

"JUVENILE DELINQUENCY, WITH
SPECIAL REFERENCE TO CHILD
PROSTITUTION IN
KENYA".

A dissertation in partial fulfilment of
the requirements for the L.L.B. Degree,
University of Nairobi.

by

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A C K N O W L E D G E M E N T S

It is true that this work cost me time, money and great anxiety. But it is also true that all these would have accomplished nothing without the patient help of my supervisor Mr. A.G. Ringera (Lecturer Faculty of Law) to whom I am greatly indebted.

Special thanks also go to Mrs. Kimani (Probation Officer, Nairobi Juvenile Court); Mr. Christopher Malei (Librarian, Nation Newspapers Nairobi); Dr. Katana Mkangi (Lecturer Sociology Department) and Miss Rosa Muraguri (Sociology student) both who introduced and led my groping mind into the world of realistic Sociology.

Finally, I thank Mrs. Penny Mungai for typing this work ever so diligently.

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23 SEP 1969

(ii)

DEDICATION

For my mother,
Whose courage and determination
are a constant reminder of my own
deficiency in the same; and who
deserves something better than this.

Table of Abbreviations

1. A.J.S. : American Journal of Sociology
2. E.A.I.S.R.: East African Institute of Sociological Research
3. E.A.P.L.R.: East African Protectorate Law Reports.
4. I.D.S.: Institute of Development Studies.
5. I.S.T.D.: Institute for the Study and Treatment of Delinquency.
6. J.C.L.: Journal of Criminal Law
7. J.R.D.: Journal of Research and Development.
8. M.L.R.: Modern Law Review.

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Table of Statutes

1. Borstal institutions Act 1963 (No. 23/63)
Cap 92, Laws of Kenya.
2. Children and Young Persons Act (No 8/63)
Cap 14 Laws of Kenya.
3. Children and Young Persons Act 1933, Cap
4, Laws of England (Halsbury's Statutes
of England 3rd Ed. Butterworths London
1972)
4. Juvenile Ordinance 1934 (no. 22/34)
5. Juvenile Ammendment Ordinance, 1936.
6. Penal Code Cap. 63 Laws of Kenya (1972)
Revised edition.
7. Probation of offenders Act Cap. 64, Laws of
Kenya.

I N T R O D U C T I O N

O:1 The Problem

① The question of crime generally, and juvenile delinquency in particular has been the haunt of many societies in the world. Voluminous works have been dedicated to this subject.¹ In Kenya there has been a growing concern bearing on this issue especially because of the ever-spiralling² rate of delinquency. For us, an even more disturbing aspect of this increase is that more females are being drawn into the delinquent ranks of their male peers. These appear in the form of "parking girls", a majority of who turn into child-prostitutes sooner or later.

It is therefore imperative that a serious study covering this area be carried out with a view to seeking ways and means of solving the delinquency problem. It is the object of this paper to attempt, in its limited way, a discourse to that end. Two questions will be paramount: i) what are the causes of juvenile delinquency and child prostitution especially? and ii) what successes, if any, has our juvenile system met to arrest a situation which threatens to become a permanent feature of our society?

0:2 Literature Review

Most of the literature available on this subject is Occidental.³ Naturally, their works are based on their local situations. While agreeing that certain aspects of our society are similar to those of other world communities, a distinction has to be made bearing in mind that our situation has its own peculiarities as a Third World nation with under-development as its hallmark. This means that it is necessary to conduct researches rooted from our own situation so that the appropriate recommendations can be made.

Our contention is that a vast amount of these works appears to be an apology for socio-economic political systems which create the material conditions which breed juvenile delinquency. Most writers therefore are content to go only as far as naming mystical causes of delinquency, treatment and suggest reforms. This approach, we argue, is erroneous because it fails to place in its proper perspective the logical causal relationship between the socio-economy and delinquency, poverty for instance the greatest named cause of delinquency is not a phenomenon existing in a vacuum.

Indeed it has a direct relationship with the existing economic base. This will in all humility, be our realistic approach and our recommendations will be influenced accordingly to prove the lie of unrealistic recommendations. One author in a Preface to his work has written: "This is a sociological work; social factors and influences in delinquent conduct are given heavy stress" ⁴

In context, the book has failed to clearly show what causes those social factors and influences and is therefore wanting.

One Kenyan sociologist, Erasto Muga⁵, has published some materials on the subject. Basically it is a compilation of statistics relating to crime and delinquency from which various inferences may be made. Regrettably, it is a brief overview that does not offer much detail. Dissertations⁶ are also available on the subject. They seem to follow a similar pattern and approach of the materials from the Western world earlier discussed, with an exception of one.⁷

Of all this literature reviewed, little has been written on female delinquency except by way of statistics. A study, then, of female delinquency and its peculiarities would be appropriate.

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O:3 CONSPECTUS

In Chapter one of this dissertation, we shall embark on a brief history of the Kenyan juvenile system. We then shall attempt a legal and social definition of a delinquent. In the latter part of this chapter, we discuss the hitherto propounded causes of delinquency and our criticisms thereof. Chapter Two will be a discourse on the social evolution of prostitution, child prostitution as well as their suggested etiologies. Closely connected with Chapter Two will be Chapter Three whose subject will be the "processed" delinquent such being the delinquent who has been through the juvenile system. The main questions will be:

i) Is the juvenile system a sure therapy process?, and ii) If not, what ideological and structural changes must be effected to ensure success?

Chapter Four will be both conclusional and reflective.

O:4 RESEARCH METHODOLOGY

There is a vast written literature on this subject hence the bulk of this research will be archival. We also intend to visit the Nairobi Juvenile Court to obtain relevant information and

interviews will be arranged not only with the delinquents themselves but also the officers responsible for their welfare.

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FOOTNOTES

1. See for example;

i) Giallombardo Rose: Juvenile Delinquency
(John Wiley and Sons Inc. New York, 1972).

ii) Cloward R.A.: Delinquency and Opportunity.
(Free Press, New York, Collier-Macmillan Ltd.,
London 1960).

iii) Allison Morris and Mary Mc Isaac: Juvenile
Justice? (Heinemann, London 1978).

iv) Bovet L. Psychiatric Aspects of Juvenile Delinquency (W.H.O. Palais des Nations Publishing,
Geneva, 1951)

2. Muya L.W. "The Juvenile in the Kenyan Borstal Institution" (LL.B. Dissertation, Nairobi University, 1978).
Statistics in this paper show that between 1974 and 1977 the cases decided before the Nairobi Juvenile Court doubled to 3,105. It requires little imagination to visualise the situation when one bears in mind those were only decided cases, others could have been pending, to say nothing of the delinquents who so far had escaped arrest.

3. See Note 1, supra
4. Gibbons D.C. Delinquent Behaviour (Prentice-Hall Inc. Englewoods Cliff New Jersey, 1970) p. (i).
5. Erasto Muga: Crime and Delinquency in Kenya (East Africa Literature Bureau, Nairobi 1975)
6. See for example
 - i) Jeanne Munene: "Juvenile Delinquency in Kenya. LL.B. Dissertation, University of Nairobi, 1976).
 - ii) Arthur Buluma: "Treatment of Juvenile Delinquents in Kenya (L.L.B. Dissertation, University of Nairobi 1974).
 - iii) Muya L.W.: "The Juvenile in the Kenyan Borstals Institution" (L.L.B. Dissertation, Nairobi University, 1978).
7. See note 6 (ii) ibid.

CHAPTER ONE

HISTORICAL BACKGROUND OF THE JUVENILE SYSTEM AND
THE ETIOLOGY OF JUVENILE DELINQUENCY:

This Chapter falls into two basic sections. The first section seeks to discuss the historical evolution of the Juvenile system in Kenya while the second attempts an analysis of the hitherto propounded causes of juvenile delinquency.

