

REHABILITATION OF CHILDREN IN CONFLICT WITH THE LAW:

A CASE OF SHIKUSA BORSTAL INSTITUTION, KAKAMEGA, KENYA

BY

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DECLARATION

This project is my original work and has not been submitted for a degree award in any other University.

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DEDICATION

I dedicate this study to my parents Prof. John Okutoyi Wambani and Mrs. Faustine Chirikona Okutoyi for instilling in me the requisite education, confidence and discipline that has led me to be the best that I can be.

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TABLE OF CONTENT	PAGE
DECLARATION.....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENT.....	iv
ACRONYMS AND ABBREVIATIONS.....	xi
CHAPTER ONE	1
INTRODUCTION.....	1
1.1 Background.....	1
1.2 Statement of the research problem.....	4
1.3 Objectives of the study.....	6
1.3.1 Specific Objectives	6
1.4 Research questions.....	6
1.5 Justification and significance of the study	7
1.6 Scope of the Study	7
1.7 Limitations of the Study.....	8
1.8 Definition of concepts/terminologies.....	9
CHAPTER TWO	10
LITERATURE REVIEW	10
2.1. International Legal Framework.....	10
2.2 International Practice	14
2.3 Regional Legal Framework.....	16
2.4 Practice in Africa	18
2.5 Kenyan Legal Framework.....	19
2.6 Practice in Kenya	22
Table 1: Crime rate among children in Kenya.....	25
2.7 Theoretical and Conceptual frameworks	25
CHAPTER THREE	29

RESEARCH DESIGN AND METHODOLOGY	29
3.1. Introduction.....	29
3.2 Research Design.....	29
3.3 Data collection methods.....	29
3.4. Population	30
Table 2: Sample population distribution.....	30
3.5 Sampling techniques	31
3.5.1 Probability sampling	31
Table 3: Distribution of sample size	32
3.5.3 Data collection methods.....	32
3.6 Ethical considerations	33
CHAPTER FOUR.....	34
DATA ANALYSIS, INTERPRETATION PRESENTATION OF FINDINGS	34
4.1 Introduction.....	34
4.2 Frequency distributions.....	34
Table 4: Respondents by age group.....	34
Table 5: Respondents by religious affiliation	35
Table 6: Respondents by education attainment	35
Table 7: Respondents by residential background	36
Table 8: Respondents by Family economic status.....	36
Table 9: Respondents by duration of stay at the Borstal institution	37
Table 10: Respondents rating of the living environment at the Borstal institution	37
Table 11: Respondents’ perceived main challenge at the Borstal institution	38
Table 12: Respondents views on available education opportunity at the Borstal institution	38

Table 13: Respondents experience of torture, degrading inhuman treatment at the Borstal institution	39
Table 14: Respondents view on adequacy of recreational facilities at the Borstal institution ...	40
Table 15: Respondents view on access to outside world while at the Borstal institution	40
Table 16: Respondents view on access to vocational training while at the Borstal institution ..	41
Table 17: Respondents view on usefulness of vocational training skills acquired at the Borstal institution	41
Table 18: Respondents view on adequacy of counseling programs at the Borstal institution....	42
Table 19: Respondents view on existence of achild re-integration strategy by the Borstal institution	42
4.3 Findings from members of staff.....	43
4.3.1. Challenges that staff face at the Borstal institution.....	44
4.3.2. Successes realized at the Borstal institution.....	44
4.3.3 Findings from parents of child inmates.....	45
4.4 Findings from members of community.....	46
CHAPTER FIVE	48
SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS	48
5.2 Summary of findings.....	48
5.2.1. Laws and policies governing Borstal Institutions	48
5.2.2. Practice at the Borstal Institution	49
5.2.3. Personnel.....	52
5.3 Recommendations.....	53
5.3.1. The laws and policies on Borstals Institutions	53
5.3.2. The living environment at Shikusa Borstal Institution	54
5.3.3. Personnel and practice at Shikusta Borstal Instituion	54
5.3.4. Reintegration back to society	54

5.4. Conclusion	55
5.5. Suggestion for further study.....	56
APPENDICES	61
APPENDIX I	61
Letter of Transmittal	61
APPENDIX II	62
Children Questionnaire	62
APPENDIX III.....	71
Key informant Guide	71
APPENDIX IV	72
Focus Group Discussion (FGD) Guide.....	72

LIST OF TABLES AND FIGURES

Figure 1:	Conceptual Framework.....	21
Table 1	Crime rate among children.....	24
Table 2	Sample population distribution.....	30
Table 3	Distribution of sample size.....	32
Table 4	Respondents by age group.....	34
Table 5	Respondents by religious affiliation.....	35
Table 6	Respondents by education attainment.....	35
Table 7	Respondents by residential background.....	36
Table 8	Respondents by Family economic status.....	36
Table 9	Respondents by duration of stay at the Borstal institution.....	37
Table 10	Respondents rating of the living environment at the Borstal institution.....	37
Table 11	Respondents' perceived main challenge at the Borstal institution.....	38
Table 12	Respondents views on available education opportunity at the Borstal institution.....	38
Table 13	Respondents experience of torture, degrading inhuman treatment at the Borstal institution.....	38
Table 14	Respondents experience of torture, degrading inhuman treatment at the Borstal institution.....	39

Table 15	Respondents view on adequacy of recreational facilities at the Borstal institution	42
Table 16	Respondents view on access to outside world while at the Borstal institution	40
Table 17	Respondents view on access to vocational training while at the Borstal institution	41
Table 18	Respondents view on usefulness of vocational skills acquired at the Borstal institution	41
Table 19	Respondents view on adequacy of counseling programs at the Borstal institution....	42
Table 20	Respondents view on existence of a child re-integration strategy by the Borstal institution	42

ACRONYMS AND ABBREVIATIONS

CYPL	Children and Young Persons Act
CCPO	Child Care and Protection Officer
CRC	Convention on the Rights of the Child
UK	United Kingdom
UN	United Nations
UDHR	Universal Declaration on Human Rights

ABSTRACT

Rehabilitation of children in conflict with the law is a key component in ensuring that these children do not revert to crime and as such are effectively enabled to fit in to society. The objectives of this study was to examine the rehabilitation of children at Shikusa Borstal Institution. The study is an explorative case study that utilized both secondary and primary data from Shikusa Borstal Institution. Secondary data was obtained from documented sources i.e. institutional reports and government records as part of the literature review. Primary data was obtained from a field research incorporating both quantitative and qualitative data collected at Shikusa Borstal Institution. The target population was children currently held at the Shikusa Borstal Institution, selected members of staff at the institutions, selected family members of discharged children and selected members of the local community. Both probability (stratified) and non-probability (opportunity) sampling were utilized to determine the final sample size.

The study revealed that Shikusa Borstal Institution faces a number of challenges in fulfilling its mandate of rehabilitating children including insufficient resources and personnel, inadequate living environment and outdated laws. The recommendations of the study were that there is an urgent need to improve the institution to enable it offers more effective rehabilitation services for children in conflict with the law by enacting sound laws, provision of more funds to improve the living environment in the institution and also to equip and motivate the officers at the bortsal institution. In view of all the above findings, reintegrating children in conflict with the law will require a holistic approach that involves all key stakeholders and society at large.

CHAPTER ONE

INTRODUCTION

1.1 Background

The subject of children in conflict with the law sometimes referred to as child criminology is a worldwide phenomenon addressed through a corrective juvenile justice system specifically designed to address the complexities of handling a minor. The emphasis with juvenile system is rehabilitative punishment for offences committed. In relation to juvenile justice in particular, the children's department and its officers are obliged to promote the rehabilitation of children so that they can be re-integrated in society as responsible citizens and to ensure that children placed in government institutions are provided with basic necessities such as food, clothing and shelter besides general rehabilitation (Cradle, 2004:21ff).

Borstal institutions can be defined as separate institutions set aside for children in conflict with the law (Human Rights Watch, 1997:51). They are settings where a child over 16 years old committed to a rehabilitation school with difficult character, exercising inappropriate influence or being persistent absconder, can be sent (Children's Act, 2001).

The name 'Borstal' originated from the City of Rochester in the UK where a prison reformer by the name of Evelyn Ruggles-Brise expressed concern that so many young criminal offenders were being sent direct to ordinary prisons and

were being tainted by hardened ‘old-lags’ to become themselves really ‘hard-liners’. Ruggles-Brise convinced the government to embrace the idea of establishing separate ‘institutions’ for youngsters in conflict with the law, where an attempt could be made to reform them rather than let them drift further into crime. Eventually, he was offered the use of a former convict prison which became the first borstal institution in the world and upon colonization by the British, Kenya adopted the concept of separate institutions for young criminal offenders (Youth Alive, 2008:2).

