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Clean Start



GIRLS IN KENYA’S JUVENILE DETENTION SYSTEM: RECOMMENDATIONS FOR ABOLITION AND REFORM

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This report is the result of a joint project of the Walter Leitner International Human Rights Clinic at Fordham Law School in New York City (“Leitner Clinic”),¹ the Law Clinic at Strathmore Law School in Nairobi (“Strathmore Law Clinic”),² the Kenyan student-run organization Wakilisha Initiative, and the Kenyan non-governmental organization (NGO) Clean Start.³ The Leitner Clinic and Strathmore Law Clinic train law students in social justice advocacy through participation in human rights projects. Wakilisha Initiative envisions a world where children in conflict with the law can freely access justice. Clean Start advocates for the rights of incarcerated women and girls and assists formerly incarcerated women and girls reintegrate back into society. The report was researched and written by law students in the Leitner Clinic and Strathmore Law Clinic, including Leona Asiema, Vera Chen, Christa Coryea, Hannah Goodman, Anna Belle Hoots, Joanna Kahumbu, Malcolm Kibati, Kelly Lai, Annette Muindi, Anne Mburu, Arthur Njuguna, and Jack Price. The project was supervised and the report edited by Professor Chi Adanna Mgbako, director of the Leitner Clinic, Teaching Fellow Emma Senge, faculty director of the Strathmore Law Clinic, and Maroun Maalouf, S.J.D. Candidate at Fordham Law School. Editorial assistance was provided by Christine ElDabh, Leitner Clinic program assistant. We wish to thank all of the individuals and organizations who agreed to be interviewed for the report, especially the girls at the Kamae Girls Borstal Institution. In addition to that we also want to thank the Department of Correctional facilities who granted us access to Kamae and YCTC Kamiti. We have changed the names of all the girls interviewed in order to protect their privacy.

¹ The views and opinions expressed here do not necessarily reflect the views of Fordham University or Fordham Law School except where expressly stated.

² The views and opinions expressed here do not necessarily reflect the views of Strathmore University or Strathmore Law School except where expressly stated.

³ The views and opinions expressed here do not necessarily reflect the views of Wakilisha Initiative or Clean Start organization except where expressly stated.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Introduction

Socially and economically vulnerable girls in Kenya are at heightened risk of being ensnared by the juvenile detention system. Facing extreme poverty, these girls are often arrested and detained for petty offences that arise from socioeconomic disadvantage. Girls are often subjected to abuses at all levels of the juvenile detention system, including violations of their rights during arrest, remand, and trial; abusive or inadequate conditions of post-sentencing detention; and stigmatization and lack of support upon release from detention. This report chronicles the experiences of girls during all phases of the criminal detention system in Kenya and advocates for abolition and reform of the juvenile detention system.

In November 2019, following weeks of desk research on the experiences of juveniles in Kenya's criminal detention system, the Leitner Clinic, Strathmore Law Clinic, Wakilisha Initiative and Clean Start convened in Nairobi to conduct fact-finding interviews for the report. We conducted a site visit to the Kamae Girls Borstal Institution ("Kamae"), the only girls Borstal institution in Kenya, and interviewed the Head Officer and 10 of the 37 girls currently detained at Kamae to discuss their experiences at all levels of the juvenile detention system. We also interviewed Hon. Jacqueline Kibosia, a Kenyan children's court magistrate; Irene Ndegwa, a pro bono attorney who represents children in the juvenile detention system; and representatives of Wakilisha Initiative ("Wakilisha"), Clean Start, Nafisika Trust ("Nafisika") and NGOs that assist incarcerated and formerly incarcerated children.

Part I of the report highlights the social and economic vulnerability of girls who are at risk of being trapped by Kenya's juvenile detention system and argues that prison is not the answer to the difficulties facing them and their families. Part II examines girls' experiences of abuse in the juvenile detention system during arrest, remand, and court proceedings. Common violations of girls' rights include police abuse and inhumane conditions of police detention, excessive wait times and lack of access to bail, harsh remand home conditions, trial in adult courts, judicial inefficiencies and trial delays, lack of legal representation, and pressure to plea bargain. Part III looks at general conditions of post-sentencing detention, including the provision of basic necessities; physical, sexual, and psychological abuse; and access to psychological therapy, formal education, vocational training, and family contact. Part III also includes a case study of post-sentencing detention conditions at Kamae. Part IV explores the difficulties formerly incarcerated girls face reintegrating back into society upon their release. It outlines current reintegration services available for girls at Kamae and discusses the reintegration experiences of formerly detained girls, who not only face stigma, but also discrimination in education, housing, employment, and difficulty with family reunification.

Key Findings

Kenya has ratified nearly all of the international and regional human rights treaties that govern juvenile detention. It has also created and amended many of its own laws regarding the juvenile detention system. There nevertheless remains a gap between these adopted laws and actual practice.

Socioeconomic disadvantage is a crucial determinant of whether a girl will have contact with the juvenile detention system in Kenya. Most of the girls in the juvenile detention system come from households that are extremely impoverished and/or dysfunctional as a result of poverty. It is the underlying system that is broken, not the girls themselves, and therefore, prison will never be the answer to the challenges facing these girls and their families. Indeed, it is the root of these girls' issues, namely socio-economic deprivation, that the government should address.

Since the juvenile detention system in Kenya has yet to be abolished, however, some girls will unfortunately end up in juvenile detention, and their first point of contact with the system begins with an arrest, and often abuse in police detention. In addition to police abuse, children entering the criminal detention system encounter procedural abuses that increase their chances of incarceration. For example, they are often tried in adult courts, rather than in children's courts, lack access to bail and pretrial release, and their cases are commonly delayed by judicial inefficiencies. Furthermore, many girls stand trial without access to legal representation or the presence of their parents and are pressured into pleading guilty.

Once sentenced, girls have historically been placed in a variety of institutions, where they have often faced abusive conditions, including lack of basic necessities; physical, sexual, and psychological abuse; and substandard access to formal education and vocational training. As a result of the history of detained girls being treated poorly in institutions throughout the country, Kamae was established in 2016 and strives to treat its juvenile female detainees with care. Kamae has no issues of overcrowding, and there is no mixing of girls with adult women, adult men, or juvenile boys. Kamae also ensures that girls have access to adequate water, food, clothing, and bedding; feminine hygiene products; psychological therapy; and emphasizes formal education over vocational training. While Kamae has made good progress addressing the historically inhumane treatment of girls in detention, no child should have to be imprisoned to get access to the services offered at an institution like Kamae, and there is still room for improvement. For example, several girls reported experiencing or witnessing corporal punishment at Kamae, which the institution should ban outright.

After girls are released from detention, they face enormous challenges reintegrating back into society. Facing both stigma and a lack of resources and support after incarceration, formerly incarcerated girls are turned away from schools, may face emotional and physical abuse from their families and communities, and have difficulty securing housing and employment.

Recommendations

Regarding an Anti-Carceral Approach:

- The government should ensure that anti-carceral solutions that do not involve incarceration in the juvenile detention system and that seek to resolve the root of juveniles' individualized issues, whether it be poverty or family dysfunction related to poverty, are widely available.
- The government should embrace alternatives to juvenile detention, such as mediation, counseling, and community service, in order to keep girls out of the criminal detention system.⁴
- The government should reinvest funds that would go into transforming the juvenile detention system to a non-punitive and community-based programming system. These funds would also support, and avail more resources to the girls at risk and their families. It should be emphasised that these families rely on specialized and highly trained social services teams that do not involve the criminal system to function.

Regarding the Police:

- The government should divest in any resources that would increase police contact with juveniles and instead allocate those resources to address the economic and social vulnerabilities of at-risk youth.
- The police should receive sensitivity training to learn how to interact with juvenile girls during the arrest and detention process. These trainings should include information on best practices to prevent physical and sexual abuse of detained girls by detained adults and police officers. Such practices include separating detained children from adults and ensuring that supervision of detained girls is conducted only by female police officers.

Regarding Remand Institutions:

- The time a child spends in pre-trial detention should be the shortest possible period of time. To ensure this, the government should eliminate cash bail for juveniles and release children to the care of their guardians pending trial.
- When children are in remand, they should be separated from adults and there should be a focus on maintaining their education to better support youth that do spend time in children's remand homes.

⁴ The Office of the Director of Public Prosecution (ODPP) has recently launched; Diversion Guidelines and Explanatory Notes, a Diversion Policy and Plea-Bargaining Guidelines. However, these are yet to be implemented.

- Teachers in remand institutions should come from the Ministry of Education, not the Department of Children Services, to ensure that juveniles are receiving a quality education.

Regarding Court Proceedings:

- Each county should have at least one children's court so that juveniles are not tried in adult courts.
- The bar association should incentivize lawyers to undertake pro bono children cases by, for instance, making pro bono hours a requirement for lawyers who wish to be admitted to the bar.
- There should be clear, standardized guidelines in court on how to handle juveniles going through the criminal detention system. This should be provided with instructions for judges, magistrates, counselors, police, and court officers.
- All juveniles should be guaranteed and provided with legal representation to protect their rights.
- Juveniles should not be encouraged to plead guilty without the presence of their guardian in court. Juveniles should also have the guidance of legal counsel before they plead guilty to ensure that both juveniles and guardians understand the implications of a plea.