When colonialism was imposed on Kenya, a new legal regime was found necessary. This was necessitated by the colonial needs which were largely exploitative. In the criminal area, a new code of crimes and punishment emerged, based on the 1899 Queensland Penal Code.¹ The hitherto subsistence economic structure existing in Kenya was replaced by a capitalist mode of production. This had far-reaching effects on the African way of life. Marx, emphasising the role of the economic structure on the whole social plane states:

"In the social production which men carry on they enter into definite relations that are indispensable and independent of their will; these

relations of production correspond to a definite stage of their material powers of production. The sum total of these relations constitute the economic structure of society - the real foundation on which rise legal and political structures and to which correspond definite forms of social consciousness. The mode of production in material life determines the general character of the social, political and spiritual process of life"²

(Emphasis added)

② That juvenile delinquency is a relatively modern phenomena in most African societies is a truism.^{2A} The disruption of the traditional cohesive social structures which led to a stable integrated way of life by a development process, set in motion by colonialism has been responsible for many social problems. This development process includes industrialisation and urbanisation which inevitably results in concomitant change in the values and structures of most social institutions. This view is effectively demonstrated by Abbot³ in his study of crime in Developing Countries. Abbot shows that there is a similarity in pattern of crimes rampant in Developing Countries.

From the beginning the colonial government insisted on a separation of the juvenile system from the adult one. To this end, a Reformatory School was set up at Kabete as early as 1909.⁴ Initially, fifty-nine inmates were taken in but no constructive measure was taken to train them in any trade or skills.⁵ It was imperative that something be done to give the Reformatory a meaning as well as to combat juvenile delinquency effectively. Therefore, in 1934 a Committee⁶ was appointed. Its terms of reference were:

- i) to consider what measures should be adopted to curb juvenile crime
- ii) to make recommendations as to the future of Kabete Reformatory.

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The Committee recommended that there was need for separation of the juvenile and adult systems and that Kabete Reformatory be turned into an Approved School.⁷ The 1934 Juvenile Ordinance was passed in view of these recommendations. In the same year another approved school was opened at Dagoretti. As per the Committee's recommendations, these institutions were to be run along the lines of English Borstal institutions.

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Yet another Committee was appointed in 1954 to review the whole juvenile system and to make recommendations as to the total separation of the adult and juvenile systems.⁹ The Committee recommended that juveniles be separated from the adult system and that separate courts with constitution and procedure for dealing with these delinquents and children in need of care be set up.¹⁰ The Committee's view was that the "cure for juvenile delinquents called for the treatment of juvenile delinquents as persons in need of care and protection rather than as criminals".¹¹

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In 1963 the Children and Young Persons Act¹² was passed. This Act appears to have adopted the recommendations of the 1954 Committee in toto. Under it, juvenile courts, remand homes and approved schools were established. In the same year, the Borstal Institutions Act¹³ was passed "for the protection of society by providing that such offenders (delinquents) can be given the amount and type of training best suited to their needs and from which they are likely to derive most benefit"¹⁴ Since then, no other changes have been introduced. It is ironical that though our juvenile system is based on the English one the former has remained static despite radical changes that have been effected in Britain, and the escalation of delinquency.

The Social and legal definition of a delinquent

The conventional image of a delinquent today in Kenya is "parking boys and girls" who are to be seen on the streets clad in rags begging for money. In this age of permissiveness and social upheaval the youth are said to have gone "wild" and rebellious. Few people will hesitate to use the words "delinquent" and "teenager" interchangeably. It is therefore hard to construct a definite social aphorism of a delinquent. Very generally therefore, a delinquent is considered as that young person who does acts that are generally unacceptable to the conventional society by which is meant the adult society by and large.

Under the Children and Young Persons Act¹⁷ "Children" in section 2 are defined as persons under the age of fourteen, "juveniles" being persons over fourteen but under sixteen years of age and "young persons" as over sixteen but under eighteen years of age. Only persons between the age of fifteen and eighteen years may be committed to Borstal institutions.

S.14(1) of the Penal Code¹⁸ sets out the minimal age at eight years below which a child cannot be held criminally liable. A child under the age of twelve enjoys an immunity on charges of rape for he is considered incapable of carnal knowledge.¹⁹ However, if it can be proved that such a child knew that the act was wrong morally, he can be held liable. There exists a rebuttable presumption under s.14(2) of the Penal Code that a child below the age of twelve is not criminally liable unless he had capacity to know that he ought or ought not have done the act or omission. For the purposes of this study, we shall use the term "juvenile delinquent" to denote that person between eight and eighteen years of age who commits an act which when committed by an adult is punishable as a criminal offence.

The Etiology of Juvenile Delinquency

There exists a controversy on the subject of the causes of delinquency. In this section, we attempt to discuss some of the theories that have been propounded on the same. It is not possible, however worthwhile, to present all the theories that have been expounded on, in this short study. We therefore shall content ourselves with the discussion of some theories that have held sway for some time as well as the currently vogue ones in contemporary studies. To that end it is convenient to classify the theories into three groups.²⁰

- i) Biogenic theories
- ii) Psychogenic theories
- iii) Sociogenic theories.

It is apt to mention at this stage that though these theories have been expounded to explain delinquency generally, they do have a general bearing, in the same sense, to child prostitution it being one form of delinquency. Our next chapters will grapple with child prostitution more specifically, suffice now to say that there is a nexus between the causes of delinquency generally and,

therefore, child prostitution.

Biogenic Theories

The father of the so-called positivist criminology ^{Caesar} Lombroso²¹ postulated that some persons are born criminals. These, he said, had definite physical traits - asymmetric face, ^{Cranium} excessive jaw, eye defects, large ears, receding ^{Jaws} forehead, prominent cheek-bones, twisted nose, ^{long} swollen lips and many others.

These physical "stigmata" - abnormal physique - indicated that criminals were "atavistic", a kind of genetic throw-back to an earlier form of animal life. This theory has held sway for quite some ²² time though its importance has relatively diminished in recent years as a result of more scientific analysis.²³ Our submission is that the theory cannot stand even the most basic empirical tests, for not all criminals bear these abnormalities. Indeed, that some criminals have such features is a function of social distribution which is natural. The connection Lombroso makes between the existence of such stigmata and criminality is so strained that at the best it means no more than - "he looks

like an animal, he surely will behave like one!"

Following closely on the Lombrosian theory the Gluecks²⁴ have come up with a more interesting analysis. In their study, they identified the presence of "Mesomorphic" bodily structure among delinquents - that "mesomorphs" - boys with athletic muscular body types, were more frequent among offenders than non-offenders.²⁵ Unlike Lombroso who introduces "atavism" as the connection between criminal behaviour and physical deformities the Gluecks make no such connection between mesomorphic forms and delinquency. Their theory therefore, short of describing the physique of delinquents has little relevance as an explanation of the causality of delinquency. The results of their research can be explained simply that with all the risks involved in delinquent acts the best recruits will certainly be drawn from the more agile persons. The predominance of mesomorphs among delinquents is a function of social selection rather than biological determinism.

It is clear that so far no credible biological explanation of delinquency has been advanced. All the biological theories, that by and large are derived from Lombroso,²⁶ fail to explain the absence of delinquency in persons well fitted to be "atavistic" or "mesomorphs".

Psychogenic Theories

Psychologists have espoused long and often complicated theories with regard to delinquency.²⁷ It follows that some are totally worthless to persons lacking a psychological orientation. The most influential person in these studies is Sigmund Freud, a Viennese psychiatrist who is said by his followers to have "discovered" the unconscious part of the psyche and his interpretation of the human mind's function and dynamics on personal development hailed.