In Kenya, borstal institutions are provided for in detail in the Borstal Institutions Act CAP 92. Children in conflict with the law when found guilty of offences may either be committed to approved schools if the child is 15 years old or younger or borstal institutions, if they are over 16 years old. The Borstal Act empowers the Minister to establish or dissolve a Borstal Institution (sec. 3). The rehabilitation process of children in conflict with the law must meet key requirements including an enabling environment for the children’s growth, proper sanitary arrangements, water supply, food, clothing and bedding for the inmates thereof the means of giving such inmates educational, industrial or agricultural training; and an infirmary or proper place for the reception of inmates who are ill (sec. 4). According to the Children’s Act and the Borstal Act the maximum that a child offender can be retained in a borstal institution is 3 years.

The major purpose of borstal institutions is to rehabilitate the child offenders with a view to reform them rather than let them drift further into crime and also equip them with skills that shall help their reintegration back into society. The effectiveness of these borstal institutions in fulfilling their rehabilitative mandate is gauged on their compliance to constitutional and international legal and human rights provisions on the rights of children. Kenya's two borstal institutions, Shimo la tewa and Shikusa, for boys aged 16 years and above, are under the administration of the Prisons Department. The environment in borstals is noticeably penal and punitive, in comparison with the institutions under the administration of the Children's Department (UNICEF, 2005:3). The number of reported cases of children in conflict with the law has been on an upward trend over the past few years in Kenya to the extent of emergence of organized children criminal gangs. Under the Kenyan law, these youthful offenders cannot be sent to jail even if convicted of a crime but are instead committed to a corrective institution or borstal institution (UNICEF, 2005: 3).

1.2 Statement of the research problem

In any given society, children are bound to find themselves in conflict with the law. For these children, juvenile justice calls for, and advocates primarily for the rehabilitation and reintegration into society as law abiding citizens. It cannot be overemphasized that such children need rehabilitation so as to avoid grooming hardcore criminals. If children in conflict with the law are not rehabilitated then society is in danger of an upsurge of crime stemming right from organized juvenile gangs. This is what has been witnessed in the recent past following media reports and complaints from the citizenry about organized children gangs that have been unleashing terror including mass rapes, robberies and kidnappings (Muiruri, 2014).The rehabilitation and reformation of children in Borstal institutions in Kenya is therefore a significant matter that merits scholarly attention because there is little empirically evidence understanding to guide national and institutional handling.

In Kenya, the administration of juvenile justice in relation to children in conflict with the law is done by three core institutions; police, court and custodial institutions. Upon successful arrest, prosecution and adjudication resulting in a guilty verdict for the child offence, the courts may order for a number of measures to rehabilitate the child offender including being taken to Borstal institutions for those over 16 years of age(UNICEF, 2005:3ff).

The Kenyan Borstal institutions (and indeed the entire juvenile justice system process) may appear to be retributive which is contrary to the tenets of international law and practice on safeguarding the rights of children (Youth Alive, 2008:2ff).

When a child is taken into state custody, the government is obligated to meet certain minimum requirements under international law regarding the conditions under which the child is detained. Kenya is a signatory to many raft laws and conventions internationally, regionally and nationally that place emphasis on the rehabilitation of children in conflict with the law. These same pieces of legislation call for minimum parameters in relation to international standards that should be observed in institutions that have been charged with the mandate of child rehabilitation.

Having an enabling legal environment is critical to ensuring that the rights of children in conflict with the law are upheld in a manner that accords international standards. Kenyan laws on juvenile justice administration have not been reviewed for a long time and it is possible that they may not reflect and comply with national and international standards on the rights of children.

The question then would be, whether Borstal institutions in Kenya have lived up to their expectation of rehabilitation and reformation of child offenders for successful re-integration into the society as stipulated in the national, regional and international human rights standard framework.

From the above analysis it may appear that Borstal institutions are given least priority by policy makers hence necessitating the need for an in-depth study of these institutions, their operations and governing frameworks, their shortcomings and catalyse these findings to invoke national attention.

1.3 Objectives of the study

The overall objective of this study is to examine the rehabilitation of children in conflict with the law at Shikusa Borstal Institution.

1.3.1 Specific Objectives

1. To analyze the laws, policies and regulations governing Shikusa Borstal institution.
2. To determine the status of the practices of Shikusa Borstal institution.
3. To offer suggestions for amendments if any of laws and practices of Shikusa Borstal Institution.

1.4 Research questions

The following research questions based on the research objectives shall guide the research investigations.

1. Are the laws, policies and regulations of Shikusa Borstal Institution adequate and effective for rehabilitation of inmate children?
2. Is the working staff of Shikusa Borstal institution well trained to ensure rehabilitation of inmate children?

3. Are the physical facilities at the Shikusa Borstal Institution adequate for rehabilitation of inmate children?

1.5 Justification and significance of the study

Kenya is a country undergoing major constitutional, legal, policy and institutional reforms in all major aspects of public life. Yet lack of adequate knowledge and information on and around borstal institutions within the juvenile justice system could prove a major and costly logjam to real and meaningful reforms. This study seeks to offer empirically derived knowledge about the state of borstal institutions in Kenya and possibly provide a basis for informed reforms if they are found necessary. The knowledge generated from the study shall aid advocacy and lobby mechanisms and stakeholders in ensuring that children in conflict with the law are effectively rehabilitated and reformed in line with international standards.

1.6 Scope of the Study

Due to the complex nature of the juvenile justice system towards the holistic rehabilitation of child offenders, it is not possible to investigate all the complex interrelationships within a study of this kind. The study will therefore limit itself to borstal institutions as opposed to the wider juvenile justice system and more specifically it shall focus on Shikusa Borstal Institution in Kakamega County, Kenya.

The study identified on Borstal institutions among the several corrective institutions mainly because it is the only mechanism that is under the general penal system and not the children's department which is more alive to the international standards of upholding children's rights. In addition, the study selected Shikusa Borstal Institution in Kakamega County mainly for the reason that it admits middle offenders as opposed to Shimo la Tewa that commits serious crimes offenders. It would hence be insightful to establish whether these children are rehabilitated and reintegrated back to society or in the retrospect "hardened" to be hard core criminals.

1.7 Limitations of the Study

Several limitations are envisaged in the conduct of the study. First, methodology limitations as it may require more sophisticated scientific analytical approaches to establish all possible relationships between independent variables, the intermediate variables and the dependent variables. Second, lack of full cooperation by prison officers. The researcher initiated extensive consultations with all the stakeholders including getting relevant authorization documents from relevant authorities to ensure maximum cooperation. Third, credibility of information given by officers and child offenders due to the prison environment where the interviews are envisaged to take place. The researcher complied with all research ethics especially the confidentiality on information obtained to assure the respondents of their security/non victimization after sharing their information.

1.8 Definition of concepts/terminologies

The following key concepts and terminologies shall derive the corresponding definition meaning for operational purpose of this study.

Borstal institution: Separate institutions set aside for children in conflict with the law between the ages of 15-17 years who have been found guilty of an offence.

Juvenile justice: The area of criminal law applicable to persons below the age of 18 years old.

Rehabilitation: The act of restoring something to its original state in this particular study rehabilitation of children is construed to mean the process of reforming children in conflict with the law into law abiding persons

Retributive justice: A system of criminal justice based on the punishment of offenders rather than on rehabilitation.

CHAPTER TWO

LITERATURE REVIEW

The international legal frameworks have laid down provisions that entail the minimum standards and parameters that should be accorded to ensure children in conflict with the law are rehabilitated. These provisions have also been reiterated in the regional and national frameworks. This chapter highlights the international and regional framework that espouses what is considered ideal for the effective rehabilitation of children in conflict with the law and the accompanying practice.

2.1. International Legal Framework

The Universal Declaration on Human Rights (UDHR, 1948) sets up universal standards and provisions that have been reiterated in subsequent conventions, charters, treaties and other legal frameworks. Article 3 provides that everyone has the right to life, liberty and security of person. Article 6 prohibits torture or to cruel, inhuman or degrading treatment or punishment. Article 7 enumerates that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 9 prohibits arbitrary arrest, detention or exile. Article 26 provides that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

The Convention on the Rights of the Child (CRC, 1989) is the premier international convention that sets out the benchmarks for the rights of the child. It enumerates 4 guiding principles that should be taken into consideration when interpreting its articles. The first is that of non -discrimination under article 2 that states that no child shall suffer discrimination on any ground. The second principle is that of the best interest of the child to be paramount consideration in all matters affecting the child. Lastly, are the paramount principles of right to life, survival and development and right of the child to be heard under Articles 6 and 12. The convention provides that every child has the inherent right to life and to their maximum development.

The convention further obligates parties to ensure that children are protected from physical or mental harm and neglect, including sexual abuse or exploitation. It also provides that children are entitled to the highest attainable standard of health, time to rest and play and free primary education. Article 37 of the CRC specifically addresses the issue of children in conflict with the law and how they shall be treated. It provides that no child shall be subjected to torture or cruel, inhumane or degrading treatment or punishment. Neither capital punishment nor life imprisonment shall be administered to children. It also provides that no child shall be deprived of his or her liberty unlawfully or arbitrary, and the same must be in conformity with the law and only be used as a measure of last resort and of the shortest appropriate period of time. The article further provides that for those children deprived of their liberty, they shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into

account the needs of his or her age. The convention provides that for children in detention, there shall be separation from adults. These provisions when upheld in totality create an environment that is deemed ideal for the holistic rehabilitation of children in conflict with the law.

