child. Also you have a child who has been sitting in a remand home for two years for stealing a chicken or some food --- for two years, and had never been heard. And actually, when we went to Likoni [Remand], we found a child who had stayed in Likoni for more than a year for a murder case; he had never been heard. (Key Informant #2).

Data from the Judiciary in fact reveal pending cases dating as far back as 2014, denying justice to child victims as well as children who are accused. Justice tends to be delayed, particularly in sexual offence cases. Atieno, referred to earlier was a victim of defilement. Another girl, Halima came to seek justice when she was a child but by the time her case was closed, she was already an adult.

The heavy workloads of the judges and judicial officers contribute generally to the backlogs suggesting staffing gaps in the Judiciary. However, the Task Force identified a number of challenges relating specifically to the prosecution of defilement cases, which contribute significantly to the backlog on children's matters in the courts as shown in Figure 11.

Fig 11: *Status of sexual offence cases in eight counties 2016-2018*



Source: Computed from National Police Service data, 2016 – 2018

Analysis of police records reveal that the bulk of pending cases in Kenyan courts relating to children matters between 2016 and 2018 are sexual offences. Sexual offences accounted for 69.48 per cent of all pending cases involving children in the eight counties sampled, with the highest in Nairobi at 90.03 per cent, followed by Nyandarua at 79.33 per cent.

Justice for victims are delayed and denied because:

- Neither the victims (mostly girls) nor their parents report the incidents immediately.
- Many parents are not cooperative on matters of defilement and prefer out of court settlements.
- Witnesses do not show up despite being summoned by the police.
- Inadequate number of prosecutors exacerbates the problem.
- Criminalisation of non-violent sexual relations between minors (below age 18) and young adults (age 18 - 25) resulting in unequal treatment and incarceration of the male child/young adult under the provisions of the Sexual Offences Act 2006.
- This is made worse by the lack of psychosocial support, for example, counselling for child victims and witnesses.
- They do not receive legal aid.
- Lack of training of medical practitioners.
- Poor investigations

The breach in the chain-link is reflected in the disconnect between the police investigators and the Office of the Director of Public Prosecutions (ODPP). Police investigators often rely on witness and victim accounts, rarely visiting the scenes of crime. This means that there were no recoveries of physical evidence or exhibits for matters before the court. Many cases are lost because the police hardly visit the scene of crime to carry out in-depth investigations by interviewing witnesses, and carrying out forensic tests on materials recovered at the scene of the crime. Further, prosecutors do not have their own case files and have to rely on the police files on the day of the hearing; this leads to frequent adjournments in court due to lack of preparation. There are also allegations of police interference with investigations and doctoring of evidence, arguably with the aim of defeating justice. During the circuit visits to Lodwar, Kitale, Narok, Shanzu and Bungoma, the Task Force found:

Quite a number of documents presented in courts from the police were tampered with. We also noticed a number of surprises in courts, where the DPP prosecutors had not studied their files before court only to realise that some of the documents needed in prosecuting were either missing, plucked or altered. Police files were in most of the prioritised cases not presented in court, and there lacked evidence in the DPP file that the police summoned witnesses to court in many of the cases (TF Retreat Report, November 2017).

The Story of Baby Lois and Botched Investigations

A mother leaves a 3 year-old child under the care of an elderly grandmother in a low income housing estate (mtaa) to eke a living. On return at about 5pm she finds her daughter crying inconsolably. On examining the baby she finds her dirty and bleeding from the private parts. She starts screaming and soon she is joined by neighbours, who advise her to report the matter to the police station. At the police station, the officer in charge files the report in the daily occurrence book and hands the mother the P3 Form to take the child to the hospital. Some members of the public tell the duty officer that they recognised the perpetrator who they know by nickname as "Blackie". So they go back to search for him and bring him to the station where the same police officer locks him in the cells. The police officer does not visit the scene of crime even to interview the elderly grandmother or to establish whether there were other people besides Blackie who might have had an opportunity to defile the child. Blackie is subsequently charged with the offence of defilement before the Magistrate's court. He denies the offence but after trial, he is convicted and sentenced to life imprisonment. Aggrieved by the conviction and sentence, Blackie lodges an appeal in the High Court. The High Court rules in his favour, setting aside the conviction and sentence as there were insufficient grounds to prosecute Blackie as no investigations were carried to rule out the possibility that it was him and none other than him who had committed the offence.

Crime and **Punishment**

Charged with minor offences like stealing chicken or a radio, some children are forced to spend as many as two to three years before being sentenced. Because of few and scattered facilities for children in conflict with the law, they are removed from their home locations and taken to faraway reception schools and probation hostels. Kibet was just 10 years old when he was arrested for an offence committed in Molo. He was convicted in Molo but taken to Getathuru Reception Centre in Nairobi County to determine whether he was high risk or low risk, and then taken to Shanzu Probation Hostel in Mombasa County where he had to serve his term of three years, this in addition to the two and a half years already spent in the process.

There was a concern that few people actually understood the Children Act. (Respondent #7, Questionnaire2) More significantly, it was alleged that the law was being "misinterpreted by judicial officers and advocates leading to wrong placements to Probation Hostels and wrong sentences impeding effective rehabilitation" (Respondent #5, Questionnaire2). Kioko, a boy-child was charged and convicted of murder. The trial judge committed him to a rehabilitation school for three years, to be followed by another three years in prison in violation of the Children Act.

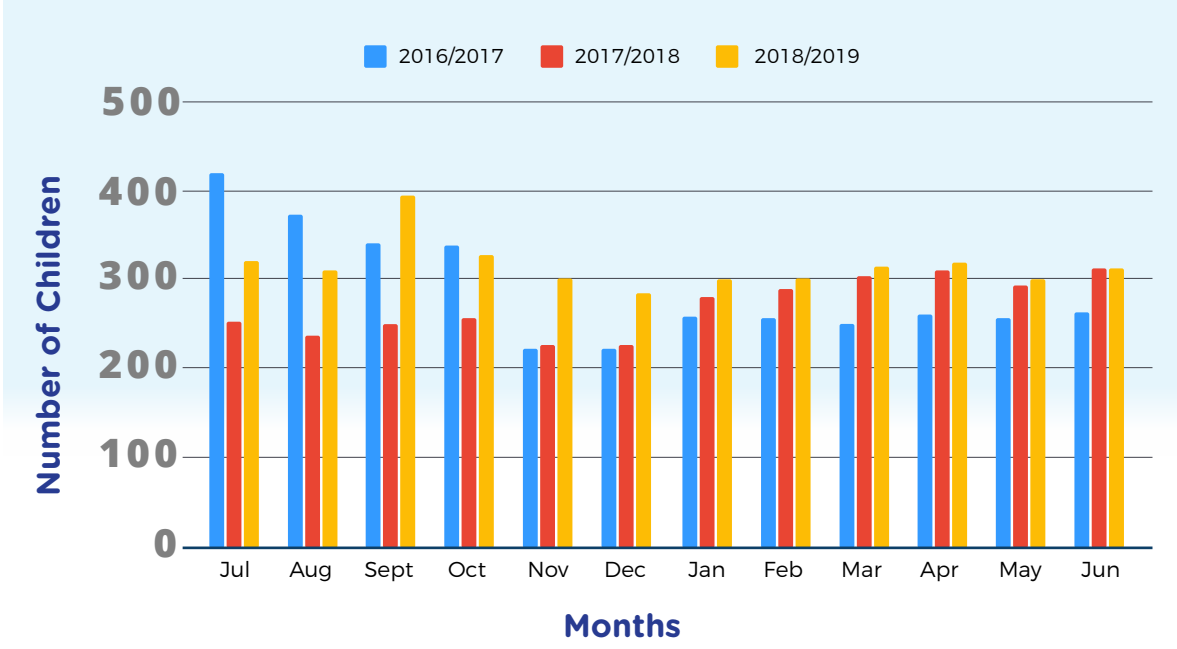
Children arrested on criminal grounds are sometimes incorrectly charged under Care and Protection, ending up in children's homes instead of in remand homes. At the same time, children who are victims of defilement or other crime, are placed with children in conflict with the law. In both instances, there are negative implications for the concerned children, as this denies them access to appropriate rehabilitation plans.

Inadequate Resources for Children

"And when the budget goes, the budget making process only looks at the criminal because they say the child has no warrant, they have no committal documents." - Key Informant #1

In the prison system, there are children who are there by default. These are the children, below the age of four, whose mothers have been convicted and serving prison terms. Some of these children are born in prison. The numbers vary by month and year depending on the number of children who are admitted to prison along with their mother, and the number who are discharged because they have reached the mandatory age of four, or because the mother has served her sentence. (See Figure 12). As far as the prison budget is concerned, these children do not exist; as the quote above so aptly puts it, prisons are for criminals, and therefore the resources cannot be allocated for children who have committed no crime.

Fig 12: *Children in prison with their mothers 2016-2019*



Source: Computed from data from Kenya Prisons Service, 2016 -2019

Though the above observation was made in relation to the Prisons, it captures the perspectives of other key child justice actors like the Police, Probation and Aftercare Services and the Judiciary. The Department of Children's Services, because of its mandate, has budget specifically designated for children's matters.

In other agencies, there was no specific budgetary allocation for children as reflected in the following examples:

- Money to cater for children in a particular institution, came from the overall allocation for that institution; the money allocated for supervision caters generally for both adults and children.
- Probation of Offenders Act Cap. 64, which governs the Department of Probation and Aftercare Services did not provide for child justice, thus limiting the funding for children in the justice system.
- There was no budget line in the National Police Service to provide bed sheets, toilet paper and other basic amenities in the CPUs. There are also no funds in the Police Stations to maintain CPU structures, or even meet the operating costs. The CPU with a capacity to hold twenty children at the Naivasha Police Station, constructed by a flower farm, is a case in point. It is not in use because of the fear of not being able to "feed about 100 children" referred by the court and others (TF Facilities Questionnaire, 2019). Unused CPUs were converted for other totally unrelated purposes: In one instance a CPU was used as housing for police, while another one was converted to a church (TF Retreat Report, January, 2018).
- Funding to transport children to and from court and provide them with lunch. Though observed in the Meru and Nyeri law courts (Retreat Reports, 10th March 2017 & 20th April 2018), the non-provision of packed lunch for the children while they are in custody of the police or in court appeared to be a general issue of concern (TF Retreat, March 2017).
- There was inadequate funding to cater for the needs of the children during investigations and prosecution of cases. Related to this was the lack of pro bono lawyers to defend children once charged.