Freud²⁸ divided the mind into three parts - the Id, Ego and Super-Ego. The "id" is the biological impulses which must be socialised by society through the Super-ego which is the embodiment of morals in that society. The "ego" and "super-ego" emerge as a child, who is born as an "id" grows up. Early childhood experiences and sexual factors play an important role in the formation of the super-ego and ego, and consequently in the process of personality development. Freud's theory, like Lombroso's is that man's criminal tendencies are inborn. The civilized society therefore has to build reinforcements in order to curb the criminal manifestations of these instinctive aggressive tendencies. He wrote:

"Civilized society is perpetually menaced with disintegration through this primary hostility of men towards one another... the passions of instinct are stronger than reasoned interests. Culture has to call up every possible reinforcement in order to erect barriers against the aggressive instincts of man..."²⁹

A later study by Frantz Alexander and Hugo Staub³⁰ amplifies this finding by stating that man enters the world as a criminal, not socially adjusted. For them, the only difference between a criminal and a non-criminal is that the latter "partially controls his criminal tendencies and finds outlets for them in socially harmless activities". The pertinent question here in our view is why some people can control their aggressive instincts while others may not given the fact that the two may be under the influence of the same super-ego.

subnote
① An Australian psychologist, Aichorn has suggested that family child-care and lack of the

child's adequate socialisation leads to delinquency. Insisting further that environment is a precipitating and not a primary causation force, he says, "there must be something in the child himself which the environment brings out in the form of delinquency" ³²

These theories in addition to ignoring the class-patterning of juvenile delinquency are incapable of empirical verification since they remain strictly within the periphery of the trained psychologist's grasp, as earlier noted. Further, to investigate and measure emotion, a complex state of feelings that requires so much attention to conscious experience with often contradictory responses is not easy and is far from reliable. The variables that arise from these personality studies mainly when discussing the "unconscious" cannot be subject to scientific study because their existence is only assumed by speculation and interpretation.

Nevertheless some of the psychogenic theories, though subject to similar attacks sound more plausible for one can explain them in tangible terms supported by social observation. ⊕ Children who

come from tension-ridden or broken homes are more prone to delinquency.³³ This is because the situation causes anxiety in the child. Most delinquents in Kenya are said to come from broken homes.³⁴ Considering the pervasive poverty in society, such children who often live with the mothers, are deprived and may do delinquent acts to obtain food and even clothes. The single parent may be so busy trying to make the two ends meet e.g. selling illicit beer, prostitution, that there is hardly any discipline on the child, who may anyway not escape the influence of the illicit life in the area where he stays.³⁵ The anomie theory espounded by Durkheim³⁶ can also be explained from a psychological perspective in that the gap between aspirations and fulfilment of goals in society creates in an individual a state of "lawlessness" and disillusion caused by frustration, through the legal means of attaining social goals being unavailable to him. It can be seen that these theories can be explained in psychological terms or alternatively concretely tangible terms, hence are more plausible.

Theories that attempt to explain delinquency as of psychopaths characterised by ego-centricity,

a-social behaviour, insensitivity to others and hostility lack any plausibility because delinquents are no more psychopaths than non-delinquents.³⁷

Sociogenic Theories

At the outset, it is trite to mention that the bulk of delinquents in Kenya come from slums or other similarly poor areas. This does not mean that there is no incidence of delinquency in well-to-do classes but that such incidence is low and often concealed. The social situation of non-protection and exposure of the lower-stratum delinquents makes them more susceptible to arrest than their well-off counterparts. The writer therefore finds it of paramount importance to attach weighty consideration to sociogenic theories which in her opinion go a long way in explaining the high rate of delinquency in Kenya especially in the lower classes. This is supported by the well-founded reason that such theories are capable of empirical verification. That the overwhelming number of delinquent offences are acquisitive (theft, robbery and among females also prostitution) buttresses the need for a materialistic approach in explanation. 38

In The New Criminology,³⁹ the authors argue for a political-economy of criminal action and the reaction it excites. Criminality should not be alienated from the dynamics of society but rather seen as a normal aspect of it. The positivist sees the individual deviant as separate from his society, an eccentric - unaffected by the ebb and flow of social arrangements, social change and contradictions in society that is essentially capitalist. For them, crime is seen as the problematic non-conforming and bohemian behaviour within the framework of those social arrangements, which are in turn informed by the obtaining mode of production.

Taylor, Walton and Jock,⁴⁰ like Marx see crime as an expression of men's situation of constraints within alienating social arrangements and partly an indication of the struggle to overcome them.

Many sub-theories cluster around the socio-genic theories of etiology. Such are broken homes, tension-ridden homes, conflict of culture etc. Some of these will emerge as we discuss the contributions of various sociologists in this field.

Ohlin and Cloward ⁴¹ have stressed the principle role played by the mode of production and its attendant culture in the incidence of delinquency. The disparity between the aspirations held up to the lower-class youth and the means to fulfilment, causes a problem of adjustment. Adolescents who form delinquent subcultures....

"have internalised an emphasis upon conventional goals. Faced with limitations on legitimate avenues of access to these goals, and unable to revise their aspirations downwards, they experience intense-frustration, the exploration of non-conform-
⁴²
ist alternatives may be a result"

⁴³
This postulation is based on Durkheim's theory of anomie - a state of lawlessness experienced by an individual who reaches the cul - de - sac as far as access to attainment of goals aspired for is concerned.

⁴⁴
Merton distinguishes two features of social life: the cultural and social structures. The former consists of goals and norms while the latter is concerned with patterned sets of relationships in which people are involved, the division of society

according to class based on power, wealth and privilege. For him, anomie results not from the break-down of norms alone - "lawlessness" - but as well as the breakdown between goals and legitimate avenues of access to them.

"Aberrant behaviour may be regarded sociologically as a symptom of dissociation between culturally prescribed aspirations and socially structured avenues of realising those aspirations".

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The situation in Kenya is not different from the American one in which the above research was done. Kenyan society being a typical capitalist one recognises class, power and prestige as the ultimate goal in society. And because capitalism is based on the advantage of a cliché at the expense of the greater majority, it follows that few can attain these goals through the legal means. Education which is one of these means has remained accessible to those who may afford it. But even for those who may afford to acquire some education the problem of unemployment dampens any prospects.

Poverty has been listed as one of the major causative factors in sociological studies of delinquency. In Kenya, as already mentioned, most delinquents come from poor homes. There is a steady influx of juveniles who have finished

their Primary School and High School Education into towns in search of opportunities. As it were, these juveniles have no skills which would enable them to acquire jobs, even if the scarcity of employment opportunities were to be ignored. For most, the only alternative is to begⁱ in the streets and/or steal while their female peers who are normally employed as "house-maids" may turn to prostitution. In relation to the anomie-theory and the Kenyan situation it is worth noting that for the majority of delinquents, the first priority is not so much the acquisition of wealth and a luxurious life as such (though they may in their childish fantasies dream of them) but basic needs like food, clothing and shelter. *Be serious!*

The contention by Albert-Cohen ⁴⁶ therefore, that delinquency is "non-utilitarian, malicious and negativistic" characterised by short-run hedonism has no plausibility. That some acts of delinquency are malicious reflects the state of "lawlessness" and frustration of this alienated section.

Undeniably, the family plays a very influential role on the early years of a person.

Cyril Burt ⁴⁷ and Schur ⁴⁸ have postulated the theory

that defective family relationships may affect a child adversely hampering his personality growth. Such defective relationships may be caused by a state of squalid poverty of the parents.⁴⁹ In the words of Schur:

"The family plays a crucial role in placing a child in society by establishing at the outset his neighbourhood, the values his environment fosters, and his socio-economic status- the family is in some ways especially influential in leading to or fending off early criminal involvement".⁵⁰

The family is seen as part of the whole society influenced not only by the economic structure but also the social structure arising ~~from~~ therefrom. This insight has significance because no matter how virtuous a parent may be, there are external influences of a cultural nature prevalent in the society in consonance with the mode of production, which he may not control. Bonger⁵¹ articulates the point well when he states that the "egoistic tendencies"

fostered by the capitalist system breed crime. When a society's policy is individual wealth, class etc., it is not surprising those in society who are denied a chance to acquire these things will resort to other means like robbery, theft and prostitution.

In the foregoing, we have attempted to show the juvenile system in its historical perspective. We also have endeavoured to define "a delinquent" in a social and legal sense. The last section of this chapter centred upon causes of delinquency. We emphasised the role played by the unequal social structure in the incidence of delinquency.

It is our submission that it is virtually impossible to construct a homogenous theory with regard to the etiology of delinquency. There are no hard-and-fast dogmas because there exists no theory within which every form in which delinquency manifests itself sits squarely. Bearing this consideration in mind, our attempt was therefore a typological study of Kenyan delinquency and its probable causes. As already noted, the predominant manifestation of delinquency in Kenya takes the form of acquisitive offences. Our tentative contention is that in

Kenya the malformity of the social structure has the greatest influence in delinquency.