The United Nations has over the years enacted several rules and guidelines applicable to juveniles deprived of their liberty.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, (1955) provides for minimum standards that shall be accorded to prisoners including among others humane and clean environment, personal hygiene, adequate clothing and beddings, food, exercise and sports and medical services. The standards prohibit inflicting any degrading or inhumane punishment on prisoners.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985); obligates member states to try to develop conditions to ensure meaningful lives in the community for juveniles. In the institutionalization of juveniles measures shall be taken within institutions for juveniles to provide care, protection, education and vocational skills to assist offenders in assuming constructive and productive roles in society.

The UN Rules for the protection of juveniles deprived of their liberty provides that the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. It further provides that deprivation of liberty should be effected in conditions and circumstances which

ensure respect for the human rights of juveniles. Detained juveniles should be guaranteed meaningful activities and programmes which promote health and self-respect, foster their sense of responsibility and encourage their development as potential members of society. In addition, it provides that juveniles deprived of their liberty shall have the right to facilities and services meeting all requirements of health and human dignity.

Design of facilities should be in keeping with the rehabilitative aim, with due regard for privacy, sensory stimuli, opportunities for association between peers, sports and physical exercise and leisure activities. Every juvenile of compulsory school age has the right to education suited to his or her needs and designed to prepare him or her for return to society. The rules reiterate the fact that every juvenile has the right to a suitable amount of time for daily free exercise, in the open air when weather permits, during which recreational and physical training normally should be provided. Adequate space, installations and equipment are to be provided. There should be additional time for daily leisure activities, including arts and crafts skill development if the juvenile so wishes. Remedial physical education and therapy under medical supervision should be offered to juveniles as per individual needs. As part of the rehabilitation process, Juveniles should have adequate communication with the outside world, which is part of fair and humane treatment and essential to preparation for return to society. Communication should be allowed with families, friends and other persons or representatives of reputable outside organizations. Juveniles should be allowed to leave the facility

for a visit to home and family and should receive special permission to leave for educational or vocational reasons.

With regards to punishment, all cruel, inhumane or degrading disciplinary measures shall be strictly prohibited, including corporal punishment, placement in a dark cell and solitary confinement. Reduction of diet and denial of contact with family members should be prohibited. Lastly, procedures, including early release, should be designed to assist juveniles return to society, family life, education or employment after release. Services to assist juveniles in re-establishing themselves in society should ensure, to the extent possible, suitable residence, employment, clothing and sufficient means. Representatives of agencies providing such services should be consulted and should have access to juveniles while detained.

2.2 International Practice

Canada offers a good illustration on best practices in the rehabilitation of children in conflict with the law. Yates (1993) carried out a study on the New Haven Correctional Center and observed that its Borstal philosophy reiterates a rehabilitation program for offenders between the ages of sixteen and twenty-one, based on the premise that imprisoning youthful offenders with older offenders would only teach them more crime. Yates characterizes New Haven Correctional Center as a free atmosphere that is without the hallmarks of incarceration such as concertina wire, uniforms and prison labels in which guards are vocational instructors and dormitory supervisors.

The Borstal program deals with the total individuals with very constructive guidelines that are aimed at his overall rehabilitation including schedules and flexible programs that allow for as much contact with the community as possible. A trainee comes in as a "pre-junior and there is a well laid out system to assess each case and monitor their progress while at the institution. There are also programs to ensure their reintegration back to society including setting up interviews for employment or further education.(Michaels 1993:245ff).

Yates concludes that because of all these, the program of rehabilitating youthful offenders achieves positive results. The study involved three groups of persons: children in custody, discharged children and the guards either active or retired (Michaels 1993:245ff).

The issue of rehabilitation of children was also the subject of a study carried out in the UK by Menis Suzzane (2012). The study is premised on the notion of Borstals as institutions aimed at arrestment of the youthful criminal tendencies.

The idea of Borstals was to expose the youth to values and skills which may have stimulated a responsible and thoughtful way of living. The novelty of the system laid in the rejection of the damaging effects that the prison had on the mind and character of the prisoner. But mainly, the Borstal penal policy recognized that the youth would not be detained for ever; thus, great effort was put in cultivating a healthy and positive relationship between the youth and the outside world.(Menis 2012:985ff).

Suzzane concluded that borstal institutions effectively rehabilitate youthful offenders when there are there are mentoring programs administered by high caliber staff.

The Borstal project was a simple system of firm and exact discipline tempered by an ascending scale of rewards and privileges which depend upon industry, conduct, and special merit'. Its core aim is to arrest progress of criminal tendencies by exposing the youth to values and skills which may have stimulated a responsible and thoughtful way of living. The Borstals training had as its core object the social rehabilitation of the youth; by doing so it guaranteed the safety of society not only while they are in detention but also when it was time to re-join it(Menis 2012:985ff).

2.3 Regional Legal Framework

The African Charter on Human and Peoples' Rights is the continent's affirmation of respect to Human Rights. This Charter calls for the dignity inherent in a human being (children included) and prohibits inhuman and degrading treatment.

The African Charter on the Rights and Welfare of the Child is the regional legal framework that provides for the rights of children in Africa. The charter espouses the four UN guiding principles of best interest of the child (Article 4), non-discrimination, right to be heard and survival (Article 5). Article 5(3) prohibits the death sentence for any crimes committed by children. The Charter reiterates the international standards on the right to education (Article 11), right to rest and leisure (Article 12), right to health (Article 14) and protection from torture (Article 16). Article 17 forms the bone of administration of juvenile justice and provides a raft of provisions including that every child found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others. State parties are to ensure that no child who is detained or imprisoned is subjected to torture,

inhumane or degrading treatment, ensure that children are separated from adults in their place of detention. The article emphasizes the fact that the aim of every treatment of a child in conflict with the law shall be his or her reformation, reintegration and social rehabilitation. The protection of these rights enshrined in the charter is aimed towards creating conducive environment for the rehabilitation of children in conflict with the law.

The Kampala Declaration on Prison Conditions in Africa (1996) set the pace for prison reforms around the continent by acknowledging that prisons in Africa are over-crowded and inadequately resourced and that the conditions for prisoners are inhuman and that for staff intolerable. In reaffirming the rights of prisoners as encapsulated in other international conventions and treaties it sets up an action of plan which among others calls for urgent and concrete measures that should be adopted to improve conditions for vulnerable groups in prisons and other places of detention such as juveniles and further calls for International standards and norms on the treatment of prisoners to be incorporated in national legislation.

The Arusha Declaration on Good Prison Practices, (1999) in its preamble reiterates the rights of life dignity and freedom from torture inhumane and degrading treatment as encapsulated in international human rights instruments and declares among others to promote and implement good prison practice, in conformity with the international standards mentioned above and to adjust domestic laws to these standards, if not yet done so; to improve management practices in individual prisons, and in the penitentiary system as a whole to

increase transparency and efficiency within the prison service; to enhance the professionalism of prison staff and improve their working and living conditions; and to respect and protect the rights and dignity of prisoners as well as ensure compliance with national and international standards;

These two documents have been the backbone of penal reforms around Africa. Although the regional legislative framework has reiterated the international standards, there is lack of measures by the governments on the implementation.

2.4 Practice in Africa

In a study conducted in Nigeria, Okagbue (2000) examines the whole juvenile justice from arrest to prosecutions. The case study sought to address three specific themes, namely, pre-trial and diversion; trial and sentencing; and children deprived of liberty. The study relied on case profiles of juveniles in conflict with the law, interviews with personnel in the system and the personal observations of the writer. It focused primarily on Lagos State, which is one of the most populous cities in Nigeria and is the commercial nerve center of the country. The study analyzed the law surrounding juvenile justice and stated that the Children and Young Persons Act II (CYPL) is the major piece of legislation dealing with matters affecting children and young persons in Nigeria.

Borstal institutions are specifically designated for the institutionalization of offenders between the ages of 16-21. However, the CYPL provides that young offenders may be committed to Borstals from the age of 14, as may children beyond parental control or in need of care and protection. (Okagbue, 2000)

Okagbue noted that only one Borstal facility for males has been established in the country. In the study, social workers were asked to describe the complaints usually received from children and the most common complaint was that there was lack of sufficient food, no water and poor accommodation. The conclusion of the study was that in almost every aspect of the juvenile justice system, the well-being, welfare and best interests of young offenders are not adequately preserved and protected. The reasons range from outdated legislation to poorly trained and insufficient personnel, inadequate facilities and lack of resources. While the important first step of legislative reform has been embarked upon, the other problems still loom large and need to be addressed if the reforms are to achieve a measure of success (Okagbue 2000:1ff).