The Task Force noted understaffing in some institutions. In one institution, there were only three staff on post to cater for eighty-eight children. Sometimes the institutions operate over capacity, thereby putting pressure on the existing staff.

The majority of Task Force members who responded to the questionnaire on current gaps and opportunities, indicated that overall, funding and budgetary allocations for children's care, resources and data was still absent (58.33%) or emerging (8.33%). The remaining respondents (33.33%) stated that the funding/budgets was established though they were not at an advanced stage. However, one of the four respondents in the latter category qualified her response in an in-depth interview. She argued that there was money in the sector for addressing children's matters, but the money was not being put to proper use. In her words,

> Who wants to spend on children? And when they are spending, what are they spending on, you understand? Because, yes, the Children's Services have a lot of money, but what is that money for? The civil society has a lot of money; but what is that money for? Is it for buildings? Is it for paying salaries? Is it for buying vehicles? What fraction of it goes to, perhaps, empowerment programmes for the children? What per centage goes to training of the officers to empower them with knowledge and skill that they require? [...] I don't know. We now need to go deeper and tease out these things. Why are we having a challenge in the area of resources, yet we have millions and millions of shillings?! (Key Informant #4)

The poor state of the infrastructure and facilities described in the previous pages testify to the inadequacy of funding for matters that matter most for children, whether by omission or by commission. There is inadequate funding to cater for the children during investigations and prosecution of cases. Pro bono lawyers for children are few and far between, despite the directions given by the Chief Justice that pro bono services shall be offered at a fee of

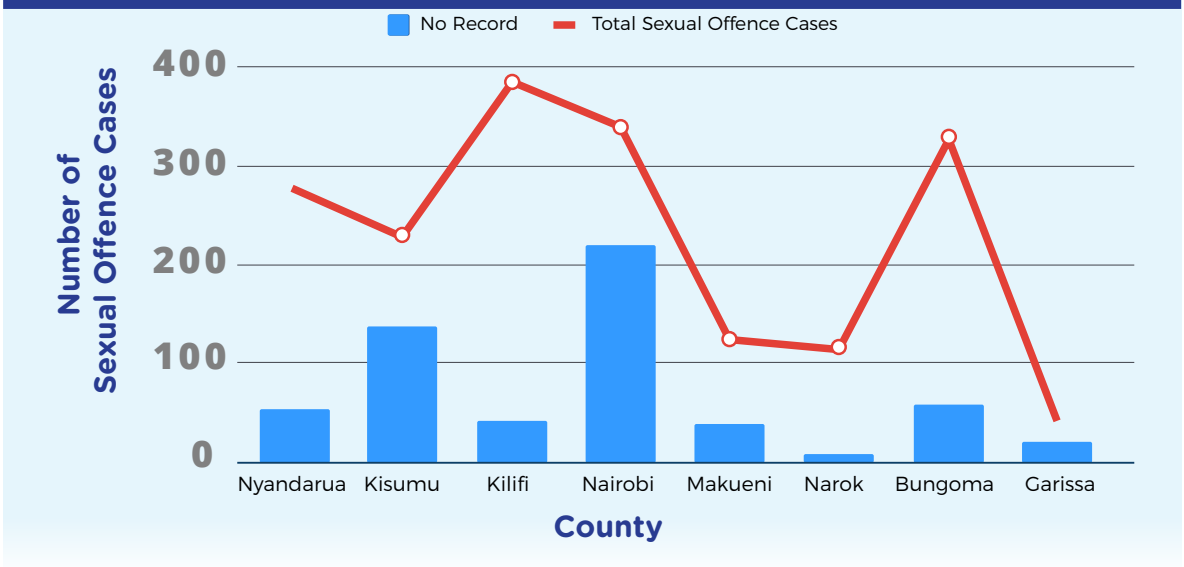
Ksh. 30,000 (USD 300) in capital cases and cases of children in conflict with the law in the Magistrate's Court. Despite this direction, the majority of children in the country continue to have their cases concluded with no legal representation. In Kwale Law Courts during the service week, the Task Force came across three boys who had been accused of gang rape and found guilty of the charge. All through their case, they had no legal representation. The trial had concluded and they were awaiting judgement. Two of them were placed in a borstal institution and the other in a rehabilitation school.

The Data Crisis

"The reality is, over the years, we've not been able to focus on data as a critical planning tool especially for these programmes, or programmatic interventions [on behalf of children]. Data was left to statisticians and mathematicians." - Key Informant #2

One of the areas of focus for the Task Force is the status of data relating to children matters in the justice system. The Task Force confirms serious data challenges at multiple levels, including data availability right from the word go, "the data is missing at the data collection point" (ibid). There are also issues of quality, management and utilisation within and across the different child justice agencies. The data collection is not standardised; information on age, sex and disability are either inconsistently entered or missing altogether across the different agencies. Agency specific information is also missing, for example, the police data does not show where an accused child is taken after the court, or when a child is arrested. As one informant explains, the omission, especially with regard to the date of arrest, may be deliberate as "it's very sensitive" because of the Constitution article 49(I) (f) (i) and (ii), which stipulates that the police has only 24 hours to deal with the case of anybody in the police cells. "Somebody may fear, 'Am I under investigation? Would there be a complaint against me if I violate article 49 of the Constitution?" (Key Informant #7).

Fig 13: *Number of sexual offence cases with age of accused missing from records in eight selected*



Source: Computed from data from the National Police Service, 2016 - 2018

Overall, about a third (31.5%) of the police records for the period 2016 - 2018 from eight average of 31.5 per cent, however, masks wide variations between counties. This is illustrated graphically in Figure 13. The bars show the frequency of cases in the eight selected counties where age of those accused of sexual offences was not recorded while the red line indicates the total cases of sexual offences that were registered over the years under consideration. The county with the least number of missing age data is Narok - 9 (7.9%) of 114 as compared to Nairobi with 220 (64.5%) of 341, and Kisumu following at 137 (60.4%) of 227 sexual offence cases.

The data are available mostly in analogue form and not organised in ways that are user-friendly and clean. Finally, an accessible, common database serving the key agencies is missing; the data is currently fragmented and dispersed across different child justice agencies, recorded as per institutional priorities. As one Task Force member pointed out in an interview, "If you look at our data, not just for children, and you go look at Prisons' data, they don't talk to each other." (Key Informant #11)

The data crisis is as much the result of serious capacity and resource gaps as it is of apathy and poor data management practices.

Recommendations

Quality of Care

1. Urgent inter-ministerial coordination with the Ministry of Education and the Ministry of Health to ensure that children in rehabilitation schools, remand homes, rescue centres and borstal institutions have equal access to primary and secondary education and healthcare services.
2. Immediate gazettement of the P&C Form and its adoption by all justice agencies that handle children.
3. Multi-agency training and capacity building of all persons dealing with children in each child justice agency, through implementation of the Policy on Mandatory Continuous Professional Development for Child Justice Actors and prioritisation of training in the budgets of child justice agencies, i.e. the Police, Judiciary, Prosecution, Prisons, Probation, Department of Children's Services and civil society. This must include training on handling children with special needs i.e. children with physical disabilities, mental health conditions, children living with HIV/AIDS, intersex, and migrant children in ways that are friendly and respect their dignity as human beings.
4. Funding and capacity building to equip correctional institutions with adequate staff and facilities for education, trauma counselling and therapy, life-skills training, caregivers, music and art therapy, and activity clubs. Counselling and self-care training for staff, caregivers, wardens, legal personnel and families of detained children should be prioritised to foster healing and smooth reintegration of children into their communities.
5. Implementation of County Governments' responsibilities for childcare facilities under Schedule Fourth Schedule, Constitution of Kenya 2010 through mobilisation of resources at the County Government level, engagement of the County Justice and Legal Affairs Committee, and follow up by the Department of Children's Services.
6. Establish mechanisms such as diversion and alternative dispute resolution (ADR) to ensure child detention and institutionalisation of children are a measure of last resort. We acknowledge the ongoing care reforms spearheaded by the National Council for Children Services. The Task Force recommends and promotes deinstitutionalisation of children by prioritising family-based care such as legal guardianship, foster care and adoption.
7. The Department of Children's Services to take action to foster accountability and counter child trafficking in charitable children institutions (CCIs) through monitoring mechanisms and deregistration of non-compliant institutions.

8. Strengthen monitoring and evaluation using mechanisms such as surprise visits and spot checks of children holding institutions to ensure that the highest standards of handling children is maintained in the best interest of the child.

Infrastructure

1. All child justice agencies should ensure that there is modern and child friendly infrastructure for children in the justice system. All child holding facilities should be renovated to cater for children with special needs including those with physical disabilities and medical conditions.
2. The Task Force recommends that child-friendly CPUs be established at every police station in the country. Coordination between the National Police Service and the Department of Children's Services is critical for seamless and efficient management of the children in these facilities.
3. The Task Force requests that the Chief Justice issue a directive for construction of a separate Children's Court in every court station in Kenya. We also propose that courts should hear children's matters as a matter of first priority on any given day, and designate a certain number of days in a week to hear children's matters exclusively.
4. The Task Force recommends the construction of a child-friendly holding room in each court station, supported by trained, child-friendly court staff who should ensure that the children are cared for and fed.
5. Government and development partners to allocate adequate funding to children institutions and increase funding respectively.