Regarding Post-Sentencing Detention:

- Juveniles in detention must have access to all basic necessities, including food, water, clothing, bedding, healthcare; protection from physical, sexual, and emotional abuse; and access to psychological services, education, and vocational training.
- The attorney general should amend the Borstal Institutions Act to eliminate corporal punishment.
- Kamae should work with government and civil society actors to introduce an age-appropriate sexual education curriculum to give girls the necessary tools to manage their sexual and reproductive health when they are released.
- Kamae should prohibit the use of corporal punishment.
- Kamae should provide alternative counselors for girls who report that their current psychological counselling sessions are ineffective.
- Kamae should improve its educational services by ensuring students are separated by age and grade in the classroom setting.
- Kamae should consider offering a technology curriculum as part of its vocational training program, including courses in Information Technology (IT).
Kamae should secure funding to help facilitate transport and temporary housing for families of detained girls who live far from Kamae.

Regarding Reintegration:

- For successful reintegration, detained juveniles should receive academic, social, and psychological support not only while incarcerated, but also during their transition into the community.
The Kenya Prison Service and the Department of Children Services should work together and strengthen their intra-organizational communication to adequately prepare girls for reentry into society.
- Institutions should develop and implement guidelines that specify the educational and psycho-social support formerly incarcerated juveniles will need upon their release. Individualized solutions must be made available for the girls, since every girl's issues will vary upon release.
- Girls should have access to the following post incarceration: quality education, equal opportunities for employment and skills training, and safe houses.
- Because formerly detained girls experience discrimination from schools upon their release, the government must ensure that they have access to high quality education, regardless of their history of detention.
- Holistic plans targeting the entire family, such as family counseling and family engagement, should be provided to the girls' families, as they are commonly traumatized by what has happened to their children, and their involvement is crucial for girls' successful reintegration.

Limitations of the Study

This study faced the following limitations;

- **Logistics and method;** The research period lasted between September and early November. A significant portion of the investigation was carried out through desk-research with exchange of information between the Leitner Clinic and Strathmore Law Clinic happening over the internet. This was necessary due to the financial implications that in-person collaboration, travel to Kenya, would raise.
Leitner Clinic representatives were able to spend a week in the country following this period. The weeks of desk-research allowed for targeted field work achieving maximum output given the time constraints. However, the area of study may benefit from a wider field-oriented excursion.
- **Language constraints;** Half the joint team had a challenge communicating in Swahili. This necessitated a facilitated approach during the interviews at Kamae Borstal Institution.

I. PRISON IS NOT THE ANSWER

Economic and Social Vulnerability of Girls Sentenced to Juvenile Detention

Socioeconomic disadvantage is the main determinant of whether a girl will be sentenced to juvenile detention in Kenya. Most of the girls detained in the juvenile detention system come from households that are extremely impoverished.⁵ The girls may also come from families where parental neglect and abuse are common.⁶ Girls living in homes where there is deep poverty or where they experience abuse may run away from home or act out, falling into patterns of school absenteeism and substance abuse.⁷ Girls may also engage in delinquent behavior as a way to get attention from their parent(s).⁸ The Honorable Magistrate Jacqueline Kibosia noted that the vast majority of girls detained in Kenya's juvenile detention system are convicted for stealing,⁹ a petty offence directly linked to poverty.¹⁰ Although these offences derive from socioeconomic vulnerability, they land the girls in juvenile detention.¹¹

Because girls from impoverished backgrounds can neither pay the fines that would keep them out of detention nor afford to pay bail, they both end up and remain in juvenile detention.¹²

Once out of juvenile detention, the girls often return to the socioeconomically disadvantaged homes that they came from, where conditions can sometimes be worse than in the institutions where they were detained.¹³ This may result in girls again engaging in petty offences that lead to further contact with the juvenile detention system.¹⁴ Echoing this sentiment, the Department of Children Services has declared that poverty is in part responsible for increased vulnerability of children to recommit offences.¹⁵ Prison should not be the answer to the challenges these girls face. Addressing the social and economic vulnerability of girls targeted by the juvenile detention system requires a *non-carceral* approach that does not rely on police, prisons, and other punitive measures.

⁵ Interview with Clean Start, in Nairobi, Kenya (Nov. 6, 2019).

⁶ *Id.*; Interview with Wanjiku Njuguna, Head of Training and Development, Nafisika Trust, in Nairobi, Kenya (Nov. 6, 2019).

⁷ Clean Start, *supra* note 3.

⁸ Clean Start, *Causes of Institutionalization of Girls* (Oct. 30, 2019).

⁹ Interview with Honorable Jacqueline Kibosia, Magistrate, Makadara Law Courts, in Nairobi, Kenya (Nov. 6, 2019).

¹⁰ Silvia Randazzo, International Juvenile Justice Observatory, Human Rights and Deprivations of Liberty in Kenya: An Analysis

of the Human Rights' Situation and Guidelines for an Internal Monitoring System,

http://www.oijj.org/sites/default/files/human_rights_and_deprivation_of_liberty_in_kenya-report.pdf, at 61(2016).

¹¹ Clean Start, *supra* note 6.

¹² *Id.*

¹³ Clean Start, *supra* note 3.

¹⁴ *Id.*

¹⁵ Future Forward Team, *Rehabilitating Young Offenders: Youth Employment in Kenya*, CHANGEMAKERS (Aug. 18, 2014),

<https://www.changemakers.com/futureforward/blog/rehabilitating-young-offenders-youth-employment-kenya>.

The Need for Anti-Carceral Solutions to Address the Economic and Social Vulnerability

International and Kenyan Standards

The Convention on the Rights of the Child (CRC) is the most comprehensive treaty that protects and fulfills children's rights.¹⁶ The CRC states that imprisonment of juveniles "shall be used only as a measure of last resort and for the shortest appropriate period of time."¹⁷ Likewise, The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) emphasize that the imprisonment of juveniles should be "used as a last resort."¹⁸ The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) suggest alternatives to the automatic criminalization of children for petty offences, including educational opportunities.¹⁹ The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) state that "all young persons who come within the jurisdiction of juvenile courts...should not be sentenced to imprisonment."²⁰

The Kenyan Constitution states that children "are not to be detained, except as a measure of last resort."²¹

Abolition of Juvenile Detention

Prison is not the solution for socially and economically vulnerable girls who are incarcerated and whose behavior stems from the effects of poverty. What is instead required are anti-carceral solutions that do not involve the juvenile detention system and that seek to resolve the root of girls' individualized issues, whether it be poverty or family dysfunction related to poverty. Indeed, proper governmental, community, and family support can not only help to prevent at-risk girls from coming in contact with the law, but also provide them with a safe and stable environment in which to grow up.²² In an interview conducted with the Head Officer at Kamae, she maintained that prisons are not the best place to address the issues facing detained girls and their families,²³ a viewpoint shared by the Honorable Magistrate Kibosia and Clean Start.²⁴

¹⁶ Convention on the Right of the Child (1990) (adopted by Kenya in 1990).

¹⁷ *Id* at Art. 37.

¹⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 1 (1990).

¹⁹ United Nations Guidelines for the Prevention of Juvenile Delinquency, Rule 5 (1990).

²⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners, Preliminary Observation 4 (2015).

²¹ The Constitution of Kenya, Art. 53 (2010).

²² Clean Start, *supra* note 3; Honorable Jacqueline Kibosia, *supra* note 7; Interview with Head Officer, Kamae Girls Borstal Institution, in Nairobi, Kenya (Nov. 7, 2019).

²³ Head Officer, *supra* note 20.

²⁴ Clean Start, *supra* note 3; Honorable Jacqueline Kibosia, *supra* note 7.

While the concept of juvenile detention as a measure of last resort receives legal acknowledgement in theory, it lacks implementation in practice. Closing the gap between the concept of juvenile detention as a measure of last resort in theory and in practice necessitates addressing the underlying causes of the girls' behaviors at three levels: the family level, the community level, and the governmental level. A girl's family life has a profound impact on her behavior, so there must be resources and support available for a girl's *entire family*.²⁵ Communities are often uneducated on how to handle issues of juvenile delinquency, so there must be changes to community structures that prioritize the safety and wellbeing of girls.²⁶ The Kenyan government must uphold Kenyan law calling for juvenile detention to be a measure of last resort.²⁷

International experts recommend non-carceral programs to keep at-risk girls out of juvenile detention. In its 2016 review of Kenya's human rights record, the Committee on the Rights of the Child, which monitors state compliance with the CRC, recommended "probation, mediation, counseling, or community service" as alternatives to incarceration for children in Kenya's dysfunctional juvenile detention system.²⁸ The Harvard Kennedy School's Program in Criminal Justice and Policy Management and the National Institute of Justice note that funding to juvenile detention centers should be reinvested to support non-punitive and community-based programming to address the needs of juveniles, strengthen their social and familial relationships, and provide necessary support for families.²⁹ These programs should not rely on the criminal system to function, but should instead replace youth prisons and draw on the expertise and support of highly qualified social services teams.³⁰ If the number of children involved in the juvenile system is reduced, funds can be re-directed to alternative facilities that focus on treatment and community building.³¹ Increasing the availability and effectiveness of such sentencing alternatives should be a priority for the Kenyan government.

²⁵ Head Officer, *supra* note 20.

²⁶ Clean Start, *supra* note 3.