2.5 Kenyan Legal Framework

Kenya has a raft of legal framework that governs Borstal institutions and the need for children offenders to be properly rehabilitated. The Constitution of Kenya reiterates the international principles for the protection of such children by enumerating certain provisions relating to the same including inherent dignity (Article 28) and freedom from torture and corporal punishment (Article 29). Article 53 has specific provisions related to the protection of children and provides among others that every child has the right to free and compulsory basic education, to basic nutrition, shelter and health care, to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour, not to be detained, except as a measure of last resort, and when detained, to be held:-

- (i) for the shortest appropriate period of time; and
- (ii) Separate from adults and in conditions that take account of the child's sex and age.

The section reiterates that a child's best interests are of paramount importance in every matter concerning the child.

The Children's Act CAP 141 is the primary legislation that focuses on the welfare and rights of children in Kenya. It borrows from the international legal framework and upholds the four UN guiding principles and further legislates on the provisions enshrined in the Constitution on the rights of the child. The preliminary section of the act defines Borstal institutions as any institution established by section 3 of the borstal Institutions Act. Part XIII deals with child offenders and more specifically section 191 provides several methods of dealing with such children and provides that in the case of a child who has attained the age of sixteen years dealing with him, in accordance with any Act which provides for the establishment and regulation of Borstal institutions.

The Borstal Institutions Act CAP 92 provides for the establishment of Borstal institutions for youthful offenders and for their detention. Section 3 of the Act gives the minister powers to establish Borstal institutions. Section 4 handles the requisites of every Borstal institutions to provide proper sanitary arrangements, water supply, food, clothing and bedding for the inmates thereof, the means of giving such inmates educational, industrial or agricultural training; and an infirmary or proper place for the reception of inmates who are ill. Borstal

institutions are headed by a superintendent who supervises and controls all matters concerning the institution.

Each borstal institution is to have a medical doctor who shall be responsible for the health of all inmates of the borstal institution, and shall cause all inmates of the borstal institution to be medically examined on such occasions as may be prescribed by law. In addition section 12 provides that there shall be prison officers for every borstal institution charged with the same duties as those of any other prison. On the welfare and rehabilitation of the children offenders, section 17 provides that every inmate of a Borstal institution shall be subject to the discipline of a borstal institution and to this Act and to all rules, orders and directions made there under during the whole period of his detention, whether he is or is not within the precincts of a borstal institution. Section 19 provides that every inmate of a borstal institution shall be liable to perform such work as may be directed by the superintendent provided that an inmate shall not be required to perform any work other than light work, if the medical officer so orders. There is an after care committee established by the Act for the purposes of visiting a borstal institution to establish hearing complaints by the inmates of the borstal institution; ensuring that there is abiding of all necessary regulations and laws; examining the punishment book; ensuring that no person is illegally detained in the borstal institution; and bringing any special case and any matter affecting the welfare of inmates or staff of the notice of the superintendent who shall subsequently inform the Commissioner of Prisons. Section 36 provides for corporal punishment by providing that no sentence of corporal punishment shall

be carried out until a period of twenty-four hours has elapsed from the time of the order thereof and a medical officer has certified that the offender is physically fit to undergo the punishment.

An analysis of these laws indicate that although Kenya has domesticated the international treaties and conventions ratified on the rights of the child, there are no express provisions on the implementation. Most notably is the fact that these provisions require resources and monetary allocations to ensure effective implementation.

2.6 Practice in Kenya

UNICEF (2005) and Human Rights Watch (1997) conducted studies on juvenile justice that established that Kenya's two Borstal institutions Shimo la tewa and Shikusa, have an environment that is noticeably penal and punitive, in comparison with the other institutions under the administration of the Children's Department.

The reports note that;

..these Borstal institutions are located on larger prison grounds, in close proximity to adult prisons, and are staffed by prison officers who are accustomed to dealing with security for adults....although separated from adults, boys see and pass adult prisoners while out working in the fields or on the common roads of the prison compound(UNICEF, 2005: 3)

The studies further established that the children in these two borstal institutions do not have access to adequate basic items such as food, running water, uniform and toiletries. The reports also established that:

...most boys receive no academic education at all and are assigned to work teams where they perform hard labor around the prison grounds, and train in tailoring, carpentry, sign writing, brick making, and agricultural work. A very small number are placed in a school section for

standards seven and eight only. According to interviewed boys who had been released from the Borstals, out of about 300 boys in each Borstal, only between 20 and 30 were allowed to study in the school section; the rest worked.(UNICEF, 2005: 3)

These two studies concluded that conditions in Kenyan prisons are known to be at times life threatening, with severe overcrowding, inadequate water, poor diet, substandard bedding, and deficient health care as the norm. In the year 2000, the country's prisons reportedly held two to three times their estimated combined capacity of 15,000 inmates and, according to the Kenyan government, 658 prisoners died in jails during the first 10 months of the year. Its recommendations are that no children should ever be placed in institutions where such substandard conditions are the norm (Human Rights Watch 1997: 54ff).

According to Youth Alive Organization (2008) the legal framework departs from the actual practice in Borstal institutions. The research premised its findings on various interviews conducted on discharged children from Shimo la tewa and Shikusa Borstal Institutions. The research highlighted the legal framework both international and local and how the same is implemented in the Kenyan borstal institutions. The reports also enumerates various parameters and standards that all borstal institutions should align themselves among them being the physical environment and accommodation, food, education vocational training and work, recreation, medical care, channels of making complaints, contacts with the wider community, disciplinary procedures and medical care. The study found that there was a big departure from the minimum requirements of Borstal institutions.

.....whereas Rule 31 of The UN Rules for the Protection of Juveniles Deprived of their Liberty provides that juveniles deprived meet all the

requirements of health and human dignity the accommodation at Shikutsa does not offer this and one of the interviewees stated that the sleeping area consists of one big room with mattresses laid on the floor which are not enough prompting other children to sleep on the cold bare floor with no cover whatsoever. (Youth Alive Organization, 2008: 1ff)

The study also established that the food is rarely sufficient and no second servings are allowed. The quality of the food is also wanting with the food being sometimes undercooked. It's only at the point of near death that the quality (including type) and quantity of food will take into consideration the health needs of a particular child.

Lastly, the research established that education is very restrictive because only class 7 and 8 education is offered thereby omitting those that are either of lower classes or above the classes available. After interrogation of all the parameters that should be taken into account for effective rehabilitation, the research concludes that Borstal institutions are a forgotten case of the Kenyan children. "The law is not all that bad. It is the accompanying practice that is non-existent" (Youth Alive 2008: 1).

In January (2015), the Coordination Principal Secretary Joseph Mukobe called for a review of the curriculum offered at borstal institutions. He stated that the laws governing borstal institutions have never been reviewed and hence do not conform to modern times and standards. Mukobe also noted that the vocational training and curriculum offered in borstal institutions should be updated from the likes of carpentry, welding and tailoring to ones that conform to the modern needs for instance ICT (Okwach, 2015).

With regards to the crime rate among juveniles in Kenya, available government statistics and records indicate that there has been a rise of crime committed by children. The table hereunder enumerates the numbers of children between the ages of 16 and 17 years convicted from the year 2010 till 2014.

Table 1: Crime rate among children in Kenya

YEAR	2010		2011		2012		2013		2014	
SEX	M	F	M	F	M	F	M	F	M	F
NUMBERS OF CONVICTED	2139	413	2551	185	2462	120	2265	67	3198	105
TOTAL	2552		2736		2582		2332		3303	

Source: Economic Survey, 2015

This study would be different from the one that was carried out by Human Rights Watch, UNICEF and Youth Alive for two reasons. First, the study shall not be a generic one on juvenile justice at large or Borstal institutions but shall narrow it to Shikusa and focus its recommendations from the findings obtained there. Second, this study shall be undertaken on the backdrop of a new constitutional dispensation and ongoing prison reforms that were not in place when the two previous studies were carried out.

2.7 Theoretical and Conceptual frameworks

The study is conceptualized in a manner that facilitates an understanding of the role that borstal institutions play in the rehabilitation of children in conflict with

the law. In this regard the conceptual framework shall be designed to facilitate the identification of the various factors at play and a determination of the multiple relationships between them and the way they affect each other.

The study used the rehabilitation theory of punishment in juveniles. The theory of rehabilitation was first embodied in the penitentiaries, built during the Jacksonian era of the late 19th century. Reformers hoped that felons would be “kept in solitude, reflecting penitently on their sins in order that they might cleanse and transform themselves” (Irwin, 1980:22).

The contemporary theory of rehabilitation argues for preventing of future crime by giving offenders the ability to succeed within the confines of the law. Rehabilitative measures for criminal offenders usually include treatment for afflictions such as mental illness, chemical dependency, and chronic violent behavior. Rehabilitation also includes the use of educational programs that give offenders the knowledge and skills needed to compete in the job market. (Butterfield, 2001)

The Borstal system adopts the contemporary theory of rehabilitation by emphasizes keeping young offenders out of the prison system and seeks to effect their reform through education, trade-training and a full work program rather than by punitive detention. Subject to obvious restraints, the system operates in a highly selective manner, relating to individual offender's need to the provision of an appropriate training facility (Warder & Wilson 1973:118).