Data

1. Recognising that data management is an issue that cuts across all child justice agencies, the Task Force recommends the establishment of an integrated digital data management system with up-to-date, accurate and secure data that can be used by all child justice agencies. Already the Task Force has supported the development of a prototype of a child Justice Information Management System (JJIMS) and presented the same to the Inspector-General of Police. The Inspector-General is committed to mapping and identifying three police stations where it would be piloted. The system provides for entry and storage of information, with protocols being developed for the sharing of information. We acknowledge that the Department of Children's Services (DCS) has a digital platform for data collection through the Child Protection Information Management System (CPIMS). In addition, we encourage child justice agencies to adopt and roll out the JJIMS. Anchored under the NCAJ, the JJIMS is designed as a case management system (tracking and escalation) for capturing data on children (those in conflict with the law and in need of care and protection) who interact with the justice system. The JJIMS monitors these cases end-to-end from the time they are reported up to their most logical conclusion.
2. Development of a special data collection tool especially for those agencies that do not exclusively handle children such as the Judiciary, Prisons and the Police. This will ensure that every child (girls, boys and intersex) in each agency are captured in the database.
3. Development and implementation of a Data Sharing Protocol and Policy that safeguards the rights of the child in any digital data platform. The Task Force calls for transparency in access to information (borrowing from best practice identified in Sweden) and periodical publication of data is emphasised. The Protocol should contain communication guidelines and protocols for information sharing and feedback to improve data collection.
4. Age assessment was identified as one of the problems ailing the justice system. The process contributes to delay of cases and in some instances, uncertainty about the age of the child. The Task Force calls for the enactment of the Children Bill, which provides criteria for the determination of a child's age by the courts. It is essential that age assessment is conducted before children are committed to the child justice institutions.

Coordination, Sensitisation and Capacity Development

"When you hear the Probation Officers speaking and the Children's Officers are speaking, we are talking about the same child, but we are speaking in a different language." - Key Informant #4

Challenges in Coordination

Coordination across child justice actors including the Department of Children's Services, Probation, Police, ODPP, Judiciary, Law Society of Kenya and civil society organisations remain a challenge at both the national and county levels. There is also weak multi-sectoral and inter-ministerial coordination.

Different child justice agencies have different mandates, and they often work in parallel to one another with little or no information on who is doing what and where. They often use different strategies to reach out to the same children, "operating in silos such that if a child is brought to my institution, even if they were in the Children's Department, I am not compelled to start by [asking], "What is it that happened when they were at the Children's Services?" I start with them based on my mandate" (Ibid). This was also a major concern raised by children participating in the Task Force supported Best Interest of the Child Conference in 2016.

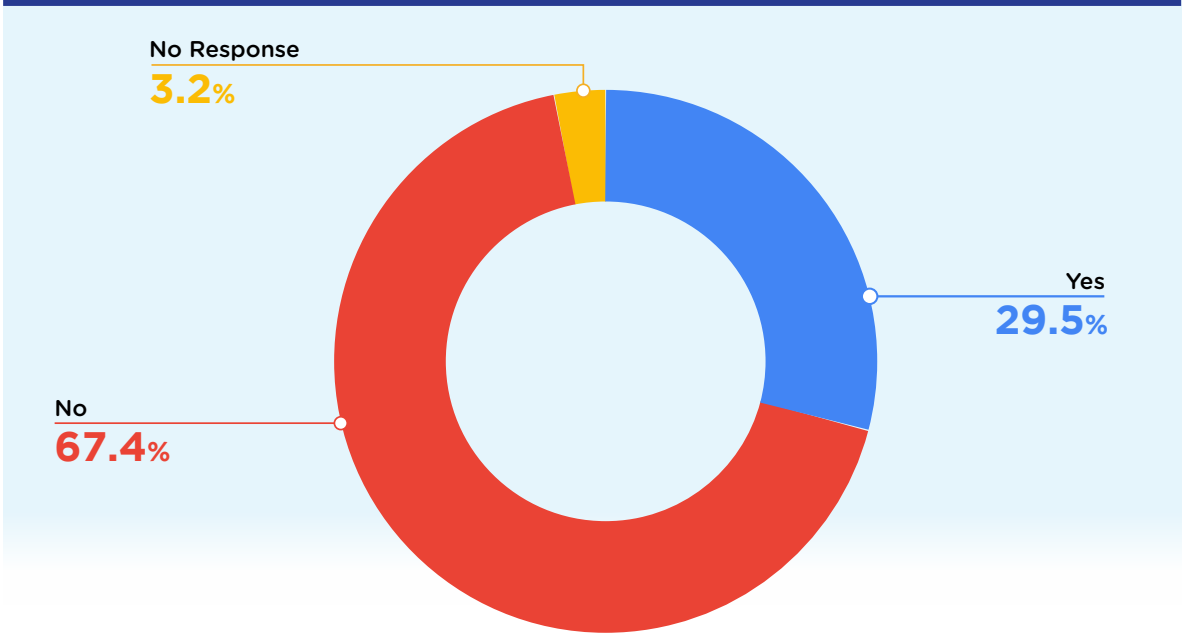
Uncoordinated application of the legislative and policy framework hampers the seamless coordination of the child justice sector, resulting in competing and fragmented interventions, which may actually work against the best interest of the child. Instances were noted of children languishing in police cells instead of being taken to a rescue centre as directed by law because the office that is mandated to protect the child is not aware of his or her existence in the police station. This may be attributed to poor communication between the concerned parties as well as the lack of awareness of each others' functions, for example, who is responsible for transporting the child from the Police Station to the rescue centre or the remand home. Yet, data made available to the Task Force indicate that almost 94 per cent of police stations out of the 95 that responded, have the contacts of children's officers within their areas of operation (TF Facilities Questionnaire, 2019).

There is also weak coordination of the Prison and children's departments while handling cases of children of imprisoned parents. Responsible for covering large geographical areas and sub-counties, the children's officers on the ground are often overstretched and may not have adequate resources to support the effective execution of their duties. So even if aware of a situation concerning children, the officer may not be able to make a timely intervention due to both work overload and insufficient resources.

Capacity and Knowledge Gaps

Awareness among child justice actors, especially judicial officers, advocates and the police, on handling children's matters is low. Available data from 95 police stations suggest that less than one-third of police stations have personnel who have specialised training in children matters (Figure 14). The total number of gazetted police stations in the country are 478.

Fig 14: *Percentage of police stations with officers with Specialised Training on Children Matters 2019*



Source: Computed from Facilities Questionnaire, NCAJ Special Task Force on Children Matters, 2019

Many magistrates do not have specialised knowledge in children's laws, policies, and child rights issues. They also lack understanding of the Sexual Offences Act 2006 and the Children Act. Therefore, they are unable to make informed decisions, relying instead on reports by children's officers, which mostly recommend that the child be sent to a specific institution regardless of whether this is her or his best interest. There are also cases of misinterpretation of the law leading to wrong placements to Probation Hostels and wrong sentences impeding effective rehabilitation. There is inadequate capacity to handle children matters in child holding institutions. (Retreat Report, 20th April 2018)

Six Year-Old Amani and How the Magistrate Bungled her Case

Amani is a 6 year old girl who is defiled by her step-father. Her mother punishes her for crying and reporting the case and both the stepfather and mother are arrested and brought to the magistrates' court. The step-father is charged, convicted and sentenced to life for defiling a minor, while the mother is charged with assaulting the child and is sentenced to 5 years imprisonment.

During cross-examination in the magistrates' court Amani begins to cry and is stepped down as a witness. After completing the trial, the magistrate does not recall the child for cross-examination or declare Amani a vulnerable witness. The magistrate also does not call other suitable witnesses (intermediaries) who the child reported the defilement to, took her to the hospital and reported the matter to the police.

The above issues are brought up during an appeal at the High Court. The High Court says that the magistrates has made a mistake by failing to declare the child a vulnerable witness, and that it was not necessary to cross-examine the child because the child was not even sworn.

The step-father and mother appeal to the Court of Appeal claiming that their fundamental rights have been infringed because they were neither given an opportunity to cross-examine the child or other witnesses who could have been declared as intermediaries. They want the evidence of the child to be removed from the record.

This is a case that shows lack of understanding and knowledge of Sexual Offences Act by the trial magistrate who should have declared the child a vulnerable witness, called for intermediaries and for an impact statement.

Largely supported by development partners and the civil society, organised training on children matters have not been consistent. Specific mention was made of funding by the Japan International Cooperation Assistance (JICA) for capacity development workshops for child justice, which stopped about three years ago. The JICA supported training course was intended for Child Care and Protection Officers (CCPOs) in the child justice system comprising officers from the Probation and Aftercare Service, Department of Children's Services and the Kenya Prisons' Services. It also includes magistrates gazetted as children's magistrates.

There are no specialised training courses available for the police, prisons' officers, and the prosecutors. Similarly, members of Court User Committees lack training on issues like plea bargaining (TF Retreat Report, 20th April 2018).

Members of the Task Force in a court registry during service week.

Recommendations

1. NCAJ to establish a Child Justice Policy Implementation and Quality Control Team with a 3-year term of service to ensure implementation of the recommendations of the Task Force on Children's Matters. Membership of the Committee to be expanded to include the education and health sector, local administration, community leaders, Nyumba Kumi Initiative and the academia.
2. Strengthen inter-agency communication and coordination, and clearly define the roles and responsibilities of child justice actors to ensure an unbroken chain-link and effective, efficient delivery of services for children in the justice system.
3. Collaboration between the Law Society of Kenya and National Legal Aid Service to sensitise advocates on the importance of legal aid for children's matters and incentivise taking up of pro bono children's matters through awarding of CPD points and ouserther rewards.
4. Organise periodic multi-stakeholder forums for purposes of monitoring, identifying challenges and mapping resources and interventions. Forums should ensure gender balance and gender sensitive content.
5. All child justice actors to maintain and update a database of all officers trained in handling children's matters to ensure that they are appropriately deployed to units that handle children.
6. Enhance the roles of the community, specifically the children, parents and community leaders, in disseminating information and reporting to the relevant authorities.
7. Conduct strategic sensitization and training of child justice actors to facilitate information sharing, understanding of roles, and orientation on children matters.
8. Enhance collaboration between Kenya National Commission on Human Rights (KNCHR), the National Gender and Equality Commission (NGEC) and child justice agencies to ensure programmatic interventions that are specific to child rights.
9. Enhance active and meaningful participation of all children in the development of laws, court proceedings and other decision-making processes that affect them pursuant to the third optional protocol of the UN Convention on the Rights of the Child (CRC).