This does not mean however, that no other factors have intercourse with this dominant force in causing delinquency, but that their role is precipitating. Muga⁵² has acknowledged this point thus-stating:

"Crime ... is by and large a function of the multifarious environmental factors including the legal system prevailing in a society which impinge upon an individual... and which all together create circumstances which ultimately predispose the individual to criminal and delinquent acts".

FOOTNOTES

1. Hilary Cartwright and J. Read: Penal Codes of East and Central Africa and the Gambia (The British Institute of International and Comparative Law, London 1963)p.(i).
2. Karl Marx, Excerpt from a Contribution to the Critique of Political Economy in Marx and Engels, Basic Writings on Politics and Philosophy (edited by Lewis Fenr, Fontana 1969) p. 84.
- 2A. Clinnard Abbot: Crime in Developing Countries (John Wiley and Sons Inc. New York, 1973) pp. 1 - 10.
3. Ibid p. 10
4. Circular to Magistrates No. 1 of 1909 2 EAPLR 169.
5. 5 E.A.P.L.R. 220
6. Committee on Juvenile Crime and Kabete Reformatory, 1934.
7. Report of Committee, Ibid.

8. Committee on Children and Young Persons
1954, chaired by Sir Humphrey Slade.
9. Report of the Committee of 1954, Ibid.
10. Paragraph 119, Ibid.
11. Paragraph 52 Ibid.
12. Children and Young Persons' Act No. 8 of
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England (3rd ed.) vol. 40 p. 843.
16. J. Temkin "The British Juvenile System"
(1973) 36 MLR 569.
17. Supra
18. Penal Code (Cap 63 Laws of Kenya)
19. S 14 (3) ibid.

20. This classification is designed from
D.C. Gibbons: Delinquent Behaviour
(Prentice-Hall Inc. Englewoods Cliff New
Jersey, 1970)

21. Stephen Schafer: Introduction to Criminology
(Reston Pub. Co. Inc. Virginia, 1976) p.
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22. See generally:

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1972). pp. 89-253.

This book contains several articles in
section Two, by leading sociologists whose ideas
do not conform to Lombroso's. See also:

Stephen Schafer Supra pp. 37-103.

Jock, Young and Taylor: The New Criminology
(Routledge, Kegan & Paul, London 1973) Chapters 7 -9.

Thorsten Sellin "The Lombrosian myth in Criminology" A.J.S. 1937, p. 898-899.

24. Sheldon and Eleanor Glueck: Physique and Delinquency (Harper & Row, New York, 1956)

25. Ibid. p. 219

26. Some of these ideas are discussed in Stephen Schafer ibid. pp. 43-60. The author discusses followers of Lombroso from Ferri, Raffaele, Garofalo, Hans Kurler to Hooton.

27. Early psychologists e.g. Benoit Augustine and Henry Mudsley associated delinquency and crime with "mental degeneration" and for them the study of psychological causes of crime was tantamount to one of "morbid anthropology", Schafer supra p. 59. Others like Sutherland Cressy blamed criminal behaviour on mental illness, Schafer supra p. 61. The theory of Sigmund Freud which will be discussed in this section was also trendy and was reproduced in various articulations by his followers e.g. William Healy and Augusta Bronnen Schafer Supra p. 66.

28. Schafer, ibid. p. 65
29. Sigmund Freud: Civilization and its Discontents
(Double - Day Anchor Books, New York, 1930)
pp. 61-62.
30. Alexander & Staub: The Criminal, the Judge and
The Public: A psychological analysis (Mc Millan
Co. New York, 1960) pp. 34-35.
31. August Aichorn: The Wayward Youth (Meridian
Books, London, 1955)
32. Aichorn, ibid., p. 30.
33. Cyril Burt: The Young Delinquent (University
of London Press, London 1961)
34. In a research by E. Muga in 1970 the finding
was that out of a total number of 1,171
delinquents that year, 691 came from families
in which parents did not live together for one
reason or the other. See generally, E. Muga:
Crime and Delinquency in Kenya (E.A.L.B. Nairobi,
1975) p. 121 et. seq.

35. A study that illuminates on the typical life of a slum exemplifies the point we are making. Nici Nelson: Some aspects of informal social organisation of female migrants in a Nairobi Squatter Neighbourhood, Mathare Valley (Unpublished, 1975).
36. A discussion of this theory will ensue later in this section.
37. See footnote 27. Supra.
38. Erasto Muga, Supra pp. 130-137.
39. Jock, Young, & Taylor Supra chapter 9.
40. Ibid.
41. Cloward and Ohlin: Delinquency and Opportunity (The Free Press, New York 1960)
42. Ibid. p. 86.
43. Rose Giallombardo, Supra, pp. 93-102.
44. Robert Merton: Social Theory and Social Structure (Rev. & Enl. Edition Glencoe III,

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The Free Press New York, 1957) pp. 1-23

45. Ibidi, p. 134

46. Albert Cohen: Delinquent Boys (The Free Press, New York 1955) p, 39.

47. Cyril Burt, Op. cit.

48. Schur E.M. Our Criminal Society (Prentice-Hall Inc. Englewoods Cliffs New Jersey, 1969.

49. Nici Nelson, op. cit.

50. Schur E.M. supra p. 93

51. Bonger: "Criminality and Economic Conditions" (1955) 46 J.C.L.

52. Muga Erasto: "Is criminality Inherited?: A survey of Contemporary Research" (1972) 2 vol. 2. J.R.D. p. 125.

CHAPTER TWO

ON PROSTITUTION GENERALLY, AND CHILD PROSTITUTION

In this Chapter, we propose to discuss the social evolution of prostitution generally in the first section, and pay especial attention to child prostitution in the second section.

¹
Websters Third New International Dictionary defines a prostitute as "a man or woman who engages in promiscuous sexual intercourse for payment".² The International Encyclopaedia of the Social Sciences defines prostitution as the "granting of sexual access on a relatively indiscriminate basis for payment either in money or goods, (it) can be performed by either males or females".³ In the ensuing discussion, it is both these meanings of a prostitute and prostitution that will be adhered to.

⁴
Engels traces prostitution as far back as the Hellenic days of Greek civilization when young women would be dedicated to Temples as dancers. Men could have sexual intercourse with these women at a fee. With the rising inequality of property over communal ownership, the hitherto religious prostitution turned into open prostitution. At this period too, monogamous

marriage or "pairing" had emerged because the man, who had acquired a dominating status by virtue of the individual property he had, wanted the sons he had sired to inherit that wealth. Monogamy was therefore an innovation to ensure the paternity of his children if they were to be his heirs. It can be seen that monogamy was a phenomenon that arose from the concentration of wealth in the hands of one individual - the man - and the need for heirs to inherit his wealth.⁵ This meant that the activities of the man which culminated in wealth came to be considered more valuable than the wife's role of rearing children, taking care of the family etc. Hence the woman suffered diminished status -

"... the man took command in the house also; the woman was degraded and reduced to servitude. She became the slave of his lust and a mere instrument for the production of children"⁶

Alongside the monogamous marriage developed prostitution or haeterism, due to the dominating status that man had acquired over the woman through acquisition of wealth. The old sexual freedom to the advantage of the man was perpetuated.