This contemporary rehabilitation theory is anchored on reformation as a way of changing the character of a criminal. But reforming the character itself may not be the end; or even if it were the end it could not be the only end. When we reform a criminal, we do so not only so as to make him a decent citizen but also, and most important, so that others may be free from the evils that this criminal may inflict on them (Oruka 1985:27).

The term “rehabilitation” itself means the process of helping a person to readapt to society or to restore someone to a former position or rank. The ultimate goal of rehabilitation is to restore a convicted offender to a constructive place in society through some combination of treatment, education, and training. In contrast to retribution that emphasizes uniform punishments based on the gravity of the misconduct, rehabilitation focuses on the particular characteristics of individual offenders that require treatment and intervention (Soda-filozofijas, 2010:22).

The rehabilitation theory is in harmony with the mission of borstal institutions and the various legislative frameworks reviewed in this study.

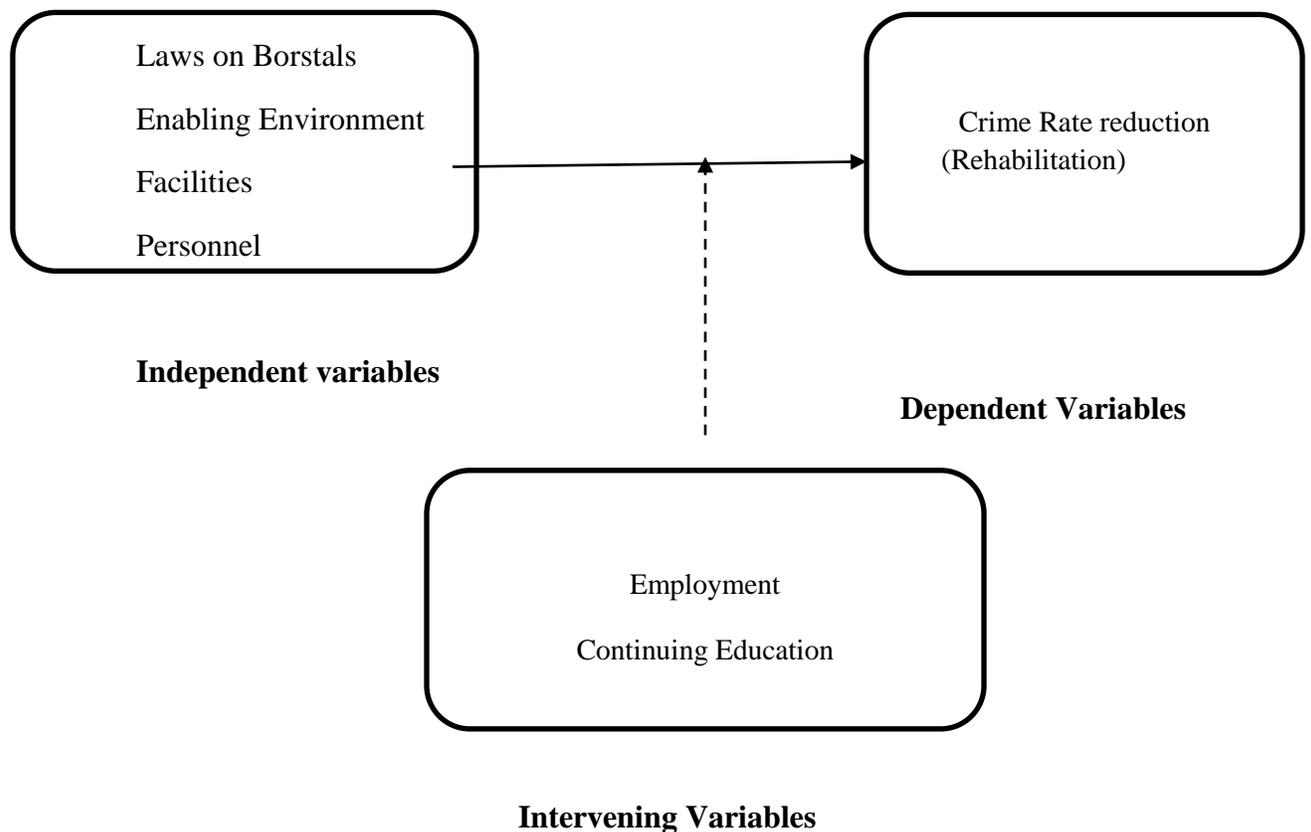
Borstal institutions are characterized by several independent variables including the laws and policies that govern Borstal institutions, the facilities in a borstal institution and the personnel in these institutions. For the purposes of this study, rehabilitation was measured by the crime rate committed by children who have been institutionalized in borstals. The intervening variables were the employment and education opportunities that ultimately contribute to whether a child shall go back into crime or reintegrate into society as a law abiding citizen.

The independent variables were limited to specific and major factors that were considered to form an ideal borstal institution to include:

- Laws and policies,
- Enabling environment for the children’s growth(proper sanitary arrangements, adequate water supply, food, clothing and bedding)
- Facilities in the institution- educational and vocational training, an infirmary, counseling
- Management of the facility- skilled personnel

This conceptualization of the study is summarized in the diagram hereunder;

Figure 1: Conceptual Framework



CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1. Introduction

This chapter focuses on the research design that has been used in the study, the data collection methods, the sample frame and size, data analysis and interpretation method and ethical considerations.

3.2 Research Design

This is an explorative case study of Shikusa Borstal Institution. Therefore, it is based primarily on raw empirical data collected from stakeholders at the institution.

3.3 Data collection methods

The research utilized both secondary and primary sources of data with a main emphasis on the later. Secondary data was obtained from documented sources i.e. institutional reports and government statistics records as part of literature review. Primary data was obtained from a field research incorporating both quantitative (statistical) and Qualitative (logical) data sets collected from a predetermine sample population of stakeholders at the Shikusa Borstal Institution. The data was collected using a number of different tools for the different stakeholders as follows:

- a) Child questionnaire; - This set of questionnaire was administered to children both inmates undergoing rehabilitation and those who have been discharged after completing their rehabilitation
- b) Key informant Guide; - This set of questions was administered to selected representatives of members staff, professionals and leaders of collaborative institutions.
- c) Focus Group Discussion Guide; - This set of questions was used to guide participatory Focus Group discussions involving family members of the children and community members.

3.4. Population

The target population for the study was constituted of children currently held as inmates, prison officers at Shikusa Borstal Institution, selected family members of discharged inmates and selected members of the local community. The total population size for the study before embarking on the field was estimated as shown in table 1 below.

Table 2: Sample population distribution

Unit	Category of population	of sub-	Estimated size of the sub-population
1	Children inmates	currently	250
2	Members of staff		32
3	Family members		Unknown
4	Community members		Unknown

5	Total	Unknown
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3.5 Sampling techniques

The quality of a sample statistic (i.e., accuracy, precision, representativeness) is strongly affected by the way that sample observations are chosen; that is, by the sampling method. The study target population was selected using a combination of both probability and non- probability samples owing to the complex nature of the entire sample population.

3.5.1 Probability sampling

When using probability sampling methods, each population element from which the sample is derived has a known (non-zero) and equal chance of being chosen for the sample. The main advantage with probability sampling methods therefore is that they allow one to estimate the extent to which sample statistics are likely to differ from the main population parameters. In this study stratified sampling (dividing the target into various sub-categories and then selecting respondents from each of them) was used to identify child respondents.

3.5.2. Non-probability sampling

However when using non-probability sampling methods, one does not know the probability of each population element being chosen, and/or cannot be sure that each population element has a known (non-zero) and equal chance of being chosen. The main disadvantage with non-probability sampling methods therefore is that they do not allow one to estimate the extent to which sample statistics are

likely to differ from the main population parameters. On the other hand non-probability sampling methods offer two main advantages namely convenience and cost. In this study opportunity sampling (simply selecting those who were available at the time of the survey) was used to identify parents and community members since their population size and distribution is almost impossible to establish.

The final sample size was distributed as in table 2 below:

Table 3: Distribution of sample size

Unit	Category of respondents	Number of respondents
1	Children currently inmates	60
2	Members of staff and professionals	20
3	Family members	10
4	Community members	10
5	Total	100

3.5.3 Data collection methods

The data collection toolkit consisted of individual questionnaires for the children, key informant guide for selected members of staff professionals and Focus Group Discussion guide for parents, community members and some members of staff.

3.6 Ethical considerations

The target population under study was children in conflict with the law and indeed a vulnerable group. Ethical considerations and protocol had to be duly considered during the course of this study. First, the requisite authorization documents had to be obtained from the relevant authorities these being children under the custody of the state. Second, consent of both the superintendent of Shikusa Borstal Institution and the children respondent themselves had to be obtained. Third, the exercise was a voluntary one with the interviews been undertaken in a private room in the institution and the children respondents explained to and assured to utmost confidentiality in the information that was collected.