"The matters of children are urgent and the Task Force needs to hit the ground running" - *Lady Justice Martha Koome, Opening Remarks, Task Force Retreat 21st April 2016*

03 | Achievements

Transforming Attitudes and Practices

The review of the status of children in the justice system paints a picture of betrayal; those entrusted with safeguarding the rights of children in the justice system have failed to execute their duties effectively and efficiently. For this failure they have not always been held accountable. The call for action by the Chairperson at its first retreat, reflects this concern, and set the tone for the operations of the Task Force. The results are evident in both the process that it adopted and the outcomes of its deliberations.

The iterative approach adopted by the Task Force has enabled the Task Force to not only deliver on outputs explicitly stated in its terms of reference, but also to inspire positive changes in the way child justice institutions conduct their business, learning from the leadership styles of each other and the sacrifices that they make while pursuing justice for children. Some members, inspired by others, have distinguished themselves as leaders in child protection, building the Child Protection Unit under the DCI to combat child trafficking and violence against children, and the Children, Victim and Witness Support Unit within the ODPP.

The Task Force has been creating awareness on children's matters, that children have rights irrespective of who they are and what they may or may not have done. The awareness has been raised through trainings, sensitisation meetings, lobbying and media campaigns resulting in greater sensitivity in handling of children's cases by the police and judicial officers. This is reflected in actions such as not placing them in institutions arbitrarily as they used to do before and using protocols to guide them in how they handle children, which they previously had not been doing.

An appreciation of children and their rights has triggered strategic changes within the ODPP, which now has a budget for children, albeit combined with child victims and witnesses. Notably, the ODPP has also begun using plea bargaining for children's cases and training officers on its use. This not only achieves expeditious disposal of children's cases, but positively affects children when used for adult offenders where "the impact of having this person held in custody is affecting children back at home, is affecting the family at large... to ensure that they are processed very quickly and they go back home and take care of their families" (Key Informant #8).

County governments, courts, and police officers have been sensitised on how to use funds allocated for children, as noted by one key informant:

> So now we have been able to sensitise courts, the governors, the police officers, even ourselves - you know, on how we can use this money. And we are seeing county governments utilising the money. Now we have around three or four county governments that have a CPU...Various counties have come up with strategies on how to protect their own children (Key Informant #8).

There have also been systemic and attitudinal changes within the prison system. According to another key informant,

> We are [now] looking at them as young girls who need care and protection and not as criminals. This has really changed because initially when the girls were in the maximum [security] institution, for example in Lang'ata [women's prison], they used to be handled as criminals but now with the appreciation of what I have, what I have learnt from the Task Force, we look at these girls as girls who are in need of care

and protection and not as criminals. And their institution, the Kamae Girls Borstal institution - we don't look at it as a prison but as an institution for young girls. And this is important. We've been able to now carefully select the managers and the people to work with these girls **(Key Informant #1).**

The gazettement of 40 hectares of land at the Kamiti maximum security prison for the Kamae Girls' Borstal was done in December 2015. However, without the support of the Task Force, it would not be the state of the art facility for girls aged 15 to 17 who are in conflict with the law, which, according to one informant, is one of two in the African continent. The facility provides girls with a safe and secure environment to reflect and develop, away from adult offenders. At the Kamae Borstal for girls, children are provided with formal education, skills training and psychosocial support for the three years that they are there.

Children of Imprisoned Mothers

The situation of children who accompany their mothers or are born in the prisons has also improved. The children, for instance at the Lang'ata Women's Prison, have a well-resourced daycare and early childhood development centre within the prison premises. A female inmate who is not the mother to any of the children is assigned to take care of them. The selection of independent caregivers are done to avoid the possibility of any bias towards any particular child. The selected caregivers are given some basic training on primary caregiving. Mothers are not allowed to take on this role to ensure that all the children are taken care of without bias. During the night, the children sleep with their own mothers, in their own ward, separated from other prisoners.

Prior to participation in the Task Force, the Prisons Staff were not sensitising mothers "on the need to protect their own children from picking anything - behaviour or habits - from the other inmates who may not necessarily be having children or who may be having children but they are not sensitive" (Key Informant #1).

The prison environment is highly militarised. To reduce the impact of militarisation on the children of women offenders, the prison authorities have introduced small changes. For example,

They [mothers] don't put on uniform because when they used to put on uniform the children were becoming militarised, you know. And, they would squat, they would salute. And they would do all sorts of things. And that is why we, as much as possible, also try to remove the children from their mothers during the day because at night they're sleeping (Ibid).

Supporting the Anti-Human Trafficking and Human Rights Agenda

The Directorate of Criminal Investigations has made strategic interventions to protect children from trafficking through the establishment of the Anti-Human Trafficking and Child Protection Unit in 2016.[12] The Task Force has played a key role in providing technical advice, training and mentorship through the experience and expertise of its members. A majority of the trafficking cases and arrests pertain to child labour and those of children with disabilities trafficked for begging, with most of the crime taking place within the East African borders. The Unit has been training police officers on detecting trafficking activities and dealing with children and has entered into strategic partnerships with other state and non-state justice actors, including both national and international civil society organisations. This has enabled

[12]Note that this department within the DCI is to be distinguished from the separate holding facilities for children within police stations, also referred to as 'Child Protection Units'.

them to provide counselling services and shelter for child victims. There is need for more staffing and capacity-building of stakeholders (police officers, Court Users' Committees (CUCs), judicial officers, and prosecutors) for greater effectiveness and responsiveness. Best practices identified include clearing of courts and testifying via video-link, as this helps child victims give evidence freely without fear of a face-to-face confrontation with the alleged perpetrator.

Successful repatriation of a child

During one of the service weeks, a young boy was rescued from a *madrassah* and was arrested along with two other boys. The other two boys had been released and reunited with their families. From a report from the children's officer, he was from Turkana and has been brought to Kwale by people he said were well-wishers who had told the boy that he was going to school. The *madrassah* was not in operation because it was not registered within the guidelines. Due to this, the security suspected that the children were being radicalized. It was closed and the children were handed over to the police and the children officers and thereafter moved to places of safety. All the parents were informed to get the children and amongst them, only this boy was not collected by the parents. When he was put in a rescue centre, he behaved violently and he tried to commit suicide. The security team suspected that the children were being radicalized; they were then handed over to the police and the children department. The process of tracing began.

Following this, the children's officer treated this as a case of radicalization and child trafficking and removed the boy from the rescue centre to Likoni remand home. The boy was committed to a remand home rather than a rescue centre because of his violent behaviour and the fear that he might escape. However, no one was arrested in relation to non-registration of the *madrassah.* The child attempted to commit suicide during the period which he had been held at the police station and the remand home.

The Task Force team prompted the children's officer to follow up on tracing the child's family and he called the chief in the area where the child was from. The chief confirmed knowing the mother of the boy who said that she was ready to receive him. In Court, the boy seemed to recall features to identify his home town like a nearby school and the name of his mother. He informed the Court that his mother was a farmer and that he wanted to go home to continue with his studies.

The magistrate on duty ordered that the child be repatriated to his home and a Protection and Care file was opened for him to monitor his wellbeing and ensure that he was lawfully repatriated. As at 18th September 2018, the boy was all smiles following reunion with his family.

The awareness created has made the Kenya National Commission on Human Rights (KNCHR) focus more on children's rights. They have mainstreamed children's rights in the implementation of all their projects, such as intersex person's project, election monitoring project, migration and human rights project and persons with disbilities' rights' advocacy project. As an organisation, KNCHR continues to receive invitations to review bills touching on human rights and specifically children's rights from the National Government as well as County Government assemblies.

The KNHCR has been in the forefront of advocating for the rights of intersex individuals to be recognised and counted resulting in their inclusion in the 2019 Polulation Census of Kenya. Intersex refers to "a person (child) who is conceived or born with a biological sex characteristic that cannot be exclusively categorised in the common binary of female or male due to their inherent and mixed anatomical, hormonal, gonadal (ovaries and testes) or chromosomal (X and Y) patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood".[13] The Taskforce on Legal, Policy, Institutional and Administrative Reforms regarding Intersex Persons in Kenya in its 2018 report, recognised the general lack of awareness about the intersex condition and the human rights violations meted out against intersex persons in the justice system.[14]

Clearing the Backlog

The backlog of pending cases before the courts constitutes a critical bottleneck in the dispensation of justice to children in the justice system. The Task Force recognised this at the outset, using service weeks and service months in November to mobilise key child justice actors to help clear the backlog. Using this strategy, the Eldoret Law Courts resolved 1497 pending cases of children's matters during the 2018 Service Month. Another 1001 cases were handled during mini-service weeks in the following law courts: Milimani (2016); Makadara (2016, 2017); Kitale (2017); Lamu, Kilifi, Malindi, Nakuru, Ngong and Meru (2018); and Garissa and Kwale (2019). The combined figure of 2,498 cases handled since 2016 is, however, a serious underestimation of the achievements of the Task Force in clearing the backlog, and reflective of a poor data management culture that continues to bedevil the child justice sector. The majority of court stations are yet to make their data returns to the Task Force on the backlog cleared and cases handled during November service months. Clearly, there is still a long way to go in institutionalising a culture of effective data management.

This notwithstanding, a change in mindshift may be discerned in some organisations. The Probation and Aftercare Services, for example, have begun placing more emphasis on the use of statistics to make decisions on matters concerning children. Additionally, the research and statistics section now consistently receives data on children held at the probation hostels or those who are under their supervision. The Task Force has constructed a number of data collection tools, and have successfully leveraged resources and buy-in for the establishment of a Juvenile Justice Information Management System (JJIMS).