In capitalism, bourgeois marriage today is sheer prostitution in the sense that for the woman it is an exchange for social security from men; the former having been denied access to economic prospects and their roles as mothers and wife debased by wage-labour. These women are prostitutes when they bend to the manipulations and demands of their husbands. Monogamy, while completely immobilizing a woman continues the old sexual freedom to the advantage of men.⁷ However, where both the man and the woman have to sell their labour under capitalism, there exists no sex differences as such except brutality towards women, that has spread since the introduction of monogamy. Such brutality is manifested in the beating of wives, disrespect for the woman generally, regarding women as the weaker sex hence to be manipulated, used and bull-dozed. In short, all that goes with male chauvinism reducing a woman to an object, a means to an end, whatever it is. Men consider women to be their sexual property limited from other males hence will be repelled, and object to female promiscuity:⁸

"... the desire on the part of the male to keep the female subject to his will, to have her available for his sexual satisfaction on demand...

and yet to have the freedom on his part to have any other woman he wishes within or without the sanctioned institution of marriage can be partially explained by male behaviour".⁹

Such explanations are inter alia the man's desire to own the woman; hence he has regulated sexual behaviour especially that of a woman whereas his is "natural". This is the decadent and pretentious morality of capitalism which Marx and Engels scorn thus:

"The bourgeois sees in his wife a mere instrument of production He hears that the instruments of production are to be exploited in common and ... can come to no other conclusion than that the lot of being common to all will likewise fall to the women. (He) ... not content with having the wives and daughters of the proletarians... not to speak of common prostitutes, take great pleasure in seducing

10
each other's wives"

In our first chapter we quoted at length from Marx on the view that the economic base generally determines the super-structure of society, i.e. the law, political structures, social consciousness and spiritual processes. The above view albeit referring to the bourgeois class is not applicable to them alone. In a capitalist society of class stratification, the ideology of the propertied class is the prevailing thesis therein. This means that it is the dominating ideology and that persons of other classes will buy it because of the slave-mentality¹¹ injected into those lower classes. The picture then is complete, the culture of the propertied class or its values and aesthetics are internalised by the lower classes who then behave like the bourgeois. Nowhere does this aspect manifestst itself better than in the dehumanized and materialistic nature of these classes.

In the foregoing we have endeavoured to establish the social context of prostitution by showing that prostitution in society is directly related to marital and familial institutions, and ultimately the economic structure obtaining. Our premise has been that "the status accorded to

a prostitute in society is largely dependent on
the prevailing sexual ethos"¹²

We now turn, in this section to the causality of prostitution generally. Enriques departs from the premise that prostitution serves no purpose except the incontinence of men.¹³ He therefore sees as one cause of prostitution the biological needs for sex by man and the collorary supply of it by woman outside marriage.¹⁴ Perhaps the question to pose here is whether men have a higher sexual urge, a question whose answer is beyond the scope of this study. And is this excessive demand for sex not psychically induced by sexist consumerism through mass media - advertisements, ponography, music etc, etc, so that the contemporary "macho-man" is the man who "conquers" as many women as possible? For such men, as well as prostitutes,

"sex is reduced to a commodity,
the human body is de-erotized
and a false sexuality is imposed
on life in general and on people's
relations and their products...
the free expression of instinctive
drives is turned into controlled
aggression".¹⁵

All human activities in capitalism are reduced to their relative value for the production process and become exchangeable for things of an equivalent value - the emphasis on materialism.

An adherent of the Euriques view, Dr. Gachuhi ¹⁶ Mugo argues that the basic causes of prostitution are institutional control of sex through prohibitive regulation inculcated through marriage, and he goes further to include the inequality between attractiveness, ¹⁷ social inequality between classes and especially between males and females. It is trite here to note that bearing in mind the number of married men who take prostitutes, there must be something wrong with the marriage institution, or if not, the general attitude towards sex in contemporary society, as we have shown above. It is true that extremely ugly and handicapped persons will otherwise not get their sexual satisfaction elsewhere but how does one explain the most ugly and handicapped men who marry beautiful wives and as well go to prostitutes? In view of this, it appears to us then that the inequality of classes that Dr. Gachuhi refers to is more persuading and especially considering that today, wage labour has almost obliterated sex differences and that we do have male prostitutes.¹⁸ As can be noted, the

views above present prostitution as a function of demand and supply. Our contention is that as an explanation of the causes of prostitution they are superficial and lack analytical depth which would explain why there is a demand and the response of supply.

19

Otto Weininger attempting to trace the causes of prostitution states that there are two distinct poles of femininity - Mother and Prostitute. Denying that women become prostitutes because of economic conditions, he writes:

"Prostitution is not a result of social conditions but of some cause deep in the nature of women. Prostitutes who have been "reclaimed" frequently, even if provided for, return to their old way of life... prostitution cannot be considered a state into which men have seduced women ... where there is no inclination for a particular course the course will not be taken".

20

For Weininger therefore while some women are born prostitutes others are born mothers i.e. they are biologically inclined to these roles.

The best criticism proffered to this view is by Hellen Deutsch,²¹ a psychiatrist who states that in all her work she never met a prostitute without a trace of tenderness, one not only un-maternal but also a -maternal, hence that the distinction between the Prostitute and Mother is probably a fiction of men.²² Even in social life one notices prostitutes who are better mothers to their children than the so called born-mothers. Prostitutes have even been known to get married and settle down as any other woman. In the early part of this section we showed that there exists no difference between women who prostitute and the women who marry for security in the context of bourgeois monogamous marriage. It follows therefore that one cannot possibly discuss Weinenger's feminine poles within that context for marriage therein is institutionalised prostitution.

Further, more recent research has shown that there is a high incidence of frigidity in prostitutes,²³ a natural or acquired sex anaesthesia. Given that a major characteristic of prostitution is sexual promiscuity (and if sex is for enjoyment) the theory of born-prostitutes collapses.

organic deficiencies; that prostitutes were biologically and psychologically abnormal. Toeing this line, Glower²⁵ referred to prostitution as of "apathetic, mentally backward and emotionally disturbed" persons. The above two theories are rendered incredible by the fact that there are some persons of similar disposition who are not prostitutes. If we agree that the reaction of society in early society (and even today) to prostitution was one of disgust and repulsion, these theories would seem biased. A prostitute was/is a pariah in society - alienated and ostracised - a situation that creates good breeding ground for mystification. Prostitutes are no more psychopaths and alcoholics than other "normal" persons. Indeed if we were to consider the term "prostitutes" broadly it would include women even in the University who exchange sex for money from old men; and are they mentally backward, psychopaths, emotionally disturbed...?

Wilson you

26

Enriques states that another cause of prostitution could be as a result of deprivation of love and affection, and alienation. The woman may therefore in prostituting herself be avenging herself against those who refused her love. It

is true that a poor family life may adversely affect a child's personality growth but it would seem that this alone would not make her a prostitute unless coupled with other factors e.g. economic. Parents who are poor are bound to be too busy earning bread to discipline or give love to their children. The child would interpret this as rejection though there are situations where parents outrightly hate their children for being "burdensome". Unless such a child comes from a poor background one wonders why she would sell her sex favours. If she was in search of love, affection and appreciation then she would offer her sexual services **freely.**

We now turn to the social-economic factors that have been held out as causing prostitution.

27

Abbot cites prostitution as one major problem facing developing countries. He sees it as a function of development processes that include urbanization and industrialization. The structure of society is fast-changing necessitating a change of values. Dr. Gachuhi,²⁸ subscribing to this view has stated that Kenya is in a process of turbulent social changes -

"As more and more people migrate to towns and cities, from rural areas in search of better living conditions ... as some members of our society display wealth which is apparently earned through the modern sector, the desire and determination of other members who have less will increase" ²⁹

As we attempted to show in our first chapter, the cohesive socio-economic structure existing prior to colonialism was dismantled. The result is that the rural areas are impoverished from scarcity of land which hitherto had been the source of life for the people. There is an urge for the landless to flock urban areas seeking to sell their labour for wages. Some of those who do not get employment may resort to male/female prostitution as an only alternative. The situation is compounded by the capitalist emphasis on material in society. It is a situation of anomie, discussed in chapter one. Prostitution therefore has its economic causes. Horton and Leslie ³⁰ express a similar view stating that, "If it is agreed that prostitution is the selling and

buying of sexual favours, the fact that it has economic causes should hardly occasion surprise".

31

Enriques sees our society as a competitive one where women are usually economically disadvantaged, and who therefore can and do use sex to enhance their social and economic status.

"Like any other industry prostitution is governed by the demand of the need to which it responds. As long as that need and demand persist they will provoke an offer".³²

He sees poverty and need as causes of prostitution. The situation, bluntly put, is this; that there are women or men who are denied any economic prospects and in need of the basics of life. On the other hand, there are men who have migrated from their families for employment, or who for some reasons go for extra-marital frolics and represent the demand for sex. The deal is complete when the offer and acceptance are made. To illustrate the credibility of his point, Enriques cites the escalation of prostitution in Russia after the 1917 Revolution, the period of the Industrial Revolution in Britain and Germany as well as that part of Europe that was occupied during the Second World War.