²⁷ *Id.*

²⁸ Committee on the Rights of the Child, Concluding Observations on the Combined Third to Fifth Periodic Reports of Kenya, U.N. Doc. CRC/C/KEN/CO/3-5 (2016);

²⁹ Harvard Kennedy School, *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, at 22-25 (2016).

³⁰ *Id.* at 22-25.

³¹ *Id.* at 24.

II. ABUSE OF GIRLS' RIGHTS IN ARREST, REMAND AND COURT PROCEEDINGS

International and Kenyan Standards

While all of the CRC articles are relevant to children, a few cater specifically to juvenile detention, such as the protection of children from violence;³² protection against torture, cruel, inhuman, degrading treatment or punishment; protection from arbitrary arrest and detention; the right to separation of accused juvenile persons from adults; and the right to legal assistance and a fair trial.³³ The International Covenant on Civil and Political Rights (ICCPR) specifically addresses juvenile rights, including the separation of accused juveniles from adults.³⁴ The African Charter on the Rights and Welfare of the Child (ACRWC) provides that children who have a run-in with the law “should receive special treatment.”³⁵ Additionally, it prohibits torture, sexual abuse, mental injury, neglect or mistreatment.³⁶ The Mandela Rules note that juvenile prisoners should be afforded the same rights as all other prisoners, including being treated with dignity and having basic necessities.³⁷

The Children Act is Kenya’s most comprehensive law regarding detained children’s rights in Kenya and lays out rights and protections from juvenile arrest to juvenile detention.³⁸ It prevents torture, cruel treatment, unlawful arrest, and deprivation of liberty and emphasizes that children should be separated from adults in detention, given government-sponsored legal assistance, and allowed contact with their families.³⁹ The Legal Aid Act also guarantees government-sponsored legal aid services for children.⁴⁰ The Persons Deprived of Liberty Act states that detained children and adults must be placed in separate facilities.⁴¹ The Bail and Bond Policy Guidelines stress that denying bail or bond is not in the best interest of minors.⁴² It also reiterates the need for children’s separation from adults.⁴³

³² Convention on the Rights of the Child, Art. 19.

³³ *Id* at Art. 37.

³⁴ International Covenant on Civil and Political Rights, Art. 10 (1966) (adopted by Kenya in 1972).

³⁵ African Charter on the Rights and Welfare of the Child, Art. 17 (1990) (adopted by Kenya in 2000).

³⁶ *Id* at Art. 16.

³⁷ Mandela Rules, Rules of General Application 11-35 (2015).

³⁸ The Children Act, Parts V-VII, IX and X (2010) [Rev. 2012].

³⁹ *Id* at Part XIII.

⁴⁰ The Legal Aid Act, Art. 36 (2016).

⁴¹ Persons Deprived of Liberty Act, (Section 12(2)(b) (2014).

⁴² Bail and Bond Policy Guidelines, Article 4.9(h) (2015).

⁴³ *Id* at Articles 3.1(a) and 6.6.

Police Abuse and Detention

Girls' first point of contact with the juvenile detention system begins with an arrest that is often traumatizing in and of itself. The police hold discretionary power to determine whether to arrest a child on suspicion of a criminal offense or to determine that a child is "in need of care of protection"⁴⁴ and detain them through a "social welfare responsibility" for referral to an alternative community measure.⁴⁵ Although there is legal support to protect and ensure special treatment of children deprived of their liberty, in practice, police often exploit their powers and conduct arrests that are arbitrary, unlawful, or conducted with insufficient evidence.⁴⁶ This exploitation of power leads to police arresting more children and placing them in police station cells with conditions that violate their basic human rights.

Police Abuse

Police abuse against children is still widely documented in Kenya.⁴⁷ In 2001, Children's Protection Units (CPUs) were established in police stations in Nairobi to deal with only children's matters.⁴⁸ Today, there remains only one CPU out of Eastlands' 28 police stations.⁴⁹ Magistrate Kibosia highlighted police officers' more recent attempts to address juvenile girls specifically by allowing only female officers to handle juvenile girls' matters, but added that these efforts have proven inadequate.⁵⁰ Ava, a 15-year-old girl interviewed at Kamae reported that she still encountered male officers during her initial detention process.⁵¹

A 2016 report found that of the times children witnessed violence in police stations, it was carried out by police officers ninety percent of the time.⁵² Carla, a 16-year-old girl interviewed at Kamae, shared that after the police discovered her trying to commit suicide, they arrested and beat her.⁵³

⁴⁴ The Children Act has approximately 25 categories of children who qualify as being "in need of care and protection," which includes street-based children, children with disabilities, children prevented from receiving education, children found begging, and more. The Consortium for Street Children, *Street Children & Juvenile Justice in Kenya* 18 (2004).

⁴⁵ *Id.* at 20.

⁴⁶ *Id.*

⁴⁷ Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Kenya 2018 Human Rights Report 5 (2018); International Juvenile Justice Observatory, *supra* note 8, at 52.

⁴⁸ UNICEF, *Taking child protection to the next level in Kenya* 2, 17 (2015).

⁴⁹ Interview with Irene Ndegwa, in Nairobi, Kenya (Nov. 6, 2019); Eastlands is one of Nairobi's most densely populated areas.

⁵⁰ Honorable Jacqueline Kibosia, *supra* note 7.

⁵¹ Interview with Ava, Kamae Girls Borstal Institution (Nov. 7, 2019).

⁵² Diego Ottolini, *Violence Does Not Fall on One Roof Alone: A Baseline Survey on Violence Against Children in The Kenya Juvenile Justice System* 41 (2016).

⁵³ Interview with Carla, Kamae Girls Borstal Institution (Nov. 7, 2019).

Grace, another 16-year-old girl interviewed at Kamae, spent weeks at a police station and detailed a time when officers beat her with a baton and their bare hands.⁵⁴

Studies have also found that children often face sexual abuse from police officers.⁵⁵ One study found that police officers were the most common perpetrators of sexual violence against children in juvenile detention facilities, amounting to sixty-five percent of reported incidents of sexual touching.⁵⁶

Some reformers argue that the provision of CPUs and gender desks in police stations would help protect children, and girls specifically, from police abuse.⁵⁷ However, these reforms would increase funding to the police and legitimize the carceral system as the correct response to challenges vulnerable children face. Increasing funding to the police system reinforces the problematic structures that punish and surveil marginalized populations. Resources should instead be allocated to increase the provision of social services that address the economic and social vulnerability of juveniles ensnared in the criminal system.⁵⁸

Conditions of Police Detention

Police stations are where children are held between their arrest and their first appearance in court, with court backlogs prolonging their exposure to poor conditions in police detention. Police jail cells are often the worst conditions of detention a juvenile girl faces throughout her time within the juvenile detention system.

Although police station cells are supposed to be temporary holding cells, many of the girls interviewed at Kamae reported spending weeks in police detention.⁵⁹ Moreover, because police station cells house everyone suspected of a crime, regardless of age, overcrowding in these pre-trial detention cells remains the norm,⁶⁰ and children are often forced to share limited space with adults.⁶¹ Helen, a 16-year-old girl interviewed at Kamae, spoke of sharing a mattress with five

⁵⁴ Interview with Grace, Kamae Girls Borstal Institution (Nov. 7, 2019).

⁵⁵ Bureau of Democracy, Human Rights and Labor, *supra* note 45, at 37; UNICEF, *Street Children's Experiences in the Injustice System*, at 93 (2004).

⁵⁶ Ottolini *supra* note 50, at 128.

⁵⁷ Honorable Jacqueline Kibosia, *supra* note 7.

⁵⁸ Critical Resistance, *Policing Harms Public Health* 2 (2018).

⁵⁹ Interviews with Joanne, Grace, Diane, Ava, Kamae Girls Borstal Institution (Nov. 7, 2019).

⁶⁰ Bureau of Democracy, Human Rights and Labor, *supra* note 45, at 5. Average prisoner population is nearly 200% capacity, some even housing up to 400% of capacity. *Id.*

⁶¹ In a 2016 survey of 660 incarcerated children, respondents reported that when held in police cells, 87.1% slept on the floor with no mattress and 85.9% had no blanket. Many also reported that police stations lacked toilets, forcing prisoners to use buckets. Ottolini *supra* note 50, at 23, 54, 133.

people during her pre-trial detention in a police cell.⁶² Irene, an 18-year-old interviewed at Kamae, said that she shared a jail cell with up to 13 other people.⁶³

The overcrowding in police station cells results in a lack of basic necessities for the girls held there. Joanne, a 16-year-old girl interviewed at Kamae, described spending two weeks in police detention sleeping on the cement floor with no blankets, pillows, change of clothes, or showers for the entirety of her stay.⁶⁴ Helen said that no one could use the toilet in the police station she was detained in outside of a specific schedule, regardless of whether they were sick or soiled themselves.⁶⁵

Minors are sometimes forced to share police station cells with adult inmates, leaving them vulnerable to abuse by their adult cellmates.⁶⁶ Even police stations with separate holding cells for children still mix them with adults during transportation.⁶⁷ Despite additional legal requirements to separate male and female prisoners, the mixing of genders also still persists in some jails, leaving girls especially at risk of various forms of abuse.⁶⁸ Diane, a 17-year-old girl interviewed at Kamae, noted that she shared a cell with men and boys during her three-weeks in police detention.⁶⁹ Grace had a similar experience but noted that the mixing of genders occurred during the day, whereas at night men and boys were separated from women and girls.⁷⁰

Remand Experiences

Children's remand homes were established by the Children Act to house juveniles from 6-17 years old whose cases are pending in court, and if not released on bail, are committed to remand for temporary custody on a magistrate's order.⁷¹ The Children Act requires that children be in remand for no longer than 90 days (for offenses not punishable by death) and under no circumstances be held for longer than 12 months.⁷² Upon the 12-month mark, if a juvenile's case is not completed, she is to be discharged.⁷³ As of 2017, there are 14 remand homes in Kenya. Some of the most common issues with juvenile remand facilities in Kenya include excessive wait times, inability to

⁶² Interview with Helen, Kamae Girls Borstal Institution (Nov. 7, 2019).