Creating Child-Friendly Environments

Other achievements of the Task Force are reflected in "quick fixes" that cost little or no money, but require a change in mindset - a small change in the way business is conducted. The Registrar, Magistrate Court of the Judiciary has institutionalised the use of white coloured case files for children's files and separate registers for children's matters have been introduced in courts; some institutions now provide lunch as children attend court; the two gazetted children courts, namely, Tononoka and Milimani are now friendlier to the children; and probation hostels holding children have introduced child friendly activities. The visit by the Task Force and subsequent interventions has substantially improved the living conditions at, and management of, the remand homes among other institutions.

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[13]Definition from the Report of the Taskforce on Legal, Policy, Institutional and Administrative Reforms regarding Intersex Persons in Kenya, December 2018, p. 12-13.

[14]See the case of Richard Muasya v Hon. Attorney General High Court of Kenya (Nairobi High Court Petition No. 705 of 2007).

Case Study: Best Practices at Makadara Law Courts Juvenile Justice Department

Makadara Law Court is a criminal court located in the eastern side of Nairobi County. The Court has eleven magistrates and serves eight slums, twenty-six police stations and two police posts.

The first November Service Month organised by the NCAJ Children Task Force was launched by the Chief Justice on 14th November, 2016 at the Makadara Law Court. That same month, the Court recognised the need for a child-friendly court dealing exclusively with children's cases and went on to establish a separate Juvenile Justice Department, courtesy of the Task Force and other partners. Today, with is child-friendly environment and practices, the Makadara court station stands out as a model for others to emulate. Among its key features are:

- It draws staff from different departments and disciplines . They include four designated children magistrates, the court administrator, four court assistants, four court bailiffs, one registry assistant, one ICT expert, two researchers and a child psychologist.
- It has adopted a separate Juvenile Register and off-white colour to distinguish children's files from other cases.
- There is a crèche for children in contact with the law and child-friendly holding areas for children in conflict with the law. Painting of the holding area in bright colours is underway, and the court station plans to stock with reading materials for the children in conflict with the law.
- Counselling and innovative interventions such as art and "play therapy" have been introduced. Young children are given toys and crayons to play with during the trial to relax them in what is otherwise an intimidating environment. Court procedures are explained to the child in simple language to build rapport, to find out the child's circumstances and special needs and make arrangements for a counsellor.
- A special form was developed to capture details of minors in order to identify family history and any peculiar issues.
- Priority dates are given to children matters. Children's cases are heard during school holidays. If the child is in custody, hearing dates are given within a month and are heard first thing in the day.
- Risk assessment reports are availed as a prerequisite to bond determination; bond terms are preferred in the first instance to avoid keeping children in custody.
- Holding of quarterly Area Advisory Council[15] meetings; this provides periodic updates and information on emerging issues and concerns.
- Introduction of Plea Bargaining Agreements for children's cases and post-trial placement conferences to deliberate on placement options for the child.
- Placement conferences (round tables) to determine the best placement options, involving parents and the child.
- Establishment of a Legal Aid Committee funded by the Government to sustain twelve advocates for a year for the court.
- Introduction of Protection and Care (P&C) files for children whose parents or guardians have active cases. Since most of these children are left without home support the Juvenile Justice Department has entered into a Memorandum of Understanding with a local children's home to provide temporary shelter and care as the cases are being processed.

[15]Area Advisory Councils are established under section 32 of the Children Act to perform the work of the National Council on Children's Services (NCCS) at the County, Sub-County and Ward level(s). They work with local communities and stakeholders and children to safeguard the rights and welfare of children.

- Cases involving children in need of protection and care, for example, custody, are dealt with by another magistrate in the same court station who is not hearing the main criminal trial. This is done to avoid prejudice to the accused.
- Judicial officers visits the Children's Remand Home every two weeks for custody mentions and to address arising welfare issues. They also conduct outreaches to slum areas.
- Child participation and interaction with children in a neighbouring school is encouraged and prizes are awarded to the best performing students.
- Court staff interacts with children at the Borstal Institution (Youth Corrective Training Centre) through introducing board games such as Chess and Scrabble; the local CUC is also working on training the children on ICT.
- High school students participate as volunteers in appropriate roles in the court during school holidays.
- Counselling is provided for judicial officers and self-care and well-being among the magistrates is promoted.
- It is a piloting centre for the Victim Protection screens project initiated by Kaplan and Stratton Advocates.

Delivering on the **Terms of Reference**

Table 3: *Snapshot of the Achievement of the Terms of Reference by Task Force*

	Terms of Reference	**Outputs**
1	To review and report on the status of children in the administration of justice.	The status of children in the administration of justice in Kenya is described in chapter 2 of this Report: The Situation of the Child in the Justice System.
2	Examine the operative policy and legal regimes as well as the emerging case law to identify the challenges and make appropriate recommendations.	• Development of and lobbying for the enactment of the Children Bill. • Summary of emerging case law on children's matters.
3	Assess, review, report and recommend on the service standards of each of the justice sector institutions with respect to children matters.	Service standards for key justice sector institutions recommended based on the assessment of 58 child holding institutions including rehabilitation schools, remand homes, police stations, borstal institutions, charitable children's institutions and rescue centres through circuit visits and pre-service week activities.
4	Prepare draft rules of procedure for enforcement of fundamental rights of children.	• Enforcement of Fundamental Rules of Procedure • Children's Court Protocol (Draft)

5	Conduct a situation analysis of the existing infrastructure and equipment in the criminal justice system in regard to children matters and develop guidelines for the monitoring, supervision and inspections for holding facilities.	• A situation analysis is contained in chapter 2 of this Report: The Situation of the Child in the Justice System. • Monitoring, Supervision and Inspection Guideline • Comparative Study of Child Holding Institutions: Likoni and Kisumu Remand Homes. (See Annex D).
6	Develop guidelines for Child Protection Units (CPUs) and propose mechanisms for the establishment of a Child Police Unit in the National Police Service.	Operational Standards for Police Child Protection Units (Draft) has been presented to the Inspector-General and awaits gazettement.
7	Develop the Court Practice Directions on children cases.	The Court Practice Directions have been developed and await gazettement.
8	Develop the Diversion Regulations.	Child Practitioners Toolkit on Diversion has been developed by Task Force and other stakeholders and awaits gazettement.
9	Develop a Policy on Mandatory Continuous Professional Development programme on child rights for juvenile justice actors and examine, review the training curricula on children.	Policy on Mandatory Continuous Professional Development for Juvenile Justice Actors (Draft)
10	Develop policies on re-integration of children accompanying imprisoned mothers.	Drafting of policy is at initial stages.
11	Develop policies on separated cells for children.	• Provisions in Children Bill: Separation of children from adults, and separate facilities for male, female and intersex children (section 24, Children Bill), Separation in children's remand homes (section 78, Children Bill), rehabilitation schools (section 80). • Operational Standards for Police Child Protection Units (Draft) has been presented to the Inspector-General and awaits gazettement.
12	Development of the guidelines for children with special needs.	• Comparative research on inclusion of children with special needs has been conducted. Drafting of Guidelines is at the initial stage. • Provisions are included in Children Bill
13	Develop guidelines for inclusion of children with special needs in the juvenile justice actors procedure to be included in the Practice Guidelines.	

14	Develop a coordinated sensitisation and awareness strategy.	• Protocol on Sensitisation on Children Matters developed to guide strategy. • Capacity building and training of justice actors, CUCs and public during Service Week pre-visits.
15	Develop a form for presenting the P&C cases in court.	• Developed the P&C Form awaits gazettement. The Inspector-General is implementing use of the form by police officers.
16	Improve coordination of the juvenile justice actors at the national and county level.	• Establishment of Child Court User Committees (CCUC) and adoption of Child CUC Guidelines • Memorandum of Understanding with the Council of Governors • Coordination of child justice actors during Children Service Weeks • Engagement with magistrates at annual colloquium

The Table 3 below summarises the outputs of the Task Force against the tasks they were expected to deliver on. The documents mentioned in the 'Outputs' column are contained in Volume two of this report.

A more detailed discussion follows on the achievement by the Task Force of each ToR apart from the first one as it is addressed in the second section of this report.

TOR 2: Examine the operative policy and legal regimes as well as the emerging case law to identify the challenges and make appropriate recommendations.

The Task Force has played a strategic role in the development of the Children Bill. The membership of the Steering Committee on the Children Bill includes the Chair of the Task Force as its Vice-Chair as well as other Task Force members. In October 2016, the Task Force reviewed the Children Act 2001 and made recommendations for amendment. Further, the Task Force members facilitated country-wide stakeholder consultations on the Bill and actively lobbied for the enactment of the Bill with relevant policy makers.

Gains made in the Children Bill

The Children Bill seeks to repeal the Children Act 2001, align it to the Constitution 2010 and address emerging issues affecting children today. The proposed Bill entrenches the best interest of the child principle as the primary consideration and safeguards a broader

range of child rights in accordance with article 53 of the Constitution and international laws. These include the procedural safeguards in the legal process and additional rights together with the right to parental care, right to free and compulsory basic education, right to social security, right to inherit property, and the rights of children with disability. The Bill defines and addresses issues such as intersex children, child trafficking, radicalisation and online abuse of children. Child protection is enhanced by broadening the categories of children in need of care and protection, increasing responsibilities of duty bearers, and toughening punitive measures for offences committed against vulnerable children.

The Bill contains far reaching reforms concerning children in conflict with the law. First, it increases the age of criminal responsibility from age 8 to 12. Second, the Bill introduces diversion mechanisms that redirect children from the judicial process to community based structures. This not only unclogs the court system, but also minimises the adverse consequences of subjecting children to the criminal justice system. Diversion promotes restorative justice approaches such as restitution and reconciliation. It should be noted that diversion is not used to resolve sexual offences and capital offences.

Child friendliness is the guiding principle for the infrastructure and service standards set in the Bill for child holding institutions. The institutions are required to have segregated facilities, like the CPUs in police atations separating children from adults as well as having designated spaces for girls, boys and intersex children. There is also tighter regulatory framework for establishment, management and inspection and staffing of charitable children's institutions and other child holding institutions.