33

A research by Rutasitara in Mombasa shows that over sixty per cent of the girls under study (sixty) came from unstable families of peasant standing and had little formal education. Some of these girls were under-age and were said to have started at the early age of thirteen. Out of the sixty girls forty-two per cent were deprived of their parents by death, divorce, or the mother had never married.

Before turning to the next section it is necessary to point out that child prostitution hinges on the same causes as other prostitution. It is no longer a question of debate whether child prostitution among males and females exists in our society. Any casual observer who walks along Kenyatta Avenue and Koinange Street in Nairobi will notice girls who hardly look fifteen, clad in cheap clothes, turbans and socks whistling and calling out all kinds of promiscuous obscenities to any would-be client.

We shall deal with some theories peculiar to child prostitution that have been advanced. Cyril Burt has placed the cause of child prostitution in over-sexedness. He argues that

such children have in their early age been involved in sexual relationships, a fact that leads to over-sexedness and prostitution. ³⁶ Glover too has shown prostitution among children as related to early infantile sexuality and that is often involves unconscious homosexuality. To him therefore, child prostitution is "a regressive phase of sexual development and like other regressive mental characteristics is likely to be activated in borderline cases by the factor of emotional stress"³⁷. Such major causes are lack of adequate family love and manifest irregularities in the life of the parents. He rejects that economic factors are origin but precipitating factors of juvenile prostitution.³⁸ Gibbens also attributes juvenile prostitution to psychological causes emanating from the family. The psychological maladjustment is aggravated by the economic situation so that the tendency is a realised. He sets out three types of child prostitutes -

- (i) the dull, crude and unintelligent personality
- (ii) the rebellious and defiant type, and
- (iii) the apparently un-emotional competent and successful type.

While not denying that the home situation is influential in shaping a child, we contend that not all girls who turn to prostitution come from tension-ridden homes though they be poor. It is also true that such tension in the home may well be a product of utter poverty prevailing therein. The psychological condition that turns a girl into a prostitute may also be a function of abject poverty in the home; indeed some mothers who are themselves unmarried have been known to send their daughters to prostitute in order to acquire the basic needs of the family.³⁹ As we argued in Chapter One, it is possible to see psychological complexities in the perspective of actual tangible terms.

40

In a research on Nairobi child prostitutes in 1962, the findings showed that the majority of juvenile prostitutes came from poor homes, were relatively uneducated and that they lived with one or both parents who were poor.⁴¹ Such girls had perhaps been courted by an old man who made them pregnant promising to marry them but later abandoned them. They now have to fend for themselves and their child, and sometimes families.

Apart from this destitute cases, there are school girls and boys who practice prostitution in return for money and small gifts.⁴² There are also the girls in commercial colleges who, envying their better-dressed peers turn to prostitution for food and clothes because their parents being under economic constraints, can barely afford college fees, which are exorbitant.

We met Njeri in a group of her friends standing next to Biba Shop along Kenyatta Avenue in Nairobi. On persuasion she told us the story of her life. She is fourteen years old and hails from Kawangware (a slum near Nairobi city), the eighth of a family of eleven children. Her mother brews chang'aa and has no other means of income. Njeri has gone up only to Standard Three of Primary Education, she now earns a living through prostitution. Father Grol who has for many years been head of Undugu Society which tries to rehabilitate young boys and girls had this to say of juvenile prostitutes:

"The typical story... the girl comes to the city to be employed as an "ayah" having dropped out of school. She becomes exposed to the alluring life of the city

and prostitution is the only
answer... she abandons her
job which doesn't pay much
43
after all".

In an interview with Mrs. Kimani, a Probation Officer at the Nairobi Juvenile Court, we learned that over 80% of the girls who are ever charged with prostitution at that court come from Mathare and Kibera slum areas. She further added that some were even sent by their mothers to get some money for the family.

Mr. Nakitare, a leading sociologist and Head of the Nairobi City Commission Social Services and Housing Department, asked to elucidate on the causes of child prostitution said,

"The problem starts at home...

/It has_7 its origin in the
child's home; its parents.

I see it as a symptom of the
social-economic environment
of the home. I certainly do not
think that sexual desire on
the part of the child has
anything to do with it".⁴⁴

We would add that the socio-economic environment of the home should not be considered in alienation of the whole socio-economic structure in Kenya i.e. the capitalist structure that leaves out thousands of masses uncatered for even as far as basic needs are concerned. It is a structure in which the class with property lives such a radically different life from their anti-thesis that an observer would not believe the two exist in the same country.

45

Carlebach at the end of his research summed up the situation thus:

"We are dealing not so much with depraved as deprived youngsters ... girls who, through no fault of their own have been denied the security and stability of a normal family life."

In this Chapter, we have attempted to study the phenomenon of prostitution in society and its probable causes. The last section is complementary to the first one, since, as noted earlier, the causes of prostitution in adults are relevant too to child prostitution. Section Two was therefore short to avoid superfluity

but was found necessary in that it represents views on the Kenyan scene regarding the causes of child prostitution. At this juncture, no closing line would be more apt than that of a retired French prostitute Jeanne Cordelier, of a poor background who says:

"Prostitution is increased by everything in society. Advertisement radio, the movie, all those things you want to possess, and
46
to get them you need money"

FOOTNOTES

1. Webster's Third New International Dictionary
(G & C Merriam Pub. Co. U.S.A.)
2. Ibid; p. 1822.
3. International Encyclopaedia for Social sciences
v. 11 & 12 (Mc Millan Co. and The Free Press,
New York) p. 592.
4. Engels: The Origin of the Family, Private
Property and the State (People's Publishing
House, Bombay 1944) pp. 35-85.
5. Ibid.
6. Engels op. cit. p. 56
7. Engels op. cit. p. 71
8. Dr. Mugo Gachuhi: Marriage and Prostitution;
A Theoretical Consideration, IDS Working
Paper No. 6, 1972 (unpublished) p. 10.
9. Ibid. p. 11

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10. Ben Turok (editor): Revolutionary Thought in the Twentieth Century (Zed Press, London, 1980) p. 10.

11. The connotation of slave-mentality as used here is found in Paulo Freire: Pedagogy of The Oppressed (Penguin Books, Middlesex, 1972) p. 25. The oppressed have internalised the oppressor so that "...to be is to be like, and to be like is to be like the oppressor".

This idea is also well articulated by Ngugi wa Thiongo: Education for Culture, excerpt from Barrel of the Pen (unpublished) pp. 92-3 read in Zimbabwe in 1982.

12. Fernando Enriques: Modern Sexuality (Mc Gibbons and Kee, London 1968) p. 304.

13. Ibid. p. 305.

14. Enriques supra p. 308

15. Reimut Reiche: Sexuality and Class Struggle (Verlag Neue Kritic, London 1968) p. 25.

This book contains a most-telling insight into the capitalist sex culture in decadence.

16. Gachuhi Mugo, op.cit. p. 15. Professor Mungai, an outstanding academician has held similar views consistently. see Daily Nation, Nairobi September 7, 1978 and Daily Nation Nairobi June 23, 1973.
17. Merton and Nisbet: Contemporary Social Problems (Harcourt, Brace and World Inc. New York 1966) p. 380. Authors argue that prostitutes provide sexual services for those who, due to ugliness, physical handicap, etc. fail to get the same services in the more "legitimate market".
18. Daily Nation, Nairobi May 5, 1975- Two men convicted of soliciting for immoral purposes. Daily Nation, Nairobi November 7 1980 - Twenty men admitted charges of soliciting for purposes of prostitution, 4 of them under-age. See also Mugo Gachuhi: Anatomy of Prostitutes and Prostitution in Kenya IDS Working Paper No. 113 1973 (Unpublished) p. 6.
19. Otto Weininger: Sex and Character (Kegan and Paul Co. London, 1908).