⁶³ Irene, *supra* note 47.

⁶⁴ Interview with Joanne, Kamae Girls Borstal Institution (Nov. 7, 2019).

⁶⁵ Helen, *supra* note 60.

⁶⁶ International Juvenile Justice Observatory, *supra* note 8, at 67-8; Criminal Justice System in Kenya, at 62.

⁶⁷ Criminal Justice System in Kenya, at 254-5; International Juvenile Justice Observatory, *supra* note 8, at 66; Bureau of Democracy, Human Rights and Labor, *supra* note 45, at 5.

⁶⁸ Bureau of Democracy, Human Rights and Labor, *supra* note 45, at 5.

⁶⁹ Interview with Diane, Kamae Girls Borstal Institution (Nov. 7, 2019).

⁷⁰ Grace, *supra* note 52.

⁷¹ The Children Act (2010) [Rev. 2012]; Ottolini *supra* note 50, at 66; Criminal Justice System in Kenya, at 137.

⁷² *Id* at Article 10 (4)(b).

⁷³ *Id* at Article 10(4), 12(1), (2) and (4).

secure bail, and poor conditions of remand detention.⁷⁴ The government should eliminate cash bail, and no juvenile should be held in remand pending trial. Instead, they should be released to the care of their guardians pending trial.

Excessive Wait Times

The Children Act guarantees children the right to an efficient trial, with maximum time frames set for each stage of the process.⁷⁵ Children must appear before a judge or magistrate within 24 hours of arrest, and should spend no more than 90 days in remand.⁷⁶ In practice, however, courts rarely uphold these time limits,⁷⁷ resulting in juveniles spending long periods in remand. Delays also continue once cases go to trial, and girls who cannot afford bail must wait out their trials in pre-trial detention.

Lack of Access to Bail

Children may languish in remand homes for years simply because they cannot afford bail, which is often priced beyond the means of impoverished families.⁷⁸ The median bail amount in 2016 was KSh15,000, while the lowest monthly minimum wage in cities in Kenya is KSh11,000, a clear disadvantage to children who come from families that do not make above this amount.⁷⁹

Magistrate Kibosia stated that courts conduct a pre-bail report to assess a child's family's economic capabilities.⁸⁰ Nonetheless, two girls interviewed at Kamae stated that their bail was set at Ksh20,000, well above the median bail amount.⁸¹ Of the girls interviewed at Kamae who mentioned bail, many of them stated that their families or guardians could not post bail.⁸² Helen stated that her mother could not afford her bail because her mother had to pay for her siblings' school fees; Helen was subsequently held in remand for the five-month duration of her trial.⁸³

⁷⁴ CESVI et. al, *Guidelines Manual on Juvenile Justice Best Practices: An Evidence-Based Approach to the Justice Reforms in Kenya*, at 14 (2016).

⁷⁵ The Children Act, Fifth Schedule Rule 12.

⁷⁶ *Id* at Fifth Schedule Rule 10(4).

⁷⁷ Clement Okech, *The Juvenile Justice System in Kenya: Growth, System and Structures* (Product of the 164th International Training Course at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders), at 11.

⁷⁸ *Criminal Justice System in Kenya*, at 137.

⁷⁹ *Id* at 105.

⁸⁰ Honorable Jacqueline Kibosia, *supra* note 7.

⁸¹ Interview with Joanne and Helen, Kamae.

⁸² Interview with Becca, Diane, Emma, Helen, Kamae.

⁸³ Helen, *supra* note 60.

Conditions of Detention in Remand

The overcrowding of juvenile detention facilities has long plagued the Kenyan juvenile detention system and all too often leads to girls being placed in adult facilities.⁸⁴ When this is the case, girls are supposed to be placed in a separate section from adult offenders, but insufficient space in adult facilities means that children are often mixed up with adults⁸⁵ and, as aforementioned, face higher risks of abuse. Girls in adult remand homes also face worse conditions, with higher reports of various forms of violence, mostly due to the mixing of ages and genders. One study found that three percent of the females held in remand in adult prisons were under the age of 18.⁸⁶ Becca, a 16-year-old girl interviewed at Kamae, confirmed that she was held in an adult remand prison and was housed with adult women during her two-month stay.⁸⁷

One of the biggest issues with any pre-trial detention is that it removes already vulnerable children from school. In all remand facilities, educational opportunities are sparse, leaving girls behind at key points in their education. Any period away from school for a child can have devastating effects on their development. Some girls interviewed at Kamae did note that there were some activities for them to participate in while in remand,⁸⁸ but Grace stated that it was mostly just “waiting and killing time.”⁸⁹

Helen, who stayed in a children’s remand home for five months, did not have any overtly negative things to say about her remand experience but felt it was important to acknowledge that she knew other girls in remand who had worse experiences and were encouraged to lie and not report abuses.⁹⁰

As noted previously, no juvenile should be held in remand pending trial. Instead, they should be released to the care of their guardians. However, when held in remand, juveniles should be separated from adults, and there needs to be focus on maintaining their education while in detention. Clean Start notes the importance of not just education, but actual *quality* education that will prepare them for their national exams.⁹¹ Currently, teachers in juvenile detention institutions

⁸⁴ International Juvenile Justice Observatory, *supra* note 8, at 67; Bureau of Democracy, Human Rights and Labor, *supra* note 45, at 37. According to a 2012 report from UNAFEI, female juveniles often shared facilities with adults, although the report did not specify which facilities. Olivia L.A. Onyango-Israel. ‘Institutional Treatment of Female Offenders in Kenya.’ 145-149. UNAFEI: Annual Report for 2012 and Resource Material Series No. 90. (2012).

⁸⁵ International Juvenile Justice Observatory, *supra* note 8, at 67 (2016).

⁸⁶ Criminal Justice System in Kenya, 172.

⁸⁷ Interview with Becca, Kamae Girls Borstal Institution (Nov. 7, 2019).

⁸⁸ Interview with Ava, Carla, Helen, Kamae.

⁸⁹ Grace, *supra* note 52.

⁹⁰ Helen, *supra* note 60.

⁹¹ Clean Start, *supra* note 3.

are largely employed by the Department of Children Services, rather than the Ministry of Education.⁹²

Court Proceedings

Once children enter the criminal detention system, their rights should be protected, and they should be guaranteed fair and efficient trials. In practice, however, they frequently encounter procedural barriers that make the process more traumatic and increase their chances of incarceration. Juveniles are often tried in adult courts, rather than in children's courts, and their cases are delayed by judicial inefficiencies. Many stand trial without counsel and are pressured into pleading guilty. The juvenile detention system, in its current form, almost ensures that any child who enters its grasp will be incarcerated.

Children's Court and Juveniles Tried in Adult Courts

In Kenya, children's courts are meant to address juvenile proceedings.⁹³ Magistrate Kibosia, who presides over a court in Buruburu, said that courts can offer necessary resources for children. Buruburu uses play therapy, and its officers, prosecutors, and pro bono counselors are trained to work with children.⁹⁴ Helen, whose case was remanded from adult to children's court, said that she had a better experience in the latter: the officers in children's court were friendlier, and the court assigned her a pro-bono attorney.⁹⁵ However, as Helen's anecdote would suggest, children are not automatically sent to children's court. Adolescents who lack documentation to prove their age can have difficulty remanding their cases from adult court to children's court, especially as some are unable to obtain birth registration.⁹⁶ If a defendant's age is unclear, courts may administer a test for age assessment. Although these tests are not infallible, their results are often treated as such by the courts.⁹⁷

Adult courts can be intimidating and traumatic for children in conflict with the law, and they work against the best interests of children. Diane and 16-year-old Fiona, two girls interviewed at Kamae, were tried in adult courts and both said that their trials were rushed, lasting only a day.⁹⁸ Helen's initial experience in adult court before her case was remanded to children's court was frightening. While in adult court, she was threatened with a sentence at Langata Women's Prison, a maximum-security adult facility.⁹⁹

⁹² *Id.*

⁹³ International Juvenile Justice Observatory, *supra* note 8, at 95.

⁹⁴ Honorable Jacqueline Kibosia, *supra* note 7.

⁹⁵ Helen, *supra* note 60.

⁹⁶ Committee on the Rights of the Child, *supra* note 26.

⁹⁷ International Juvenile Justice Observatory, *supra* note 8, at 68.

⁹⁸ Interview with Diane and Fiona, Kamae Girls Borstal Institution, in Nairobi, Kenya (Nov. 7, 2019).

⁹⁹ Helen, *supra* note 60.