The Bill prioritises family-based care over institutionalisation of children. It introduces kinship adoption, including kafala which is a form of adoption under Islamic jurisprudence. It also increases regulation of foster care, guardianship and adoption, and enacts the constitutional provisions on equal parental responsibility over a child. The Bill clarifies the respective mandates of institutions in the administration of children's services, as well as financial provision, auditing and reporting requirements. Further, it recognises the impact of devolution on the enforcement of child rights and embeds county government structures in the child protection framework.

TOR 3: Assess, review, report and recommend on the service standards of each of the justice sector institutions with respect to children matters.

The Task Force conducted circuit visits to a total of fifty-eight child holding institutions in fifteen counties, including rehabilitation schools, remand homes, police stations, and charitable children's institutions. During the circuit visits, data on children were collected and quality of care and service standards of the institutions visited, observed. The recommendations on the service standards for the justice sector institutions with respect to children matters are contained in Vol II of the Task Force Report.

TOR 4: Prepare draft rules of procedure for enforcement of fundamental rights of children.

The Task Force drafted the Children's Court Protocol which awaits validation by members of the Task Force. It provides guidelines for child friendliness of the infrastructure and procedures of children's courts, drawing from local and international best practices.

TOR 5: Conduct a situation analysis of the existing infrastructure and equipment in the criminal justice system in regard to children matters and develop guidelines for the monitoring, supervision and inspections for holding facilities.

Based on insights gained from the circuit visits and investigated the infrastructure and conditions of facilities in the child justice system, the Task Force developed a 'Monitoring, Supervision and Inspection Guideline for Holding Facilities'. This tool sets a baseline standard for all child holding institutions in the child justice system. The purpose of the Guideline is to monitor compliance to basic minimum standards related to admission procedures, institutional capacity, condition of the facility, quality of food and nutrition provided, rehabilitation programmes, right to formal education, staff training and funding. This is intended to improve service delivery, ensure the provision of quality care and protection of children of all categories, and to promote the accountability of all child holding facilities in conformity with the Constitution of Kenya 2010 and in the best interest of the child.

TOR 6: Develop Guidelines for Child Protection Units (CPUs) and propose mechanisms for the establishment of CPUs in the National Police Service.

The Task Force has drafted the Operational Standards for Police CPUs. This is in recognition of the fact that the Police, being a child's first point of contact in the justice process, are a core agency within the child protection system. Further to that, the CPUs in police stations are a critical component of child protection in the justice system.

The Operational Standards defines the norms for infrastructure, service provision and treatment of children in CPUs and provides guidance to police officers on handling and protecting children from abuse and neglect. The Standards also aim to strengthen the capacity of the Police to respond effectively to the needs of children by providing guidance on handling them, and proposing structures, referral processes, administration and service provision for a Child Police Unit within the National Police Service.

TOR 7: Develop the Court Practice Directions on children cases.

The Task Force developed the Children Act (Protection of Fundamental Rights and Freedoms of the Child) Court Practice Directions, 2016 [See Vol II] to guide child justice actors in operationalising the best interest of the child in the course of exercising their respective powers conferred by section 3, section 4, Part IX and Part X of the Children Act 2001. The Directions apply to all civil and criminal proceedings involving children in contact with the law. They give direction on the administration of children's matters in the children's court and in the environment within which they are located, as well as to the court's expectations of legal practitioners. The Children Act Court Practice Directions await gazettement.

TOR 8: Develop the Diversion Regulations.

The Children's Task Force played a key role in developing the Child Practitioners Toolkit on Diversion. [See Vol II]. The Toolkit is a handy reference guide on diversion for children in Kenya. It customises the ODPP's Policy on Diversion to address the needs of children in the child justice system. The Diversion Toolkit provides a multi-agency framework on the implementation of diversion programmes at the macro and micro levels in Kenya, and

highlights the roles and responsibilities of the various law enforcement and civil society organisations providing legal aid and other child friendly services. It was agreed that National Legal Aid Services shall be responsible for implementation of the Toolkit.

TOR 9: Develop a policy on mandatory continuous professional development programme on child rights for justice actors and examine, review the training curricula on children.

After reviewing the existing curricula on children's issues, notably the Child Care and Protection Officers (CCPO) curriculum developed in 2011 in partnership with the JICA, the Task Force recommended a further review and amendment of the curriculum in order to:

- Ensure conformity with the Constitution of Kenya, 2010;
- Address emerging issues in the child justice sector;
- Set minimum training requirements for various cadres of personnel in the justice sector working with children, clarify the structure of different training programmes (for example, basic trainings, on-the-job/continuing trainings, professional trainings at certificate/ diploma level, specialisation on children matters;
- Entrench child rights training for all justice actors and harmonise other training curricula like that offered by the Judiciary Training Institute with agency-specific trainings.

In addition, the Task Force developed a Policy on Mandatory Continuous Professional Development for Juvenile Justice Actors (Draft). The goal of the policy is to ensure that there is a mandatory continuous professional development programme on child rights for each of the child justice actors and that anyone dealing with children must be trained. It also seeks to harmonise training for diverse child justice actors; address training gaps as identified in the training needs assessment; and provide guidance for bodies mandated to assess the training needs or develop a training curriculum for child justice actors.

The curriculum is undergoing review with support from JICA. The Policy shall be housed at the NCAJ.

TOR 10: Develop policies on re-integration of children accompanying imprisoned mothers.

The development of the policies have been initiated, anchored in the Children Bill.

TOR 11: Develop policies on separated cells for children.

The draft Operational Standards for Police Child Protection Units (CPUs) developed by the Task Force sets norms for separate CPUs in police stations.

The Children Bill provides for separation of children from adults in police cells as well as separate facilities for male, female and intersex children (section 24, Children Bill), separation in children's remand homes (section 78, Children Bill), and rehabilitation schools (section 80).

TOR 12: Development of the guidelines for children with special needs and

TOR 13: Develop guidelines for inclusion of children with special needs in the Juvenile Justice Actors' procedure to be included in the Practice Guidelines.

The drafting of the Guidelines, which is in its initial stages, is informed by a comparative research on children with special needs that was undertaken by the Task Force secretariat.

TOR 14: Develop a coordinated sensitisation and awareness strategy.

The Task Force developed a Protocol on Sensitisation on Children Matters which sets standards on the information and methodology to be used when sensitising members of the public and children on child rights and protection. The Protocol provides guidelines on methodology, appropriate language, issues of confidentiality and privacy, teaching children their rights and responsibilities, use of social media, and treatment of children during sensitisation and awareness campaigns.

Pre-Service Week

In preparation for the National Service Month in November and subsequent service weeks, the Task Force conducted pre-visits to court stations and child holding institutions. One of the objectives of the pre-visits was to introduce the court and court users to sensitise them on alternative dispute resolution (ADR) mechanisms, in particular the benefits of court-annexed mediation.

During the pre-visits, the Task Force strengthened capacity of court staff, coordinated the service week interventions, trained and sensitised key actors in the justice system (including Court User Committees) on children's matters. They also took this opportunity to sensitise and conduct training on legal aid, pre-screen files for court care and protection cases, data collection, plea bargaining and court-annexed mediation, and to identify child rights champions in the community. Advocates were sensitised on the importance and need of providing pro bono services. Materials and documents required for the service week were provided to courts and CUCs, for example, the case information tool, P&C Form, special off-white file folders for children's cases, Children CUC Guidelines, plea agreement forms, and mediation manual.

Prior to the service week launch, members of the Task Force sensitised the public on children's issues and the service weeks on local radio stations. Dramas acted by children during the service week further raised consciousness on child rights issues among members of the public.

TOR 15: Develop a form for presenting the P&C cases in court.

The Task Force developed the P&C Form to be used instead of the charge sheet for all children at police stations, regardless of whether they are in conflict with the law or in contact with the law. It was presented to the Inspector-General who directed all police officers to use the form instead of the charge sheet for section 119 Children Act (P&C) children cases. Though the P&C Form awaits gazettement, children in need of care and protection who are presented in court now are already using the Form.

TOR 16: Improve coordination of the Juvenile Justice Actors at the National and County level.

The Task Force has been successful in improving coordination of the child justice actors at both the national and county levels. The representation of diverse child justice actors on the Task Force has facilitated better coordination of the sector. It has brought together all actors and built a common understanding of the roles and responsibilities of each with regard to child rights and justice through the exchange of information, discussion of challenges, and support for each other in order to achieve justice for children. As a result, inter-agency relationships, especially between the courts, children's officers and the police within the country have been strengthened, and there is greater appreciation of working with others. There is also a sense among various actors that children's matters are being handled more efficiently than before.

Child Court User Committees (CCUCs)

The Task Force has sensitised Court User Committees on the principles of the Best Interest of the Child and why it is necessary to expedite matters involving children. This has resulted in entrenching child rights into the deliberations of the NCAJ Court User Committees. There is now a standing agenda on children matters in all their meetings and in large court stations, special CCUCs have been established. To support these, the Task Force has adopted the Child CUC Guidelines.

Council of Governors

The Council of Governors have a Memorandum of Understanding with the NCAJ. Through this, and through the Department of Children's Services and the Cradle, it has collaborated with the Council of Governors to prioritise child protection and child rights issues at the county level. The CRADLE is a civil society organisation that sits on the Task Force.

A technical working group was formed with representation from the Task Force and the Secretariat of the Council of Governors in October 2018. Through this partnership, the Task Force was able to actively contribute to the planning of the Second Children's Devolution Conference in January 2019. It lobbied for child protection to be a priority agenda item and to be included in the communique from the conference, which was presented to His Excellency the President of the Republic of Kenya, Uhuru Kenyatta. The Chair of the Task Force addressed the child delegates and county officials at the conference through an engaging speech and question and answer session, where she responded to questions on child justice from children, including those from rehabilitation institutions.

Opportunities for future collaboration and coordination include: drafting of county child protection policies; developing an integrated data collection and management system; county-specific child protection strategies; and borrowing of best practices from various counties.