CHAPTER FOUR

DATA ANALYSIS, INTERPRETATION PRESENTATION OF FINDINGS

4.1 Introduction

This chapter outlines the findings of this study. Data analysis was undertaken using both quantitative (statistical) and Qualitative (logical) methods. Quantitative (statistical) data was analyzed using the statistical package for social sciences (SPSS) computer software. This involved the computation of descriptive statistics such as frequency distributions of variables (independent against dependent variables). The computed figures were then interpreted in terms of emerging consensus and then drawing logical conclusions on the relationships and impacts of the various factors against the study objectives, questions and hypothesis.

Qualitative data on the other hand was analyzed using logical deduction and in-depth analysis based on judgmental inferential conclusion drawing. These were also interpreted on the basis of logical conclusions on the relationships and impacts of the various factors against the study objectives, questions and hypothesis.

4.2 Frequency distributions

Table 4: Respondents by age group

Units	Age group	No. of respondents	Percentage
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1	15 years and below	2	3.3
2	15-17 years	54	90.0
3	18 years and above	4	6.7
4	Total	60	100.0

Majority of the child inmates were aged between 15 -17 years making up 90% of the respondents followed by those aged 18 years and above with a small minority reportedly aged 15 years and below. Although the institution admits children aged 15-17 years, it's possible to find those aged 18 years and above since at 17 one can be there for 3 years hence attaining up to 20 years.

Table 5: Respondents by religious affiliation

Units	Age group	No. of respondents	Percentage
1	Christian	50	83.3
2	Muslim	10	16.7
3	Total	60	100.0

Most of the child inmates were Christians constituting of 50 children- 83.3% of the respondent with the rest being 10 Muslims at 16.7%. No other religious affiliations were recorded among the respondents.

Table 6: Respondents by education attainment

Units	Age group	No. of respondents	Percentage
1	Primary	16	26.7
2	Secondary	42	70.0
3	None	2	3.3
4	Total	60	100.0

The majority of the inmate children had attained secondary school level of education making up 70% (42) of all the respondents. Those with primary education constituted 26.7% (16) while 3.3 % (2) of the respondents had no formal education.

Table 7: Respondents by residential background

Units	Age group	No. of respondents	Percentage
1	Rural	18	30.0
2	Rural-urban	12	20.0
3	Urban	30	50.0
4	Total	60	100.0

Half of the child respondents had come from urban residential backgrounds followed by those from rural residences at 30 % while the remaining 20% were from rural-urban residential background.

Table 8: Respondents by Family economic status

Units	Age group	No. of respondents	Percentage
1	Poor	16	26.7
2	Middle Class	40	66.7
3	Rich	4	6.7
4	Total	60	100.0

More than half of the inmate children were from relatively well-off family status with 66.7% describing their families as middle class while 6.7 % described their families as rich. A significant proportion constituting 26.7% described their families as poor.

Table 9: Respondents by duration of stay at the Borstal institution

Units	Age group	No. of respondents	Percentage
1	< 1year	44	73.3
2	1-2 Years	12	20.0
3	2-3 Years	4	6.7
4	Total	60	100.0

The majority of the child inmates had been at the Borstal institution for less than a year making up 73.3% of the respondents compared to 20% who had been there for between 1–2 years and only 6.7% who had been there for between 2–3 years.

Table 10: Respondents rating of the living environment at the Borstal institution

Units	Rating of environment	No. of respondents	Percentage
1	Very good	2	3.3
2	Good	24	40.0
3	Bad	12	20.0
4	Very Bad	18	30.0
5	Not Sure	4	6.7
6	Total	60	100.0

Half of the child inmates felt that their living environment at the Borstal institution was bad 20% (12) thought it was bad and 30% (18) thought it was very bad. A huge 40 % (24) of the child inmates felt the living conditions were good with 3.3 % (2) thinking it was very good. Only 6.7% (4) were not sure how to describe their living environment at the Borstal institution.

Table 11: Respondents' perceived main challenge at the Borstal institution

Units	Main challenge	No. of respondents	Percentage
1	Sanitation	2	3.3
2	Food	12	20.0
3	Clothing and beddings	24	40.0
4	Punishment	22	36.7
5	Total	60	100.0

Clothing and beddings was cited by the inmate children as the main challenge they faced at the Borstal institution constituting 40% closely followed by punishments which was rated at 36.7 %. Food emerged third with 20% with sanitation cited as the main challenge by a mere 3.3 % of the respondents.

Table 12: Respondents views on available education opportunity at the Borstal institution

Units	Available education	No. of respondents	Percentage
1	Class 4-8	30	50.0
2	Secondary	24	40.0
3	Post -Secondary	6	10.0
4	Total	60	100.0

Half the children identified primary education as the most available education opportunity at the Borstal institution followed by secondary school with 40% while 10% identified post-secondary education (vocational training).

Table 13: Respondents experience of torture, degrading inhuman treatment at the Borstal institution

Units	Has experienced or witnessed	No. of respondents	Percentage
1	Yes	38	63.3
2	No	14	23.3
3	None-response	8	13.3
4	Total	60	100.0

A great majority of 63.3% (38) claimed to have been a victim of or witnessed cases of torture or degrading and inhuman treatment at the borstal institution. The respondents cited beating, hard punishment, molestation and sexual abuse among others. However 23.3% (14) denied ever being victim of or witnessing cases of torture or degrading and inhuman treatment at the Borstal institution; while 13.3% (8) did not respond to the question.

Some of the sentiments of children citing torture and degrading treatment at the institution cited the following:

“There is corporal punishment like excessive caning even while naked, washing toilets with bare hands leading to skin diseases called “upele” or commonly “guaraguara”

“One of the inmates tried to escape from custody. We were taken to the segregation room and tortured almost left half dead, painful joints, no food and sleeping in the segregation room which is cold so we could tell the authorities why the inmate had tried to escape”

Table 14: Respondents view on adequacy of recreational facilities at the Borstal institution

Units	Recreational facilities adequate	No. of respondents	Percentage
1	Yes	38	63.3
2	No	20	33.3
3	None-response	2	3.3
4	Total	60	100.0

A majority of the inmate children constituting of 63.3% felt that there were adequate recreational facilities at the Borstal institution compared to 33.3% who felt the recreational facilities were inadequate. However a minority of 3.3% did not respond to the question.

Table 15: Respondents view on access to outside world while at the Borstal institution

Units	Has access to outside world	No. of respondents	Percentage
1	Yes	36	60.0
2	No	24	40.0
3	Total	60	100.0

An overwhelming majority constituting 60% of the child inmates interviewed conceded that they had some access to the outside world while at the Borstal institution. Yet a significant 40 % denied that they had any access to the outside world while at the Borstal institution. Those conceding to having access to the outside world cited visits by relatives and friend as well as games /choir (recreational) activities as the main avenues for interacting with the outside world.

Table 16: Respondents view on access to vocational training while at the Borstal institution

Units	Access vocational training	No. of respondents	Percentage
1	Yes	52	86.7
2	No	8	13.3
3	Total	60	100.0

The majority of the child inmates making up 86.7% (52) agreed that they had access to some form of vocational training at the Borstal institution with only 13.3% (8) claiming that they had no access to any form of vocational training while at the Borstal institution.

Table 17: Respondents view on usefulness of vocational training skills acquired at the Borstal institution

Units	Skills useful	No. of respondents	Percentage
1	Yes	24	40.0
2	No	28	46.7
3	None response	8	13.3
4	Total	60	100.0

Interestingly most of the child inmates believed that the vocational training skills acquired at the Borstal institution were not and would not be useful to them, while 40% believed the skills acquired from the vocational training were and would be useful to them. However, 13.3 % of the respondents did not answer the question.

Table 18: Respondents view on adequacy of counseling programs at the Borstal institution

Units	Counseling adequate	No. of respondents	Percentage
1	Yes	38	63.3
2	No	20	33.3
3	None-response	2	3.3
4	Total	60	100.0

Most of the child inmates constituting 63.3% of those interviewed agreed that there were adequate counseling programs at the Borstal institution compared to 33.3% who claimed that the counseling programs at the institution were not adequate while 3.3% did not respond to the question.

Table 19: Respondents view on existence of a child re-integration strategy by the Borstal institution

Units	Re-integration strategy exists	No. of respondents	Percentage
1	Yes	40	66.7
2	No	20	33.3
3	Total	60	100.0

The majority of the child respondents at 80 % (40) felt that the Borstal institution had an existing child re-integration strategy for re-integrating them into the society once they leave the Borstal institution. However 20 % (20) of the respondents felt that the Borstal institution did not have a child re-integration strategy.

4.3 Findings from members of staff

The study utilized a key informant guide and focused group discussions with key stakeholders on the role of Shikusa Borstal Institution in the rehabilitation of children in conflict with the law.

The members gave an overview of Shikusa Borstal Institution stating that it was started in 1963 for purposes of rehabilitating children in conflict with the law.