Judicial Inefficiencies and Trial Delays

Even when children are sent to children's court, they are not guaranteed a quick or fair trial, as judicial inefficiencies plague the juvenile detention system. Children's courts are often understaffed and overwhelmed, which results in children being tried in adult courts¹⁰⁰ or waiting months for their trials to be finalized.¹⁰¹

Milimani, a court station housing the only children's court in the country that does not share a building with an adult court, has more resources for children than any other court in Kenya. However, Milimani suffers from chronic understaffing, and does not have enough magistrates to hear cases.¹⁰² According to an audit conducted by the National Council on the Administration of Justice, it experienced a backlog of over 4000 cases involving criminal charges against children.¹⁰³

These inefficiencies plague smaller courts as well. Magistrate Kibosia noted that her court only hears children's cases once a week, which significantly slows down proceedings.¹⁰⁴ She also observed that due to budget constraints, there are few children's courts¹⁰⁵ and fewer than ten judges in all of Kenya specialize in children's issues.¹⁰⁶ According to Magistrate Kibosia, judicial inefficiencies can be minimized if each county had at least one children's court.¹⁰⁷

Children are also likely to have better experiences in court if there are clear guidelines for how to treat them, and if they are guaranteed lawyers to protect their rights. Magistrate Kibosia noted that there is not a standardized guide for how to handle juveniles in the criminal justice system. She recommends that a policy document be drafted with instructions for judges, counselors, police, and court officers.¹⁰⁸

Lack of Legal Representation

Among the procedural barriers faced by children is lack of counsel. Juveniles frequently face trial with no legal representation. Without counsel, children are much less likely to understand their legal rights or how to navigate courtroom proceedings, which will likely end in their detention.

¹⁰⁰ International Juvenile Justice Observatory, *supra* note 8, at 95.

¹⁰¹ Coalition of Child Rights Organizations, *Joint Submission #1: Coalition of Child Rights NGOs for UPR-Kenya Report on Child Rights*, at 6 (2015).

¹⁰² International Juvenile Justice Observatory, *supra* note 8, at 54.

¹⁰³ Criminal Justice System in Kenya, at 47.

¹⁰⁴ Honorable Jacqueline Kibosia, *supra* note 7.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

The 2016 Legal Aid Act attempted to remedy this problem by requiring that children be provided with legal counsel,¹⁰⁹ but it is unclear if this has made a tangible difference.

Currently, many civil society organizations provide children with free legal services, but their support has been criticized as being inadequate.¹¹⁰ Four of the girls interviewed at Kamae reported that they did not have a lawyer present during their trials,¹¹¹ including Diane who was not even aware that she had the right to a lawyer.¹¹²

According to Magistrate Kibosia, this shortage of attorneys is caused not only by insufficient funding, but also by a system that does not incentivize lawyers to perform pro bono work. Working with children is often labor-intensive, and there is not a culture of pro bono work that compensates for the fact that many lawyers are unwilling to take such cases due to lack of financial incentives.¹¹³ The bar association should incentivize lawyers to take pro bono children cases, and pro bono hours should be a requirement for training lawyers to be admitted to the bar.¹¹⁴

Pressure to Plea-Bargain

The lack of resources available to most juveniles has serious implications for them during trial. Children in the criminal detention system often do not fully understand the legal process and, especially without counsel, are vulnerable to making decisions against their best interests. Courts often pressure girls to make plea-bargains in order to shorten their trials without fully explaining the ramifications of these decisions.¹¹⁵

Accounts from some of the girls interviewed at Kamae suggest that the courts want to finish their cases as quickly as possible, without due regard for what is in the child's best interest. Diane and Fiona, for instance, said that their trials lasted only one day.¹¹⁶ Helen said that her pro bono counsel encouraged her to plead guilty.¹¹⁷ Ava was forced by the police to falsely plead guilty to possessing marijuana. The officers claimed that it would help her complete her sentence more quickly, and they threatened her with violence if she did not comply. She was ultimately sentenced to Kamae after pleading guilty.¹¹⁸

¹⁰⁹ The Legal Aid Act, Art. 36.

¹¹⁰ Coalition of Child Rights Organizations, *supra* note 99, at 6.

¹¹¹ Interview with Becca, Diane, Fiona, Joanne, Kamae.

¹¹² Diane, *supra* note 67.

¹¹³ Honorable Jacqueline Kibosia, *supra* note 7.

¹¹⁴ *Id.*

¹¹⁵ Clean Start, *supra* note 3.

¹¹⁶ Interview with Diane and Fiona, Kamae.

¹¹⁷ Helen, *supra* note 60.

¹¹⁸ Ava, *supra* note 49.

Lack of Parental Notification and Support

Under Kenyan law, parents must be notified of their child's arrest.¹¹⁹ According to Magistrate Kibosia, no child should be admitted to court or allowed to plead guilty without a guardian present.¹²⁰ However, others with experience in the juvenile detention system noted that this rule is not always honored in practice. Pro-bono attorney Irene Ndegwa said that in her experience, parents are almost never notified of their children's arrest, with only two exceptions: if it is clear that the child is not a street-based youth or if the child has a lawyer.¹²¹ Clean Start also reports that courts often fail to notify parents and that families are rarely available for support during the juvenile detention process.¹²²

Some of the girls interviewed at Kamae endured trial without their parents. Helen said that her mother never visited her in remand or during trial.¹²³ Joanne's mother testified against her in court because she wanted to send her daughter to a correctional facility, believing this could help her daughter's "behavioral issues."¹²⁴ Even those girls whose parents were present at trial were not guaranteed to receive better treatment. Becca and Carla said that their parents were present at court, but that the judges misrepresented the nature of Kamae to them, falsely telling both the children and their parents that they were being sent to "boarding school."¹²⁵

Courts must uphold the rule noted above and make it impossible for children to plead guilty without their guardian present in court. In addition, legal representation by a lawyer will ensure, or at least maximize the chances, that children and their guardians are aware of the implications of pleading guilty and know accurately the nature of the institution that the child is sent to.

¹¹⁹ The Children Act, Article 18(4).

¹²⁰ Honorable Jacqueline Kibosia, *supra* note 7.

¹²¹ Interview with Irene Ndegwa (Nov. 7, 2019).

¹²² Clean Start, *supra* note 3.

¹²³ Helen, *supra* note 60.

¹²⁴ Joanne, *supra* note 62.

¹²⁵ Interview with Becca and Carla, Kamae.

III. POST-SENTENCING DETENTION OF JUVENILE GIRLS

After sentencing at trial, girls enter into the custody of the Kenyan Prison Service. Conditions at juvenile institutions must meet standards set by both international and domestic law.¹²⁶ As noted at the beginning of this report, we do not believe juveniles should be imprisoned. However, children who are incarcerated in the current juvenile detention system should of course be provided with all basic necessities, including food, water, clothing, bedding, adequate health care, and protection from physical, sexual, and emotional abuse. They should also be provided with adequate psychological services, formal education, and vocational training.

This section reflects on the situation of post-sentencing detention of girls in general, as well presents as a case study of detention conditions at Kamae. As noted previously, Kamae is the only girls Borstal institution in Kenya. Borstal institutions are designated for children between the ages of 15 and 18 found guilty of criminal offences.¹²⁷ Kamae is operated by the Department of Corrections and was established in 2016 in response to ongoing abuses in the juvenile detention system, specifically the post-sentencing treatment of girls in police stations and remand homes.¹²⁸ Prior to Kamae's establishment, it was not uncommon for many girls to serve their sentences in remand homes and jails due to limited post-sentencing detention available for girls.¹²⁹ At Kamae, there are no boys or adult women or men detained in the Borstal institution.¹³⁰ Overcrowding is not an issue: the institution has a capacity for 200, and at the time of our site visit, there were 37 girls detained there.¹³¹ While Kamae should take even further steps to improve treatment and provide opportunities for its juvenile detainees, including banning corporal punishment, it is encouraging to see the institution trying to address some of the problems that have plagued girls in the juvenile detention system.

International and Kenyan Standards

The United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Guidelines) were drafted to address the situation of incarcerated women and girls. Some of its articles address girls in prison, including their rights to education, female healthcare, and counseling after sexual or physical abuse.¹³²

¹²⁶ United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (2010); The Borstal Institutions Act (1991) [Rev. 2009].

¹²⁷ The Borstal Institutions Act, Article 2.

¹²⁸ Head Officer, *supra* note 20.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders, Rules 36-39.

In Kenya, the Borstal Institutions Act regulates Borstal institutions.¹³³ The Act requires minimum standards for hygiene and comfort in Borstal institutions¹³⁴ and the presence of medical officers to ensure detainees' health.¹³⁵ It is worth noting that Borstal institutions are a foreign British invention that were implemented and modified in Kenya.¹³⁶ The United Kingdom abolished its Borstal system with the Criminal Justice Act of 1982¹³⁷ for "being outdated and no longer seen as fit for purpose,"¹³⁸ while in Kenya, these institutions unfortunately still exist.