20. Ibid. pp. 216 - 217.
21. Deutsch Hellen: The Psychology of Women
(Little, Brown and Co. London 1947) pp. 33-50.
22. Ibid. pp. 33-4
23. Enriques op. cit. p.311.
24. Enriques op. cit. p. 310
25. Edward Glover: The Psychopathology of Prostitution
(I.S.T.D. Publication, London 1943) pp. 7-9.
26. Enriques op. cit. p. 313
27. Clinnard Abbot: Crime in Developing Countries
(John Wiley & Sons Inc. New York, 1973) p. 62
28. See Gachuhi M., 1973 op. cit.
29. Gachuhi, 1973 op. cit. p. 1
30. Horton and Leslies: Sociology of Social Problems (Appleton - Crofts 3rd Ed. New York, 1965) p. 195.
31. Enriques op. cit. p. 308.
32. Enriques op. cit. p. 309

33. W.K. Rutasitara: Mombasa Bar-girls; A study of Prostitution and Veneral Disease in a Kenya Sea-Port, (Dissertation in Public Health, Medical School Makerere University, 1970). pp. 55-7. (unpublished)

34. Daily Nation, Nairobi October 23, 1980.

Three lodging houses closed in Eastleigh after found promoting prostitution among school-children; a student of St. Michael Primary School found sitting on a bed with two men on a surprise visit by the Eastlands Estates Leaders Sub-committee.

Daily Nation, Nairobi November 7 1980 - Four out of twenty-nine males who admitted soliciting for prostitution at Nyamakima lodging were under-age.

Daily Nation, Nairobi October, 29, 1982
The increase of child-prostitution in Murang'a district.

Kenya Times, Nairobi November 25, 1983
Child prostitution rampant in Nairobi.

35. Enriques op. cit. p. 311

36. Glover op. cit. p. 7

37. Glover ibid.
38. Gibbens quoted in Julius Carlebach:
Juvenile Prostitutes and Nairobi. No. 16
E.A.I.S.R. 1962, Kampala) p. 10.
39. Interview with Mrs. Kimani, Probation
Officer, Juvenile Court, Nairobi.
40. Carlebach, op. cit.
41. See Appendix 1 & 2 based on Carlebach supra
pp. 12-20
42. M. Gachuhi 1973, supra p. 11
43. Daily Nation, Nairobi June 6, 1982
44. Kenya Times, Nairobi November 11, 1983.
45. Carlebach, supra p. 42.
46. Daily Nation, Nairobi August 2nd 1978.

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Appendix (i)

According to Carlebach's research, the following was the education status of the twenty-five juvenile prostitutes under review. Also shown is the standard of education among non-prpstitute juveniles as per 1962. (see page 20)

Standard of Education	Juvenile Prostitutes	Ordinary Juveniles
Standard 1	1	-
II	2	-
III	2	1
IV	6	9
V	2	1
VI	3	2
VII	2	1
VIII	1	-
NIL	3	11
NOT KNOWN	3	2

Appendix (ii)

The following was the social background of the juveniles under review (see p. 12, Carlebach).

Father	Dead 9	Unemployed 5	Employed 1	Farmer 2	Unknown 7
Mother	2	16	1	-	1
		M O T H E R S' OCCUPATION			
	House- wife	Cheap Labourer	"Shamba"- girl	Prosti- tute	Offal- seller
	12	6	1	4	1

CHAPTER THREE

TREATMENT OF DELINQUENTS

In this Chapter we intend to discuss the kind of treatment accorded to delinquents right from the time of arrest upto determination of their case in any of the methods of disposal available at law.¹ It should be noted that the use of the word "delinquent" in this context denotes the young prostitute who is our main concern in this study.

Usually, the first contact that a delinquent gets into with the law takes the form of arrest by police officers. The latter have a discretion to release her or bring her before the Juvenile Court. In Kenya, and Nairobi especially, the young prostitutes are arrested on police swoops either in streets or in bars. Writing on juvenile encounters with police, one sociologist has stated that "the stigmatisation resulting from police apprehension, arrest and detention actually reinforces deviant behaviour".² There exists in most african states a colonial legacy which associates the police with ruthlessness and brutality.³ The public attitude towards the police is one of fear and distrust.

In an interview conducted in Kampala, among 102 delinquents who had been through police interrogation they saw:

"the police as representing an oppressive, corrupt and inhuman aspect of society... they particularly singled out the police cruelty towards suspects and police intimidation to coerce the suspects to make confessions."⁴

Police harrassment and brutality in Kenya is an undeniable aspect of our society today. It follows that young prostitutes who come into contact with them are harassed resulting in their stigmatisation and/or hardening.

The Juvenile Court

The juvenile court is established under s.3. of the Children and Young Persons Act.⁵ It has jurisdiction to hear all cases in relation to persons under eighteen years of age except where the offence is manslaughter or an offence punishable by death or where that person is jointly charged with an adult.⁶ Various attempts are made in the Act to distinguish the juvenile court from the

adult courts. Under s 4 the court is to sit in a different building or room or on different days or times from those in which sittings of courts other than juvenile courts are held. No person shall be present except members and officers of the court, parties to the case before the court, their advocates and witnesses and other persons directly connected with the case. Also allowed are parents or guardians of any person before court, bonafide representatives of newspapers and news agencies and such other persons as the court may authorise. Under s.5 publication of particulars of juveniles' names, address, school, photographs etc, likely to lead to the identification of such person are prohibited. The words "conviction" and "sentence" are not to be used on children and young persons but instead "finding of guilt" and "an order made upon such finding" consequitively.⁷

The juvenile court presents two images, viz the legal and socio-agency image.⁸ In its legal image the court is concerned with the protection of the community against delinquent elements while in the latter, the welfare of the child in accordance with the juvenile courts basic philosophy comes to the fore.

"The purpose of the juvenile court is not to inflict a penalty on the child but to save him from further delinquency... its success therefore depends on a comprehensive understanding of all significant aspects of the case... if treatment is to be directed to causes and adapted to the needs of the individual, the child himself must be studied - his physical condition, his personality and the driving forces of his conduct".⁹

Prima facie, these two images are in contention.

On the one hand, the court must protect the society and on the other diagnose the offender's difficulty, treat his condition and fit him back into the community. The court is caught in a dilemma. In the words of J. Masime "the judge must balance the welfare of the child in accordance with the juvenile court's basic philosophy against the protection of the community"¹⁰ Indeed s.14 of the Children and Young Persons Act¹¹ states that every court in dealing with a person under eighteen who is brought before it shall have regard to his welfare and shall take steps for removing him from undesirable surroundings and for securing that proper provision be made for his maintenance, education and training.

This dilemma calls for great skill and experience on the part of the magistrate. The great reliance on professional judgement is the key to the mystery contained in the juvenile courts, and more generally the riddle of the whole administration of juvenile justice.

"The whole system depends on the judicious use of judgement ... the reliance on judgement based on experience and training is the distinctive feature of any system promoting individualised justice as a principle" ¹² (Emphasis added)

The magistrates who sit in juvenile courts are normally University Graduates of the Law Faculty, where no special training is given in view of dealing with delinquents. This deficiency in a sociological orientation is certainly a handicap in reaching a balanced judgement.

We now turn to the various disposals that are available to magistrates. In all there are ten alternatives of disposal.¹³ We shall deal with the most salient and commonly resorted to. Under s.17 (a) the magistrate may discharge the offender under s. 35 (1) of the Penal Code.¹⁴

He may make an order of Probation under the Probation of Offenders Act ¹⁵ in accordance with s.17 (b). Committal to care of a fit person, relative or other, approved society or approved voluntary institution willing to undertake his case is provided for in s.17(d). If the offender is under 16 an order may be made to commit him to an approved school suitable to his needs and attainments as per s.17 (e). Also subject to s.27 of the Penal Code ¹⁶ the offender may be ordered in accordance to that section to undergo corporal punishment ¹⁷. The court may order a fine, compensation or costs or all of them under s.17(g). Where a person is over 16 years a court may order committal to a Borstal in accordance with the Borstals Act. ¹⁸

Critique

Various criticisms have been made on the juvenile court and disposants applied. Paul Tappan ¹⁹ in "The Nature of Juvenile Delinquency" states that the official procession of delinquency may have severally adverse effects on the delinquent to the extent that the proposed treatment is rendered impossible.