National Children's Service Month and Service Week

The Task Force identified backlog of children cases as one of the hindrances to the administration of justice towards children. One of the greatest achievements of the Task Force has been the coordination and planning of the Judiciary Children's Service Month in November and subsequent service weeks between 2017 and 2019. The aim is to hear pending children's cases across the country in order to clear backlog of children's cases. In November 2016, the Chief Justice David Maraga declared that the National Children's Service Month be institutionalised by including it in the Judiciary calendar for November.

The inaugural service month was held at the Makadara Courts in Nairobi.

In preparation for the service weeks, the Task Force visited court stations to ensure preparation of relevant documents, conduct training, strengthen the capacity of court staff and CUCs, and provide administrative support to court stations and Court User Committees. The launch day of the service weeks provided opportunities to sensitise and inform the public about children matters, mediation and plea bargaining, and interact with the community.

Court-annexed Mediation was successfully used to resolve cases, notably custody and maintenance cases. Plea-bargaining was used to reduce the length of proceedings.

The Law Society of Kenya (LSK) and National Legal Aid Service (NLAS) provided pro bono advocates and volunteer mediators. Other key partners (including the US Department of Justice, UNICEF, International Development Law Organisation, International Committee for the Development of Peoples (CISP) and other local NGOs) provided resources to host the various launches, administrative support for the registry, paralegals, counsellors, stenographers, entertainment, refreshment, and accommodation for additional staff. Following the service week, courts sent data to the Task Force on cases cleared. Task Force encouraged courts to take initiative to clear children cases on a regular basis.

Children marching during the Kwale Law Court's Children's service week on 26th to 30th August, 2019.

"The matters of children are urgent
and the Task Force needs to hit the ground running"
- Lady Justice Martha Koome, Opening Remarks, Task Force Retreat 21st April 2016

04 | The Call to Action

The analysis of the status of children in the justice system reinforced the raison d'etre for the appointment of the Special Task Force on Children's Matters in January 2016. It revealed a broken chain-link that prevented children, both victims and accused, from exercising their rights guaranteed under the Constitution of Kenya 2010 and the UN Convention on the Rights of the Child. However, with vision, commitment, collaboration and political will, this chain-link should, and can, be fixed.

The Big 7 Agenda for Action

The Task Force has succeeded in delivering on 90 per cent of the expected outputs, and has initiated work on the remaining 10 per cent. It also gone beyond its mandate by influencing strategic institutional and attitudinal changes in the way key child justice agencies conduct business. Nevertheless, there are persisting gaps and challenges. To plug these gaps, the Task Force calls for urgent action by all State and non-State actors to come together in the best interest of children in contact and in conflict with the law.

1. Immediate enactment of the Children Bill 2018.
2. Establishment of a Child Justice Policy Implementation and Quality Control Committee by NCAJ with a 3-year term of service to ensure implementation of the recommendations of the Task Force on Children's Matters. Membership of the Committee to be expanded to include the education and health sector, local administration, community leaders, Nyumba Kumi Initiative and the academia.
3. Adoption of the annual National November service month and service week protocols in all courts in Kenya by the Registrars of the Judiciary, and provision of the necessary budgetary allocation for hearing cases.
4. Provision of primary and secondary school education and second teachers to statutory children's institutions (rehabilitation schools, borstal institutions, remand homes) by the Ministry of Education in coordination with the Department of Children's Services in compliance with the constitutional right of every child right to education and the decision of the Eldoret High Court ruling in Eric Githua Kiarie v. Attorney General & 2 Others [2016] eKLR.
5. Use of ADR (alternative dispute resolution) mechanisms, court-annexed mediation, diversion and plea bargaining as critical tools for expediting access to justice for children in Kenya, in order to ensure that detention of the child is a measure of last resort.
6. Strengthening of child rights institutions through adequate budgetary allocation, resources and oversight mechanisms in order to improve the conditions of detention in children's holding facilities and institutions.
7. We call all public and private sector institutions and agencies at the national and county government level to report abuse of children to the Police, Courts and relevant authorities, and to create safe spaces for children to report abuse, in accordance with their constitutional duty to safeguard child rights.

Call to Action per Child Justice Agency

Judiciary

1. Implement the National Children's Service Month each November and periodic mini-service weeks in all courts in the country to ensure finalisation of children's matters with the same urgency of other matters, for instance, election petitions. The Task Force calls for all children's matters to be heard and concluded within 1-3 months to protect children from the adverse consequences of the legal process. Service Month and service

weeks should promote the use of mediation, diversion and plea bargaining in resolving children's cases.

2. We urge the adoption of the Policy on Mandatory Continuous Professional Development Curriculum (Draft) for Child Care and Protection Officers (CCPOs) in Kenya developed by the Task Force. Module 1 of this Curriculum is in the process of review by the National Implementation Team with the support of the Japan International Development Authority (JIKA) Kenya. The Task Force recommends that the training of CCPOs be anchored at the Judiciary Training Institute (JTI) as the central institution to train child care and protection officers with a pool fund to support this curriculum.
3. Urgent review and modification of the Daily Court Returns Template (DCRT) to make it child-sensitive and capture vital information relating to children's matters, thereby enhancing the visibility of children's cases. The tool does not presently indicate whether the matter before the court is a children's case, nor does it capture the child's age and gender.
4. Judiciary to prioritise provision of screens for all Magistrates courts and High courts that handle children matters, in order to make the court environment conducive for child witnesses and victims to give evidence in court without intimidation. While the designation of one courtroom specifically for children in some courts is commendable, the Task Force noted with concern that they are not always compliant with child friendly standards. The Malindi Law Courts is a case in point; it did not have the budget to purchase screens to protect child witnesses and victims, forcing the children in sexual offence cases to testify in the presence of the accused. Often intimidated, the children refused to testify.
5. The use of the off-white colour files in all court registries for easy identification of all children cases is proposed. In addition to facilitating visibility, colour coding also ensures that the registries and judicial officers pay special attention to and prioritise children's cases.
6. All courts to open Protection and Care (P&C) files in aid in monitoring and follow-up on the wellbeing of all children appearing in court and children of imprisonment mothers regardless of the age of the child. This file should accompany the mother's file.

Office of the Director of Public Prosecution (ODPP)

1. Digitisation of data collection on children's matters should be done as a matter of urgency. The Task Force acknowledges that the Office of the Director of Public Prosecutions is a new Constitutional office, as well as the reforms by the Director of Public Prosecutions which included phasing out the prosecution from being police-led to become the role of prosecution counsel who are advocates of the High Court. We recommend that the ODPP digitise data collection of children's cases for ease of tracking of cases at the Courts and their outcome.
2. The Development of Guidelines on Plea Bargaining for children's matters.
3. Capacity development of prosecutors on plea bargaining and diversion is critical. We recommend that more prosecutors continue to be trained on the use of alternative dispute resolution mechanisms such as mediation, to handle children matters. Plea bargaining reduces the time a case takes in court and saves resources.

Police

1. We call on the Inspector-General to ensure children are separated from adults by rolling-out CPUs in police stations.
2. The Task Force recommends that the Police use the Protection and Care (P&C) Form when dealing with children under the Children Act instead of a charge sheet as is the current practice. The use of the charge sheet puts child victims at risk of incarceration despite not having committed any crime.
3. Though the inclusion of child matters into the Police Service Standing Orders Chapter

46 is a step forward in the right direction, the provision as currently formulated is not adequate. We therefore recommend that an addendum is added to the Standing Orders, elaborating on the handling of children during investigations and ensuring that it is aligned to the Children Act 2001.

4. The Task Force recommends the establishment of a separate Department of Children Matters within the National Police Service to ensure that special attention is paid to children matters and for accountability purposes.
5. The majority of police stations do not have personnel trained in handling children in ways that are friendly and responsive to their needs. It has been noted with concern that when the police are transferred to a new duty station, their training in children's matters is not considered in the assignment of responsibilities. This weakens capacity development programmes and demotivates officers who are passionate about handling children matters. We recommend officers versed in children's matters, when transferred to other stations, continue to handle children matters to also save on resources.
6. The Inspector-General to ensure every arresting officer takes into consideration the children left behind by the caregiver during arrest to avert traumatizing the children and to take their welfare and best interest into consideration by ensuring they are left in the care of a responsible person.

Department of Children's Services

1. Child-friendly infrastructure that caters to the needs of all children, including children with disabilities, girls, boys and those that are intersex, is largely lacking in child holding institutions. Institutions such as Malindi Remand Home and Kiambu Remand Home were established in the colonial era, and therefore have outdated facilities. We recommend the refurbishment of the institutions holding children as appropropriate to ensure that they are child friendly, modern and cater to all children in the justice system.
2. The right to education is an inalienable right and should be provided to all children irrespective of who they are and where they are. However, the findings of the Task Force, confirmed by other child justice actors, reveal that many children in the in the in the justice system are unable to exercise this right in violation of a 2016 ruling of the Eldoret High Court, reaffirming the right of all children to education. We strongly urge the Department of Children's Services together with the Ministry of Education to enforce this ruling without further delay, so that all children in the justice system are able to access quality, age-appropriate and relevant education like their peers who are not incarcerated.

Prisons

1. We urge the Kenya Prisons to set aside budgetary allocation for children accompanying their mothers in prison.
2. All prisons to register and file a P&C (protection and care) Form in Court for all children accompanying their mothers in prison and those born in prison. Upon release, the child's file should remain active even after the child is separated from her or his imprisoned mother and leaves prison upon turning 4 year for monitoring purposes.

Probation

1. The Task Force recommends that the infrastructure and facilities in probation hostels be made child friendly. Colourful paintings on the walls are low cost, quick-fix interventions that may be immediately enforced. However, in addition to this, attention must be paid to the recreational facilities, ensuring that both indoor and outdoor areas are safe for the children, and compliant with the needs of children with disabilities, girls and intersex children.