Provision of Basic Necessities

Water, Food, Clothing, and Bedding

Children in the juvenile detention system often lack basic necessities such as food, clothing, bedding, and access to medical services.¹³⁹ In an attempt to remedy the lack of basic necessities for juvenile girls often present at other detention facilities, Kamae ensures that girls have access to adequate water, food, clothing, and bedding. When girls arrive at Kamae, the institution provides them with slippers, a uniform, feminine hygiene products, blankets, and a mattress.¹⁴⁰ Every Monday, correctional officers assess the girls' supplies and replenish them as needed.¹⁴¹ Irene and Joanne reported that they receive three meals a day.¹⁴² However, Helen noted that the amount of food provided is inconsistent: some days she remains hungry, and other times when observing guests visit the institution, "there is too much to eat."¹⁴³

Feminine Hygiene/Menstrual Health Products

According to Clean Start, girls in detention facilities have historically lacked access to feminine hygiene products.¹⁴⁴ Encouragingly, girls interviewed at Kamae reported that they have access to

¹³³ The Borstal Institutions Act, Article 2.

¹³⁴ *Id* at Article 4.

¹³⁵ *Id* at Article 11(1).

¹³⁶ Okech, *supra* note 75, at 4-5.

¹³⁷ The Criminal Justice Act 1982 (UK).

¹³⁸ Stephen Case: Youth Justice - A Critical Introduction (2018), at Chapter 3.

¹³⁹ CESVI, *supra* note 72, at 67; Anne Mary Okutoyi, "Rehabilitation of Children in Conflict with the Law: A Case of Shikusa Borstal Institution, Kakamega, Kenya," at 38 (2015); Onyango Tobias Odera, "Effectiveness of Rehabilitation Programmes on Juvenile Delinquents in Kenya: A Survey of Rehabilitation Schools in Nairobi County," at 49-50 (2013).

¹⁴⁰ Interview with Ava, Irene, Joanne, Kamae.

¹⁴¹ Head Officer, *supra* note 20.

¹⁴² Interview with Irene, Joanne, Kamae.

¹⁴³ Interview with Helen, Kamae. While the Head Officer did not have an opportunity to respond to this particular allegation, Kamae must continue to ensure that girls continue to have access to proper nutrition.

¹⁴⁴ Clean Start, *supra* note 3.

proper menstrual health products.¹⁴⁵ Grace reported that this was a welcome change from police stations and remand homes, where feminine hygiene products were lacking.¹⁴⁶ Based on the historic absence of feminine hygiene products provided at detention facilities, Kamae is making steps in the right direction with the assistance of well-wishers.

Sexual and Reproductive Health Information

According to Clean Start, girls in detention facilities do not receive formal sex education.¹⁴⁷ This is in line with the national treatment of sex education in secondary schools. An April 2017 report on sex education standards in Homa Bay, Mombasa, and Nairobi Counties found that teachers lack proper resources and training, and often face community opposition to any type of sex education that does not advocate for abstinence.¹⁴⁸ Kamae should work with government and civil society actors to try to introduce an age-appropriate sexual education curriculum to give the girls the necessary tools and knowledge to manage their sexual and reproductive health when they are released.

Physical, Sexual, and Psychological Abuse

Violence is endemic throughout the juvenile detention system. Almost 80% of incarcerated juveniles in one study reported that they witnessed violence targeting children in the justice system, and 72.2% reported that they had personally been subjected to violence.¹⁴⁹ Many children who reported witnessing violence said that it was most often perpetrated by institutional staff.¹⁵⁰ Girls interviewed at Kamae reported instances of corporal punishment but did not report instances of sexual, psychological, or severe physical abuse.

Physical Abuse

In 2018, the Global Initiative to End All Corporal Punishment noted that the abuse of children in the Kenyan juvenile detention system often comes in the form of corporal punishment.¹⁵¹ While all provisions in Kenyan law that allow for corporal punishment are void, they have not been

¹⁴⁵ Interview with Diane, Emma, Irene, Kamae.

¹⁴⁶ Grace, *supra* note 52.

¹⁴⁷ Clean Start, *supra* note 3.

¹⁴⁸ Guttmacher Institute, *From Paper to Practice: Sexuality Education Policies and Their Implementation in Kenya*, (April, 2017), <https://www.guttmacher.org/report/sexuality-education-kenya>.

¹⁴⁹ Ottolini *supra* note 50, at 127.

¹⁵⁰ *Id* at 67.

¹⁵¹ End Corporal Punishment, *Corporal Punishment of Children in Kenya*, at 6 (2018).

formally repealed. This may account for the practice's continued existence.¹⁵² Although corporal punishment is limited by the Children Act, it is allowed by the Borstal Institutions Act and is frequently used in practice.¹⁵³ Many children report that they have been subjected to corporal punishment through all stages of the juvenile detention system.¹⁵⁴ Forms of corporal punishment faced by children in conflict with the law across various detention facilities in Kenya range from beatings (e.g., slapping, caning, punching) to "kneeling/standing for long periods" and forced labor, such as "unblocking sewage with bare hand[s]," among other forms of punishment.¹⁵⁵ Similar forms of abuse are reported to be inflicted by peers through aggression and bullying, although this occurs less frequently.¹⁵⁶

Although we did not receive any reports of severe physical abuse at Kamae, girls did report that they are sometimes subjected to corporal punishment, such as beatings for their own or others' wrongdoings. Ava said that she received corporal punishment that "hurts."¹⁵⁷ Emma, a 17-year-old girl we interviewed at Kamae, noted that corporal punishment occurs despite the head teacher making it clear that the girls are not allowed to be beaten and enforcing this rule when the teacher is present at Kamae.¹⁵⁸ Ava and Diane noted that reasons for being subjected to corporal punishment at Kamae include losing items, insulting someone, or fighting with other girls.¹⁵⁹ Emma noted that sometimes girls may receive corporal punishment even if they did not personally "do something bad." She said that for example, if two girls at Kamae get into a fight, not only do those two girls receive corporal punishment, but so may the rest of the girls present.¹⁶⁰ Ava and Diane expressed frustration that corporal punishment is applied to some residents simply for being in the wrong place at the wrong time.¹⁶¹ Emma reported that physical violence from other girls is relatively rare and only happens when no authority figure is present.¹⁶²

Kamae should entirely abandon the use of corporal punishment. Many of the girls have already endured trauma; they should not be subjected to more at the hands of the state.

¹⁵² *Id* at 1-3.

¹⁵³ International Juvenile Justice Observatory, *supra* note 8, at 31.

¹⁵⁴ Ottolini *supra* note 50, at 70.

¹⁵⁵ *Id* at 70-75.

¹⁵⁶ *Id* at 128.

¹⁵⁷ Ava, *supra* note 49.

¹⁵⁸ Interview with Emma, Kamae Girls Borstal Institution (Nov. 7, 2019).

¹⁵⁹ Interview with Ava and Diane, Kamae.

¹⁶⁰ Emma, *supra* note 156.

¹⁶¹ Interview with Ava and Diane, Kamae.

¹⁶² Emma, *supra* note 156.

Sexual Abuse

One report found that 13% of children in juvenile detention were subjected to sexual touching,¹⁶³ 5.4% of respondents reported that they had been raped,¹⁶⁴ and 10% reported sexual molestation by staff.¹⁶⁵ The report found that detained girls are twice as vulnerable to sexual violence as boys.¹⁶⁶ None of the ten girls interviewed at Kamae reported experiencing sexual abuse at the institution.

Psychological Abuse

It is difficult to determine the level of psychological violence committed against Kenyan children in the juvenile detention system.¹⁶⁷ However, it is clear that children feel fear, stress, and isolation as they are exposed to different levels of the juvenile detention system.¹⁶⁸ Although the girls interviewed at Kamae did not report any psychological abuse from officers in Kamae, they are not immune to stress or fear. Ava, for example, expressed that she does “not like life anymore.”¹⁶⁹

Psychological Therapy

As part of its attempt to provide better care for girls, Kamae offers psychological therapy. A counselor visits three to four times a week.¹⁷⁰ If a girl feels like she needs counselling on one of the days that the service is not provided, she can request that the welfare officer arrange a session.¹⁷¹ Girls are encouraged to speak with a counselor at least once a week, but they are not required to. Nearly all of the girls interviewed at Kamae have attended counseling sessions, with many finding them helpful in dealing with their problems.¹⁷² Because the therapy is voluntary, some girls take advantage of it more than others. Diane and Emma reported that while they thought the therapy was useful, they no longer attend sessions because they feel like they no longer need it.¹⁷³ Conversely, Irene and Joanne reported that they stopped meeting with the counselor because they did not feel like they were being helped.¹⁷⁴

¹⁶³ Ottolini *supra* note 50, at 82.

¹⁶⁴ *Id.*

¹⁶⁵ Sebastian Okello Wang'ombe, Influence of Correctional Facility Environment on Juvenile Recidivism Journal of Law, Policy and Globalization, 2019, Vol. 87, at 6.

¹⁶⁶ *Id.* at 9.

¹⁶⁷ *Id.* at 77.

¹⁶⁸ *Id.* at viii, 78.

¹⁶⁹ Ava, *supra* note 49.

¹⁷⁰ Diane, *supra* note 67.

¹⁷¹ *Id.*

¹⁷² Interviews with Becca, Carla, Diane, Emma, Joanne, Irene, and Helen, Kamae.

¹⁷³ Interview with Diane and Emma, Kamae.

¹⁷⁴ Interviews with Irene and Joanne, Kamae.