The institution has a holding capacity of 250 children at any given time and those admitted stay for period not exceeding 3 years. Children who complete their rehabilitation (committal) duration are released back into the society in quarterly intervals in a year. The children admitted to the borstal institution come from all parts of the country having met the following criteria:

- Must be aged between 15-17 years at the time of admission
- Must have been proven guilty of an offence by a court of law
- Must be committed by a court of law

Shikusa Borstal Institution has a total staff of 32 officers and support staff. The officers stated that they are well trained to handle children including child care and protection officer training (CCPO), child human rights, counseling, teaching, vocational training and Agriculture

The education level of the staff is in accordance to the designation for instance the teachers and counsellors would be recruited as professionals with the requisite qualifications. It was established that all prison personnel upon recruitment are

taught courses on child care and protection and may be posted to either the borstal institutions or adult prisons. The staff also benefit from capacity building training on areas of child protection.

4.3.1. Challenges that staff face at the Borstal institution

According to the staff interviewed the main challenges they face at the institution include over expectation from the inmates, their families, the government and the society at large on the extent to which they should rehabilitate the children, understaffing, congestion (too many inmates), inadequate physical facilities and equipment's, lack of finances/inadequate funding, communication barriers i.e. different education levels including total illiteracy among the child inmates, some high headedness among hardcore inmates (including molestation of colleagues) and lack of a comprehensive reintegration strategy

4.3.2. Successes realized at the Borstal institution

The members of staff interviewed identified several major successes achieved by the Borstal institution including provision of education opportunities for the child inmates at both primary and secondary levels, provision of vocational skills training opportunities for child inmates who opt out, have completed or does not fit the formal education system, provision of counseling programmes for traumatized children and those requiring psycho-socio support, provision of child corrective rehabilitation of convicted child criminals and successful reintegration of rehabilitated children back into the society

According to the staff the institutional follow up results indicate that on average 70 % of all the children rehabilitate at the Borstal institution are successfully reintegrated back into society as law abiding citizens. However about 30% go back to criminality and some have ended up in jail or being killed in relation to criminal activities.

4.3.3 Findings from parents of child inmates

The parents who were interviewed agreed that the Borstal institution is for the better of children in conflict with the law since the alternative would be to have children locked up in same jail with adults. They further observed that although the Borstal institution is a ‘children’s prison’ it operates more like a school (on the model of approved schools) than a ‘prison’ besides the institution offers vocational training to children who do not fit into the formal education.

The parents enumerated several complaints which they claimed to have witnessed or informed by their children at the Borstal Institution including wrongful conviction – that some inmates wrongly convicted therefore have become victims i.e. one parent whose 16 year old son was convicted of defiling his 17 years old girlfriend and sexual partner for more than an year. His girlfriend was set free and he was convicted despite both confessing that theirs was always consensual sex. Sexual violation – that some of the boys are sodomised either by fellow inmates or sometimes by rogue members staff/workers at the institution, torture and degrading punishment – that some inmate children are tortured(severe beatings) or subjected to hard labour punishment for minor offenses at the institution and inadequate counseling – than children at the Borstal institution do not receive

enough counseling were also reported. The parents also stated that lack of exit strategy – that the institution and the government have no meaningful community reintegration strategy for children leaving the Borstal hence many of them soon become frustrated and return to criminality

4.4 Findings from members of community

Members of the public interviewed supported the Borstal institution saying it is doing a good job rehabilitating criminal children who would otherwise end up being lynched by angry members of the public. They however voiced several concerns regarding the institution stating that although children are generally taken good care at the Borstal institution, the staff and workers are largely neglected and are therefore not motivated to perform their duties of enabling rehabilitation of inmates. There are allegations of cases of child sexual violation (sodomy) within the Borstal institution and that corporal punishment is meted on some of the inmate children. Other complaints were that children who successfully complete their rehabilitation and are released are not assisted to start a new life i.e. lack of startup capital to start business despite the vocational training skills acquired. The members of public also stated that lack of community sensitization on rehabilitated children to prepare them for reintegration. As a result many members of the society continue to view the released children with suspicions and regard them as criminals or potential criminals. Indeed any time a crime happens the released child from the Borstal institution is treated as the first suspect and a number of them have even been killed under such circumstances.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

This chapter summarizes the findings obtained in this study, proposes recommendations thereof and conclusions of the research.

5.2 Summary of findings

The overall purpose of this study was to analyze the rehabilitation and reformation of child offenders at Shikusa Borstal Institution. The study sought to establish whether the laws, policies and practices of Shikusa Borstal Institution are conducive for the rehabilitation of children. Guided by these objectives the following is a summary of the study findings;

5.2.1. Laws and policies governing Borstal Institutions

Kenya is a signatory to a number of international and regional treaties and conventions on the rights of the child more specifically the Universal Declaration on Human Rights, Convention on the Rights of the Child, African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights. The 2010 Constitution also by virtue of Articles 2(5) and (6) binds Kenya to all the international ratified legal instruments. These instruments set the minimum parameters that should be observed by institutions mandated to rehabilitate children in conflict with the law as discussed exhaustively under

chapter 2. These minimum parameters and observation of the rights enshrined in these instruments set up the ideal environment for the rehabilitation of children.

The 2010 Constitution is very progressive and aligns itself to the international standards and instruments ratified on the rights of the child. It indeed dedicates the whole of Article 53 to enumerate the rights that accrue to every child as discussed in chapter 2.

The two legislations that are to bring light to the broad provisions of the Constitution on the rights of the child are the Children's Act and the Borstal Act. The Children's Act should expressly outlaw corporal punishment. A Children Act (Amendment) Bill is under discussion to amend section 18 of the Children Act to include prohibition of corporal punishment and this is to be lauded.

An analysis of the Borstal Act against the provisions of the international standards indicate that it remains archaic with very little progression towards the dynamics of the present times. Even with the recent penal reforms that have been undertaken there is urgent need to have equally standing laws that govern the operations of these institutions.

5.2.2. Practice at the Borstal Institution

It is not enough to have laws and policies in place but equally important is the practice and implementation of these laws. As seen above, Kenya is bound by the international instruments ratified. These international instruments provide for minimum parameters on what constitutes the ideal environment for rehabilitating

children in conflict with the law. It cannot be overemphasized how the environment of a borstal institution influences the rehabilitation of children that have been involved in criminal activities. The environment ranges to a varied number of external factors but for the purposes of this study was confined to the prevailing accommodation, sanitation, health, water, foods clothing and beddings. The research also premised to establish whether there are recreational activities and programs like counseling and religion that are adequate to the well-being of the children and the right to have frequent communication with the outside world.

The living environment at the Shikusa Borstal Institution is not very conducive for children rehabilitation. This is evident from 50% of child respondents who described it as bad and corroborated by my own personal observation and the views of parents and members of the public. The design and layout of the accommodation does not meet the minimum international standards of ensuring privacy and sensory stimuli and indeed is beyond the capacity that the institutional can handle. The government should take deliberate measures to prioritize borstal institutions by allocating more funds to establish similar institutions across the country which would effectively address the problem of overcrowding.

Whereas, the internal standards are that children in conflict with the law should be separated from adults, in Shikusa the children are in close proximity with the adults prisoners hence negates this separation principle.

The food ratios were also not at par with the international standards as most children interviewed indicated that it was too little. Indeed the complaints of sick inmates not receiving the required diet should be looked at. Similar complaints were also raised on the need for better sanitation, clothing and bedding.

Education is a right that has been encapsulated in both the international and domesticated laws. Continuing education and vocational skills is critical to their rehabilitation and reintegration back to society. Indeed a borstal institution should adopt the model of an approved school rather than a prison. It is an institution that nurtures children in conflict with the law by equipping them with education and life skills that shall better their lives once out and avoid a relapse into criminal activities. The education at Shikusa is viewed as adequate and indeed both primary and secondary education is available. On the relevance of the vocational skills once out, this should be reviewed as the institution only offers the traditional skills like masonry and carpentry.

Recreational activities, counseling and religious activities were viewed as adequate at Shikusa. There is also the presence of a health center that serves both the children at the institution and the general public and overall having this accessibility is a step to ensure the basic needs of children in need of medical facilities is achieved.

Another issue that also stood out was that reintegration of children back to society is critical if the children are indeed to continue the rehabilitation that they underwent in the institution. Rehabilitation of children in general takes a holistic

approach and involves a concerted effort by a multitude of stakeholders and external factors. All the categories of the interviewed stakeholders agreed that Shikusa Borstal Institution lacks a comprehensive strategy for reintegrating rehabilitated children back into the society

5.2.3. Personnel

In analyzing whether the staff of Shikusa Borstal Institution are well trained to ensure rehabilitation of inmate children, the study took two approaches one on their capacity, training and welfare and two on how they handle the children at the center.

With regards to their capacity, the feedback from the staff is that they are understaffed and there is need to equip the institution with more personnel. The staff interviewed stated that they have been trained on issues of children including child care protection, children rights and counseling all components that lead to the successful rehabilitation of children. However, there may be need to have a more deliberate recruitment on professionals trained on child protection as part of the minimum qualifications as opposed to ad hoc trainings.