Legislature

1. The enactment of the Children Bill 2018 into law is long overdue. The Bill, which has been in the process of drafting for over 12 years, incorporates voices of both children and

adults from consultative forums organised in all regions of the country. It is progressive, taking into account emerging issues relating to children, prioritises family based care to institutionalisation of children, promotes alternative dispute resolution mechanism, and raises the age of criminal responsibility among other benefits.

2. We urge that Parliament increase budgetary allocations for children in all the justice agencies to ensure the highest quality of services are provided and sustained. The Children Bill, unlike the Children Act 2001, has a Schedule on Financial Provisions to ensure adequate financial provision for children's programmes and services.

National Legal Aid Service

1. Work in partnership with the Law Society of Kenya to incentivise taking up of pro bono children's matters through awarding of CPD points and other rewards.
2. Prioritise funding and provision of legal aid for both civil and criminal children's matters.

Kenya National Commission on Human Rights (KNCHR)

1. Establish a Unit/department with the mandate to provide human rights oversight to institutions offering care to children in Kenya.

2. Allocate adequate resources to KNCHR in order to support relevant child friendly policy and legal reforms for inclusion of human rights safeguards for children with special needs.

Non-State Agencies

1. Due to the strained funds for the Court User Committees, we recommend that the non-state agencies support them by sensitising members and raising awareness on child rights and child protection in the community. Court User Committees are established in every court and consist of a representative in each of the child justice agencies. This body would be useful in drawing attention and information sharing to members of the public through visits to child holding institutions and public barazas which proved to be effective in reaching out to the community.

2. We recommend that the non-state agencies take up research or support research in collaboration with academics, on the root of the issues affecting children most importantly, defilement, delinquency and radicalisation. This shall serve to build understanding and information on how to deal with children in the justice system.
3. The Task Force calls for stronger and expanded public-private partnerships to roll out diversion programmes all over the country. Diversion is an alternative dispute resolution mechanism that takes preference in handling issues outside the courtroom, except for sexual offences. Rehabilitation programmes are the backbone of diversion because they are meant to reform a child's behavior to ensure that they do not re-offend. These programmes are best facilitated by the community, and non-state agencies as the child is the product of the community. Therefore, we encourage the society and non-state agencies to take up their role in rehabilitating children by supporting various courts and police stations through the Court User Committees.

Multi-Agency

1. Better Coordination and capacity development on child rights and protection in the child justice sector by adopting the policy on a mandatory Continuous Professional Development Program for Child Care and Protection Officers (CCPOs) drafted by the Task Force on Children Matters.
2. Accountability and information sharing within the sector to prevent child abuse by duty bearers and embezzlement and wastage of funds.
3. We urge the Ministry of Health to coordinate with the Department of Children's Services to provide health services and facilities and qualified healthcare workers to statutory children's institutions (rehabilitation schools, borstal institutions, remand homes).

Annexes

Annex A: Terms of Reference

1. To review and report on the status of children in the Administration of Justice.
2. Examine the operative policy and legal regimes as well as the emerging case law to identify the challenges and make appropriate recommendations.
3. Assess, review, report and recommend on the service standards of each of the justice sector institutions with respect to children matters.
4. Prepare draft rules of procedure for enforcement of fundamental rights of children.
5. Conduct a situation analysis of the existing infrastructure and equipment in the criminal justice system in regard to children matters and develop guidelines for the monitoring, supervision and inspections for holding facilities.
6. Develop guidelines for Child Protection Units and propose mechanisms for the establishment of Child Police Unit in the National Police Service.
7. Develop the Court Practice Directions on children cases.
8. Develop the Diversion Regulations.
9. Develop a Policy on Mandatory Continuous Professional Development program on child rights for Justice and examine, review the training curricula on children.
10. Develop policies on re-integration of children accompanying imprisoned mothers.
11. Develop policies on separated cells for children.
12. Development of the guidelines for children with special needs.
13. Develop guidelines for inclusion of children with special needs in the Juvenile Justice Actors procedure to be included in the practice guidelines.
14. Develop a coordinated sensitisation and awareness strategy.
15. Develop a form for presenting the P&C cases in court.
16. Improve coordination of the Juvenile Justice Actors at the National and County level.

Source: Gazette Notice of Gazette Notice No 369 of 29th January 2016

Annex B: Task Force Secretariat Report Writers

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Annex C: List of Volume II Documents

1. Children Bill
2. Compendium of Emerging Case Law on children matters
3. Court Practice Directions
4. Rules of Procedure for Enforcement of Fundamental Rights
5. Monitoring, Supervision & Inspection Guideline
6. Recommendations on Service Standards for Key Juvenile Justice Institutions
7. Protection & Care Form [P&C form]
8. Diversion Toolkit (Draft)
9. Operational Standards for Police Child Protection Units (Draft)
10. Policy on Mandatory Continuous Professional Development for Juvenile Justice Actors (Draft)
11. Children's Court Protocol (Draft)
12. Child Court User Committee Guidelines
13. Protocol on Sensitisation on Children Matters
14. Throughcare Guidelines
15. Reintegration Policy
16. Sexual Offences Proposed Amendment
17. JICA Training Manual (Draft)
18. JJIMS User Operation Manual and Guide
19. JJIMS Needs Assessment
20. Comparative Study of Child Holding Institution (Likoni Remand and Kisumu Remand)
21. Proposed practice guidelines (incl. Case Study) on handling children involved in terrorism and radical extremism
22. Proposal on transportation and feeding of children by Justice agencies
23. List of State-owned Child Holding Institutions in Kenya

Annex D: List of Children in Need of Care and Protection

A child is in need of care and protection:

1. who has no parent or guardian, or has been abandoned by his parent or guardian, or is destitute; or
2. who is found begging or receiving alms; or
3. who has no parent or the parent has been imprisoned; or
4. whose parents or guardian find difficulty in parenting; or
5. whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship; or
6. who is truant or is falling into bad associations; or
7. who is prevented from receiving education; or
8. 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
9. who is being kept in any premises which, in the opinion of a medical officer, are overcrowded, unsanitary or dangerous; or
10. who is exposed to domestic violence; or
11. who is pregnant; or
12. who is terminally ill, or whose parent is terminally ill; or
13. who is disabled and is being unlawfully confined or ill treated; or
14. who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography; or
15. who is engaged in any work likely to harm his health, education, mental or moral development; or
16. who is displaced as a consequence of war, civil disturbances or natural disasters; or who is exposed to any circumstances likely to interfere with his physical, mental and social development; or
17. 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
18. 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.

Source: Children Act 2001 Part X: 119 (1)

Annex E: What Works and What Does Not: The Kisumu and Likoni Remand Homes

The Kisumu Children's Remand Home - A Good Practice

The Kisumu Remand Home was identified as a good practice by the Task Force. It had a capacity to hold a maximum of 85 children. It had 15 members of staff including eight counsellors/social workers and four teachers. They used to have five, but recently one had retired and had not been replaced. Of the remaining four, three were in-house while one had been posted there by the Teachers' Service Commission. The Home also had three cooks, one clerk, one office administration assistant, two security wardens and two prison security officers, and one children's officer.

The children were separated according to their age group. The Remand Home had a counselling room for the children which was bright and carpeted with child friendly paintings on the walls. Proper procedures were in place to address children's grievances.

Only one child has had his case delayed for over one year. The beds were described by the Task Force members as very nice, with wooden frames, good and clean sheets and blankets. The girls' dormitory had a nice indoor toilet.

The institution had a clean indoor kitchen and a storage room that was stocked with many bags of food including maize, beans, rice, sugar and flour. Where there was a budgetary deficit, the manager reported that he fundraises meet the resource gap so that they children's needs may be catered for.

Despite the institution being a good practice, there were some challenges that it experienced such as the following:

- The uniforms the children wore were worn out.
- The mattresses were worn out.
- The institution had no facility to place children who are mentally challenged.
- It was built during independence, thus it appears old and requires upgrading.
- It has no rescue centre nearby. Consequently, the institution is compelled to admit children who are under-age and have special needs, which it does not have the capacity to for.
- There is no mental health facility in the vicinity. It therefore had to admit one child who was found not fit to stand trial, despite not having the technical and physical capacity to do so.
- Not all staff are trained in child protection policy.

Likoni Children's Remand Home: From Dereliction to Success

The Task Force visited Likoni Remand Home in November 2016. The conditions at the Remand were found to be terrible. The children were found eating horrible food from dirty utensils and had scabies. The facility was also dirty.

There were three pregnant girls under the age of eighteen. They had been admitted there as children in need of care and protection yet a Remand Home is supposed to hold children in conflict with the law as they await the hearing of their matters in court. There was no female staff in the institution which was worrying, considering the vulnerable state of the girls.

There was a child who had stayed at the Remand Home for more than one and a half years and his matter had never been heard. When the Task Force sought to know from the Magistrate why they continued sending children to the Remand despite knowing the conditions at the facility, she indicated that there was no other facility they could send the children to. She was advised that the children could be released to parents or guardians as long as they were not abusive. This advice was consistent with the Constitution which states that holding children in an institution was a measure of last resort.

After the visit, the Task Force took measures to have the Remand Home improved in the best interest of the children. Strongly worded letters were sent to the Cabinet Secretary and the Principal Secretary in charge of children explaining the pathetic situation of the facility and asking for explanation and improvement. The Task Force informed the Ministry that it was culpable for anything that would go wrong in the Remand Home. It also called upon the Ministry to ensure that the pregnant girls received prompt medical attention. The Ministry promised prompt action to rectify the situation. Some agencies, such as the Cradle gave some donations to the children.

When the Task Force undertook a follow up visit in 2018, it found a completely different situation. The Department of Children's Services had changed the manager of the Remand Home. The boys and girls slept in gender-segregated dormitories and all children had uniforms and slippers. The dormitories were clean, although still old and needed refurbishing. The walls were painted. The Remand Home now had a library stocked with books, desks and chairs for the children. The children seemed happier and no case was pending beyond one year at the institution. This has so far been one of the success stories of the Task Force, turning around a children's facility from dereliction to a well-run facility.

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