In addition to voluntary individual counseling, girls have instituted group therapy sessions that they run themselves.¹⁷⁵ Irene and Joanne noted that these sessions are especially useful to girls who have not found the individual counseling helpful.¹⁷⁶ The group therapy meetings are organized by the girls whenever they want, and they serve as a place for the girls to talk openly about their feelings; no officers are present at the meetings.¹⁷⁷ Group sessions are also held when a new girl enters the institution in order to help acclimate her.¹⁷⁸

Kamae's interest in the girls' mental health is encouraging and should be commended. However, if girls report that individual sessions have not been productive, the institution should place the girls with new counselors.

Formal Education

According to Clean Start, juvenile detention facilities often lack quality formal education.¹⁷⁹ As noted previously, formal education classes are often taught by representatives from the Department of Children Services rather than the Ministry of Education.¹⁸⁰ Moreover, Clean Start reported that too often ages are mixed together in classes and teachers come infrequently.¹⁸¹ A 2011 study on conditions in male and female rehabilitation schools in Nairobi County found that 81% of the children felt that the education was inadequate.¹⁸² The classes lacked continuity and often different age groups were mixed together.¹⁸³ Additionally, the education classes suffered from a shortage of desks, stationery, and materials.¹⁸⁴

In response to the lack of educational opportunities at other detention facilities housing juveniles, Kamae laudably makes an effort to enroll the majority of girls in their formal education program, stressing the importance of formal education versus vocational training.¹⁸⁵ There are currently 36 girls at Kamae who are taking formal education classes, which is nearly every girl currently detained at Kamae.¹⁸⁶ These classes cover Class 7-8 of primary education and Form 1-2 of secondary level.¹⁸⁷

¹⁷⁵ Irene, *supra* note 47.

¹⁷⁶ Interviews with Irene and Joanne, Kamae.

¹⁷⁷ *Id.*

¹⁷⁸ Irene, *supra* note 47.

¹⁷⁹ Clean Start, *supra* note 3.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Grace Murugi Ndegwa, *Factors influencing rehabilitation of juvenile delinquents in the juvenile justice system in Kenya: Case of Dagoretti girls' rehabilitation school in Kiambu County*, 2014, 52.

¹⁸³ *Id.* at 63.

¹⁸⁴ *Id.* at 51.

¹⁸⁵ Head Officer, *supra* note 20.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

For some girls, taking classes at Kamae is an upgrade from their former schools. Carla noted that, in contrast to her former school, there are no school fees at Kamae and they are given school books.¹⁸⁸ Becca finds it easier to study at Kamae because she has access to textbooks and materials that she lacked in her prior school.¹⁸⁹ Irene spoke positively about her teachers, who she views as parental figures that she can open up to.¹⁹⁰

School hours run from after breakfast until before dinner, with a lunch break and opportunities to participate in extracurricular clubs.¹⁹¹ Girls interviewed reported having access to a varied curriculum that includes chemistry, English, physical education, and physics. The girls are permitted to sit for the national exams.¹⁹² Fiona, however, reported that the quality of education is weakened when girls of different grades and ages are mixed together.¹⁹³

Despite the efforts by Kamae to give the girls a proper education, girls still face the stigma of being educated at a Borstal institution. When girls leave Kamae and seek admission at other schools, those schools have the discretion to refuse them on the basis of time spent in a Borstal institution.¹⁹⁴ Even if families try to hide the fact that their child was detained at Kamae by describing it as a boarding school, girls must produce their official Kamae Borstal certificates when they apply to schools.¹⁹⁵

Although some judges sent girls to Kamae specifically to be educated, the education they receive once incarcerated is imperfect.¹⁹⁶ Kamae should collaborate with the Ministry of Education to hire more teachers. Doing so would allow the institution to separate students by age and offer more grades. This would prevent girls from needlessly repeating the same curriculum.¹⁹⁷

Vocational Training

One report found that juvenile detainees in Borstal institutions receive little vocational training, and that when training is available, children are not remunerated for their work.¹⁹⁸ Another report found that there is little variety in vocational training programs.¹⁹⁹

¹⁸⁸ Carla, *supra* note 51.

¹⁸⁹ Becca, *supra* note 85.

¹⁹⁰ Irene, *supra* note 47.

¹⁹¹ *Id.*

¹⁹² Ava, *supra* note 49.

¹⁹³ Interview with Fiona, Kamae Girls Borstal Institution, in Nairobi, Kenya (Nov. 7, 2019).

¹⁹⁴ Clean Start, *supra* note 3.

¹⁹⁵ Head Officer, *supra* note 20.

¹⁹⁶ Interviews with Becca and Carla, Kamae.

¹⁹⁷ Clean Start, *supra* note 3.

¹⁹⁸ International Juvenile Justice Observatory, *supra* note 8, at 59.

¹⁹⁹ Okech, *supra* note 75, at 6.

As noted earlier, Kamae places the majority of girls in formal education classes rather than vocational training. Currently, seven or eight girls at Kamae are in vocational training.²⁰⁰ When asked about vocational training, Emma said that she “finds these classes effective”²⁰¹ and they “help her pass the time.”²⁰² Kamae also provides extra-curricular activities, which girls can participate in during a designated time slot before lunch.²⁰³ However, the vocational training offered has been criticized by some advocates as “archaic.”²⁰⁴ For example, the vocational training programs are largely gendered, focusing on hairdressing, beauty, beadwork, and crocheting. The extracurricular clubs only cover drama, beauty, traditional dancing, sports, modeling, cooking, massage, and yoga.²⁰⁵ Kamae should consider also offering innovative and technological training, such as Information Technology (IT).²⁰⁶

Family Contact

The Department of Children Services has experimented with programs to increase family contact with incarcerated children. These trials facilitated the collection of data regarding the children-family relationship; allowed for assessment of the children’s social skills, mental capability, and desire to re-establish family contact; and provided support for children’s family with family counselling. These programs, however, still faced obstacles to long-term implementation, including lack of funds to provide necessary counseling and home visits; personnel that did not follow procedures; and parents unable or unwilling to participate.²⁰⁷

Kamae organizes a “Parents Day,” during which parents can visit the Borstal and listen to motivational speakers, who are brought in to help with family reconciliation.²⁰⁸ Family members and friends can also visit the girls every day of the week, and they are allowed to bring the girls snacks.²⁰⁹ However, because Kamae detains girls from all over the country, Carla noted that her mother has only been able to visit once because the institution is located so far from their home.²¹⁰ Joanne reported having no family contact at all despite her effort to call home every two weeks.²¹¹

²⁰⁰ Head Officer, *supra* note 20.

²⁰¹ Ava, *supra* note 49..

²⁰² Emma, *supra* note 156.

²⁰³ Irene, *supra* note 47.

²⁰⁴ Clean Start, *supra* note 3.

²⁰⁵ Carla, *supra* note 51.

²⁰⁶ Clean Start, *supra* note 3.

²⁰⁷ CESVI, *supra* note 72, at 30-31, 49-50.

²⁰⁸ Head Officer, *supra* note 20.

²⁰⁹ Ava, *supra* note 49.

²¹⁰ Carla, *supra* note 51.

²¹¹ Joanne, *supra* note 62.

Some of the girls in Kamae are able to call their parents whenever they like.²¹² However, Ava reported that she has to call her parents through the welfare office.²¹³

One method to enhance family contact would be allocating funds to help facilitate transport and temporary housing for the families of the girls who live far away from Kamae. In addition, family counselling should be provided by the Department of Children Services to facilitate family contact with family members who are not willing to contact their children.

²¹² Interviews with Ava, Irene, and Joanne, Kamae.

²¹³ Ava, *supra* note 49.

IV. REINTEGRATION

None of the girls in juvenile detention should be incarcerated in the first place; indeed, the Kenyan criminal justice system unfairly punishes these girls for being economically and socially disadvantaged: a commonality among all institutionalized girls. The types of services we advocate for in this section should thus ideally be offered and provided to the girls without their coming into contact with the juvenile detention system *at all*. Because the juvenile detention system has yet to be abolished, however, some girls are and will be sentenced to juvenile detention. In these unfortunate instances, there must be measures in place to ensure that the girls have access to all of the reintegration services they need. Formerly incarcerated girls' successful reintegration into society is crucial to their leading independent lives, and successful reintegration is predicated upon providing the girls with academic, social, and psychological support not only *while incarcerated*, but also *during their transition back into the community*,²¹⁴ with help from actors across multiple settings.

Juvenile institutions for girls must help facilitate their reintegration back into society by focusing on reentry long before the girls are released. To ensure that the reintegration process begins as soon as possible, these institutions should install reintegration policies or guidelines that detail the academic, social, and psychological supports that the girls need to succeed pending their release.²¹⁵ Beyond reforming the reintegration policies of the detention facilities themselves, each of the departments that has a hand in the girls' lives during and after institutionalization—the Kenya Prison Service and the Department of Children Services, respectively—must work together to adequately prepare the girls for reentry into society. Currently, there is a lack of interaction and consistency between the two departments, both of which are pivotal to the girls' successful reintegration.²¹⁶ What is necessary, then, for the girls to have better transitions is for greater communication between the services and the juvenile institutions to prepare these girls for life after prison.