"(T)he young offender is often considered and not infrequently treated as an intractable junior criminal. The curse of the court adjudication and institutional commitment or supervision (probation) is upon him. The stigma is just as real if not as horrendous as that of the convict".²⁰

The processed delinquent feels marked, a feeling which, could lead to more delinquent acts because she may become hardened. According to a Probation Officer at the Nairobi Juvenile ²¹ court some of the girls who are brought before the court have been severally before it. Their defences are normally that they were sent by their mothers to prostitute in order to acquire food and house-rent for the family, she further added. One observes a justification in the defence and that the court should understand her situation and let her be, or so she argues impliedly.

David Matza²² says that in view of such a situation when nevertheless a "sentence" is handed down, a sense of injustice is experienced.

"The moral bind of law is loosened whenever a sense of injustice prevails. Law, whatever

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its guiding principle, trial by
ordeal or due process binds members
of society to the extent that it
maintains a semblance of even-handed
23
administration"

It is our view that Probation supervision in no way
rehabilitates a delinquent if she continues to live
in the same conditions she was in especially when
the parent or guardian is poor, poverty being a
major driving force behind delinquency as shown
elsewhere in this study.

Approved schools or Borstals could have a ✕
positive or negative result on the graduate. According
to Gibbons ²⁴ one of the negative results is that
official handling of a delinquent draws society's
attention to his acts hence stigmatisation.

In Juvenile Victimization, ²⁵ the authors are
cynical of any "positive" results of approved schools.
They argue that in such schools authorities organise
or regulate all institutional activities by rules
and plan them in order to allow the institution to
reach its goals. These rules are looked upon
as so necessary that the staff usually enforce them
with a vigour surprising. Staff interpret adherence
to these rules as a sign that the inmates are show-

ing progress and will eventually be fit for re-admittance to the outside world. Bureaucracy substitutes human values so that the interest for their clients is diminished. The authors further state that mortification in the form of loss of identity results, what with wearing of drab institutional clothing that crushes self-esteem. The situation is worsened by the hostility of the staff in the name of discipline. In an interview with an official with the Children's Department Nairobi, the writer of this study was duly perturbed by the strong emphasis that official laid on discipline in approved schools and especially routine intermittent roll-call done to establish whether any inmates had escaped. Such emphasis coming from an official cannot be taken lightly much as discipline be a commendable ideal. In approved schools all kinds of delinquents are lumped together which would lead those among them who feel lesser delinquent to feel victimised and eventually become harder.²⁶

The probation officer earlier mentioned in this chapter lamented that the teachers in approved schools have no educational training which would enable them to deal with the inmates successfully. Further she added that it is becoming increasingly difficult to fix the discharged delinquent into a

FOOTNOTES

1. The Children and Young Persons Act Cap. 141, Laws of Kenya. Methods of disposal are provided for in s.17 (a) - (k).
2. Rose Giallombardo: Juvenile Delinquency (John Wiley and Sons Inc. New York, 1972) p. 371.
3. Clinnard M.B.: Crime in Developing Countries (John Wiley and Sons Inc. New York, 1973) pp. 215 et seq.
4. Clinnard op. cit. p. 220
5. Children and Young Persons Act. supra.
6. S. 12, Children and Young Persons Act op. cit.
7. S. 15 Children and Young Persons Act op. cit.
8. J.R.O. Masime: "The Dilemma of Juvenile Justice" (unpublished, 1974).
9. K.F. Lenroot and E.O. Lundberg "Juvenile Courts at work - A study of the organisation and method of Ten Courts" 88, 84 (U.S. Children's Bureau, Department of Labour Publication No. 141, 1925).
10. Masime supra.
See also Rose Giallombardo op. cit. p. 369.

11. Children and Young Persons Act supra.
12. David Matza: Delinquency and Drift (John Wiley and Sons Inc., New York 1967) p. 116.
13. Children and Young Persons Act, supra s. 17(a) -(K).
14. Penal Code Cap 65, Laws of Kenya.
15. Probation of Offenders Act Cap 64, Laws of Kenya.
16. Penal Code op. cit.
17. S. 17 (f) Children and Young Persons Act supra.
18. Borstals Act Cap. 92, Laws of Kenya c.f. sections 2,7, 18.
19. Paul Tappan: "The Nature of Juvenile Delinquency" in Rose Giallombardo supra pp. I et seq.
20. Tappan op. cit. p. 12.
21. Interview with Mrs. Kimani, Probation Officer, Nairobi Juvenile Court.
22. Matza supra p. 96.
23. Matza op. cit. p. 102

24. Gibbons D.C.: Delinquent Behaviour
(Prentice-Hall Inc. Englewood Cliffs, New
Jersey, 1970) pp. 221-225.
25. Bartollas, Miller, Dinitz: Juvenile Victimization
(John Wiley and Sons. Inc. New York, 1976)
pp. 30-64.
26. Bartollas, Miller and Dinitz op. cit.
27. Matza *supra* pp. 130-131.
28. See Appendix 1 which is based on statistics
acquired from the Juvenile Court at Nairobi.
The statistics refer to that court alone.

Appendix 1

YEAR 1974

MONTH	BOYS	GIRLS	TOTAL
January	81	5	86
February	75	8	83
March	115	12	127
April	58	12	70
May	142	8	150
June	158	5	163
July	97	12	109
August	230	5	235
September	203	11	214
October	126	6	132
November	163	6	169
December	263	5	268

(continued over leaf)

Appendix 1

Year 1983:

MONTH	BOYS	GIRLS	TOTAL
January	111	35	144
February	118	20	138
March	93	16	109
April	100	18	118
May	139	30	169
June	106	25	131
July	72	19	91
August	106	19	125
September	117	24	141
October	106	29	135
November	102	22	124
December	72	27	99

CHAPTER FOUR

CONCLUSION

In the first chapter of this study we tried to trace the evolution of the juvenile system in Kenya ever since the colonial times. We also attempted to study the causes of juvenile delinquency. We stated that socio-economic factors play a deterministic role in the incidence of delinquency. Our submission was that the malformity of the economic and social structure which arise from our capitalist mode of production has the greatest influence on delinquency. However we were quick to note that there exists an interplay between this major cause and other factors which serve aggravating roles.

The main concern of the second chapter was to study prostitution in its historical evolution. We saw that prostitution arose in its historical stage because the means of production and the wealth acquired from it became vested in the man. This monopoly reduced the role of the woman as a mother and caretaker of the family so that only those roles which culminated in amassing wealth were considered worthwhile.. The woman therefore

suffered diminished status. We saw that prostitution especially at the beginning of the monogamous nuclear family was forced on the woman by the fact that if she did not get married to ensure social security her economic needs would be unfulfilled. This was because when the man acquired monopoly of wealth it conversely meant that the woman was disinherited.

In that part we studied the causes of prostitution and especially of child prostitution. Our submission at the end of the Chapter was that child prostitutes are not so much depraved but deprived youngsters, girls who, through no fault of their own have been denied the security and stability of a normal family life.

The question we attempted to answer in the last part of this discourse was: What does juvenile processing entail and is it a sure therapy? We criticised our juvenile system not only for its superficial operation which attempts to eradicate the symptoms and not the causes. The same socio-economic situation which is the **breeding** place for delinquency continues to exist. We said that for as long as our juvenile approach is more inclined to cosmetics than prevention the degree of delinquency

will logically continue to escalate and become an ugly but permanent feature of our society.

We do not pretend to offer any recommendations but an ideological and structural change appears to us mandatory if this situation is to be arrested. If any system is to boast efficacy; it should ensure that none of its subjects goes hungry and naked to the extent that her/his only alternative is theft and/or prostitution. This calls for more equal distribution of social wealth than capitalism currently offers. To this end economic and hence social arrangements must be re-organised to benefit the larger part of the population. Our closing question is as rhetorical as it is important: What justice exists where a child is let to live in squalor and poverty thus making him delinquency-prone only to later subject him to the juvenile process for "cure"?.

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