Reintegration Services at Kamae

Kamae does make an effort to provide the girls housed there with some skills to help them after release. The institution offers counseling to help prepare girls emotionally for release. Many of the girls in juvenile detention struggle with deep rooted issues linked to socio-economic deprivation, and counseling is one of the most effective ways to address these issues. In 2019, Clean Start began

²¹⁴ *Juvenile Reentry*, Office of Juvenile Justice and Delinquency Prevention, at 1, <https://www.ojjdp.gov/mpg/litreviews/Aftercare.pdf> (last updated Aug. 2017).

²¹⁵ Clean Start, *supra* note 3.

²¹⁶ *Id.*

working with Kamae to also provide the girls with mentoring sessions, helping them develop confidence, resilience, and restored hope.²¹⁷

Some of the girls interviewed at Kamae found some of the rehabilitative services helpful. Kamae makes efforts to help girls repair relationships with their families, which can be crucial to a smooth transition. Emma said that the officers helped her reconcile with her estranged grandmother.²¹⁸ Fiona referred to Parent's Day during which parents could visit their children at Kamae, sit in on classes, and stay beyond normal visiting hours.²¹⁹ Ava described the rehabilitative life-skills programs offered by the Borstal, which she said taught her how to make friends and surround herself with "good people."²²⁰ Becca described learning how to "choose her friends wisely."²²¹ However, Ava also expressed reservations about the life waiting for her after release. She was afraid that she would not have a support network outside of prison, and that she would be dragged back to a world of alcohol and drugs.²²²

Reintegration Experiences of Formerly Detained Girls

No two girls in juvenile detention are the same, and neither are their needs post-incarceration. As a result, every girl's issues upon reentry into society will vary, and individualized solutions must be made available to help them access their needs both during and after detention, whether it be education, employment, and/or housing. When it comes to successful reintegration of formerly incarcerated girls, it is essential that their *whole person* be addressed.²²³

Stigma

Girls often have difficulty reintegrating back into society after incarceration. They face stigma and a lack of resources and support after release.²²⁴ According to Wanjiku Njuguna of Nafisika, stigma is perhaps the most significant challenge faced by girls when they leave the juvenile detention system, and it can affect their interactions with their families and their communities.²²⁵ Elizabeth Njambi of Wakilisha likewise stated that stigma is one of the largest barriers girls face during re-

²¹⁷ Impacthub Media, *Giving Girls Confidence Behind Bars: Kamae Girls Borstal Institute, Kamiti Prison* (2019), <http://impacthubmedia.com/12339/giving-girls-confidence-behind-bars-kamae-girls-borstal-institute-kamiti-prison/>.

²¹⁸ Emma, *supra* note 156.

²¹⁹ Fiona, *supra* note 191.

²²⁰ Ava, *supra* note 49.

²²¹ Becca, *supra* note 85.

²²² Ava, *supra* note 49.

²²³ Clean Start, *supra* note 3.

²²⁴ Lillian Aluanga-Delvaux, *Child Offenders Battle Stigma After Leaving Kenya's Prison*, The Standard (2013), <https://www.standardmedia.co.ke/article/2000086490/child-offenders-battle-stigma-after-leaving-kenya-s-prison>.

²²⁵ Interview with Wanjiku Njuguna.

entry, as most people in their communities will likely know that they were incarcerated.²²⁶ Some of the girls interviewed at Kamae seemed aware of the potential stigma upon reentry to their communities. Diane, for instance, has intentionally hid from her primary school that she had been arrested and sentenced to a Borstal institution.²²⁷

Wanjiku Njuguna of Nafisika also observed that formerly incarcerated girls may also face emotional and physical abuse upon their release at the hands of their families and/or communities.²²⁸ This abuse is committed during a vulnerable time for young women, as they try to adjust to life outside of prison and life as adults.²²⁹ According to Clean Start, some girls return to rehabilitation schools because they have been rejected by their families and communities and have nowhere else to turn.²³⁰

Education

Regular schools outside of the juvenile detention system routinely discriminate against girls who have been detained in the criminal justice system.²³¹ This discrimination undermines any education girls received while institutionalized. When girls are released from a Borstal institution, they receive a certificate with their completed education level, which also indicates their prior correctional institutionalization.²³² This notation leads to school discrimination against the girls, barring them from access to quality education after their time spent in a correctional institution.

The Head Officer at Kamae acknowledged the severe problem of schools discriminating against formerly incarcerated girls and said that she encourages families applying for schools not to disclose the fact that their daughters were previously detained at Kamae. However, she conceded that even if the parents do not verbally disclose this fact, the notation that they were detained in a correctional institution remains on their education certificate.²³³

Because formerly detained girls face discrimination from schools, the government must ensure that these girls have access to quality education after being released.²³⁴ Rather than view the girls' prior correctional institutionalization as something negative, schools must understand the underlying factors that resulted in the girls' detention and openly accept them into their programs. If not, the girls face a significant hurdle for reintegration into society. Clean Start has begun to

²²⁶ Interview with Elizabeth Njambi, CEO and Founder, Wakilisha, in Nairobi, Kenya (Nov. 6, 2019).

²²⁷ Diane, *supra* note 67.

²²⁸ Wanjiku Njuguna, *supra* note 223.

²²⁹ Clean Start, *supra* note 3.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ Head Officer, *supra* note 20.

²³⁴ *Id.*

address this issue by partnering with a school that accepts formerly incarcerated girls,²³⁵ allowing them to reach their full education potential.

Housing

Because some of the girls' families are unable to house their daughters after their release due to economic hardship, the girls may lack a stable home to reenter, resulting in high recidivism rates.²³⁶ This issue is exacerbated by the fact that there are currently no government or NGO safe houses for formerly incarcerated women or girls who do not have stable homes.²³⁷ Without a stable home to be released to, girls are left with nowhere to go, eventually leading them back into the juvenile detention system. Because some girls either face abuse after returning home or the risk of being homeless, safe houses must be established for formally detained girls to guarantee they have a stable place to live.²³⁸

Employment

Employment is an important aspect of reintegration, but girls do not always receive the support they need. Although prisons give girls some vocational training, which can potentially help them find employment, Clean Start has criticized the vocational options afforded to detained girls. Because girls in juvenile detention often learn only outdated, gendered skills, and because they further lack access to quality education, opportunities must be available for the girls to acquire modern skills and remain competitive in the marketplace.²³⁹ As noted earlier, young women could potentially benefit more from learning modern skills that could better equip them to enter the workforce, such as IT, including computer programming.²⁴⁰

Family

Because many formerly detained girls come from dysfunctional families due to the effects of poverty, some girls face abuse at the hands of family members after returning home.²⁴¹ According to Wanjiku Njuguna of Nafisika, this abuse not only harms the girls, but also creates an unhealthy norm of what love looks like to them.²⁴² Without a family support system to help facilitate their

²³⁵ Clean Start, *supra* note 3.

²³⁶ CESVI, *supra* note 72, at 46; Mary Nereah, *Realising Article 53(1)(F) of the Constitution: Pretrial Detention as a Measure of Last Resort* 21-22 (Jan. 2017) (unpublished LLB dissertation, Strathmore Law School) (on file with Strathmore University).

²³⁷ Clean Start, *supra* note 3.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Wanjiku Njuguna, *supra* note 223.

²⁴² *Id.*

reintegration back into society, girls may fall back into the same situations that led them to the juvenile detention system in the first place.²⁴³ In light of the frequency of this displacement, Nafisika often acts as the “middle-man” to connect girls to other programs or places that can help them find a new home, including through adoption.²⁴⁴

Because some girls’ families do not fully understand what their children experienced during incarceration, the girls may also have trouble reconnecting with their families after juvenile detention.²⁴⁵ Indeed, parents themselves are often traumatized by what has happened to their children and have difficulty relating to their children’s experiences of incarceration.²⁴⁶ To help bridge this gap in understanding, Clean Start works with several families of formerly detained girls to try to help them comprehend the perspective of their children and the reintegration process.²⁴⁷ Through Clean Start’s intervention, the girls’ parents have come to understand the role they may have played in the delinquency of their children and the environmental circumstances that led to it, including abject poverty.²⁴⁸

Because the girls are coming from a family context, both them and their families require psychosocial support to process what has happened and to address the trauma.²⁴⁹ There needs to be resources available not only for the girls, but also their parents so that the girls’ reintegration processes are as smooth as possible. Some of the resources that are necessary for targeting the girls’ entire families include family counseling and programs of family engagement.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Clean Start, *supra* note 3.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

CONCLUSION

Although the Kenyan government has undertaken some efforts to improve detention conditions for juveniles over the past decade, the situation for girls ensnared in the juvenile detention system remains bleak. Abuse, negligence, and misconduct are present in all stages of the juvenile detention system, from arrest to trial and detention. While the establishment of the Kamae Girls Borstal Institution is aimed at addressing the needs of girls in detention, the carceral system is an incorrect response to the challenges facing vulnerable girls facing socio-economic disadvantage in Kenya. The Kenyan government should embrace non-punitive, anti-carceral measures and allocate funds to improve the socio-economic conditions of children in marginalized communities, secure the rights of children in all stages of the juvenile detention system, and implement rehabilitative programs that prepare formerly incarcerated youth for re-integration.

Contacts for queries and comments

Arthur Muiru Njuguna; Project Coordinator, Strathmore Law Clinic

Email: arthur.njuguna@strathmore.edu

Elizabeth Njambi; Founder and CEO, Wakilisha Initiative

Email: elizabeth.njambi@wakilisha.org

or

info@wakilisha.org