Second, there were complaints that the personnel were handling the children in ways that amount to torture and inhumane treatment. Both international and local laws outlaw torture and inhumane treatment especially towards a child. Some of the children interviewed narrated experiences on how they have been tortured and subjected to inhumane treatment. A majority of 63% of the children interviewed claimed to have been a victim of torture at the institutions ranging from beating, hard punishment, molestation and sexual abuse among others. Borstal institutions

are anchored on the rehabilitation notion and not retribution hence, any practice contrary to this is counterproductive towards the rehabilitation of children. Strict measures need to be undertaken to curb the act of torture in borstal institutions.

5.3 Recommendations

Based on the findings revealed by the study, the following are the proposed recommendations;

5.3.1. The laws and policies on Borstals Institutions

The following critical elements in the Borstal Act need to be amended in-order to achieve effective rehabilitation of children. The Act needs to provide for the clear recruitment, training and duties of the Borstal officers to be distinct from the larger penal system and instead focus on juvenile justice and rehabilitation for children in conflict with the law. Section 21 which sets up an after care committee should among other roles bestow upon it the duty to set up programmes and interventions that shall ensure the successful re-integration of inmates upon their release. Section 34 and 36 gives the Commissioner of prisons the power to administer corporal punishment of up to 10 strokes to inmates found guilty of an offence. However this should be repealed to conform to the international treaties that Kenya has ratified including the Convention of the Rights of the Child that propone for alternative means of punishment. Allegation of mistreatment of children by the prison staff was recorded. The Act and policies need to be revised to seal loopholes for mistreatment of children and issue stiffer penalties to any staff found undertaking activities contrary to the overall rehabilitation of children.

Torture is a human rights violation and as such should be outlawed by the Borstal Act and the perpetrators to be subjected with harsh penalties.

5.3.2. The living environment at Shikusa Borstal Institution

There should be increased government funding to enable expansion of facilities, improved service delivery including sanitation, clothing and bedding for the inmate children and the curriculum should be reviewed to include more lucrative courses like computer studies to make these children vie competitively for available jobs.

5.3.3. Personnel and practice at Shikusta Borstal Instituion

The recruitment of personnel to the borstal needs to incorporate training on child protection as a compulsory requirement and continuing learning as opposed to ad-hoc trainings. The welfare of the personnel should also be improved including living conditions and remuneration to boost their morale in carrying out their duties of rehabilitating these children. In addition, the institutions should set up alternative means of punishment that are humane and aligned to the international standards.

5.3.4. Reintegration back to society

There should be sensitization of host communities on the eve of reintegration of rehabilitated child by the rehabilitation officers. Placement of rehabilitated children to transitional institutions such as schools and vocational training centers at their homes to serve as re-entry points should be undertaken. These rehabilitated children who have gained valuable vocational training skills should

be provided with seed equipment and startup capital to start own income generating activities and linkages to local employers either as internships or as new employees. Also, the governments to set aside sufficient funds for the after care of children once their terms are over and ensure the smooth transition back to society and society at large also play a key role in accepting these children including acceptance in schools, job opportunities to enable them lead a meaningful life and reduce the probability of relapsing back into crime.

5.4. Conclusion

The study analyzed the elements that lead to the effective rehabilitation of children. It was deciphered from the information gathered that, the law though not perfect is in place; it is the accompanying implementation and practice that lacks. From the literature review there were a lot of similarities between the Nigeria borstal institutions and the Kenyan counterparts as opposed to other developed countries like Canada and the UK. Resources are paramount if the provisions of the international instruments are to be followed to the latter and the Kenya government should take deliberate measures to prioritize funding of Borstal institutions.

The rights of children in conflict with the law must be promoted, fulfilled and respected. The institution mandated to foster their rehabilitation must be provided for the necessary environment under which to operate, both legal and physical, and also be held accountable for the welfare of these children. Shikusa Borstal Institution is one of only two borstal institutions in the country with the

imperative mandate of rehabilitating children in conflict with the law. The institution continues to face challenges that need to be urgently addressed and the recommendations in this study considered to guide penal reforms in the borstal institutions.

5.5. Suggestion for further study

This study was based on Shikutsa Borstal institution and the results point to a need for a comparative study covering more than one Borstal institution. It also emerged that Borstal institutions only admit children aged 15 years and above while, those aged below 14 years are taken to approved schools. There is therefore need for a comparative study of both Borstal institutions and approved schools. In addition, a more comprehensive study undertaken over a longer period of time could yield more tangible results on the effectiveness of rehabilitation of children in conflict with the law.

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LEGISLATIVE INSTRUMENTS

Universal Declaration on Human Rights (1948).

Convention on the Rights of the Child (1989).

African Charter on the Rights and Welfare of the Child (1990).

The African Charter on Human and Peoples' Rights (1981)

The United Nations Standard Minimum Rules for the Treatment of Prisoners(1955).

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985)

The UN Rules for the protection of Juveniles Deprived of their liberty (1990)

The Kampala Declaration on Prison Conditions in Africa (1996)

The Arusha Declaration on Good Prison Practices (1999)

The Kenya Constitution (2010)

Children's Act CAP 141 (2001)

Borstal Institutions Act, CAP 92 (1963)

APPENDICES

APPENDIX I

Letter of Transmittal

Hello, I am Anne Mary Okutoyi, a master's student in the University of Nairobi. I am undertaking a research on the role of borstal institutions in the rehabilitation of children. This questionnaire is aimed at collecting data and other relevant information towards my study. The data collected shall help shape policy recommendations towards penal reforms in borstal institutions.

Explanation of procedures

It will take you about 15-20 minutes to fill in this questionnaire. This exercise is voluntarily and you may choose not to answer any question

Confidentiality

All data and information collected will be treated with utmost confidentiality and used solely for academic purposes.

Consent

With the above information and understanding, do you agree to participate in this research?

YES NO

If you say "Yes" then it means you have agreed to be part of the study

Anne Mary Okutoyi

APPENDIX II
Children Questionnaire

Part A: Personal Demographics

1. What is your age? Tick (✓) as appropriate

I. Below 15

II. 15-17

III. Over 18

2. What is your religion? Tick (✓) as appropriate

I. Christian

II. Muslim

III. Hindu

IV. Others

3. What is your education level? Tick (✓) as appropriate

I. Primary

II. Secondary

III. Post-Secondary

IV. None

4. What is your family's background environment? Tick (✓) as appropriate

I. Rural

II. Rural-urban

III. Urban

5. What is your family's economic background? Tick (✓) as appropriate

I. Poor

II. Middle class

III. Rich

PART B: Rehabilitation Information

6. What crimes did you

commit?.....
.....
.....
.....
.....

7. How long have you been/were you at Shikusa Borstal Institution? Tick (✓) as appropriate

I. Less than 1 year

II. 1-2 years

III. 2-3 years

IV. Above 3 years

8. How would you rate the environment at Shikusa Borstal Institution? Tick (√) as appropriate

I. Very good

II. Good

III. Bad

IV. Very Bad

V. Not sure

9. What are some of the major difficulties/challenges that you have faced while at Shikusa? Tick (√) as appropriate

I. Sanitation

II. Water Supply

III. Food

IV. Clothing and Beddings

V. Accommodation

VI. Inhumane or degrading treatment/punishment

Others(specify).....
.....
.....
.....
.....

10. What education is available at the Institution? Tick (√) as appropriate

- I. Below primary
- II. Class 1-3
- III. Class 4-8
- IV. Secondary
- V. Post- secondary
- VI. None

11. Have you witnessed any or been subjected to any torture, degrading and inhumane treatment? Tick (√) as appropriate.

- I. Yes
- II. No

12. If yes which ones? Please give details?

.....
.....

.....
.....
.....

13. Are there any recreation activities undertaken at the institution? Tick (✓) as appropriate.

I. Yes

II. No

14. If yes, which ones?

.....
.....
.....

15. In your opinion, do you think these activities are adequate to your development? Tick (✓) as appropriate.

I. Yes

II. No

16. If no, what are the reasons?

.....
.....
.....
.....

17. Do you get access to the outside world? Tick (✓) as appropriate

I. Yes

II. No

18. If yes how do you access the outside world? Tick (✓) as appropriate.

I. Through visits

II. Through sports and other recreational activities

III. Other activities, please

state.....

.....

.....

.....

19. Do you/ Did you have access to any vocational training while at Shikusa Borstal Training? Tick (✓) as appropriate.

I. Yes

II. No

20. If yes did you acquire any skills from the vocational training? Tick (✓) as appropriate.

I. Yes

II. No

21. Which skills did you acquire?

.....
.....
.....
.....
.....

22. Have these skills been relevant after discharge from Shikusa? Tick (✓) as appropriate.

- I. Yes
- II. No

23. If no, what do you think are the reasons? Tick (✓) as appropriate.

- I. Inadequate skills
- II. Irrelevant skills
- III. Others

please

state.....
.....
.....
.....

24. Are there any religious activities in Shikusa? Tick (✓) as appropriate.

- I. Yes
- II. No

25. If yes, which ones?

.....
.....
.....
.....
.....

26. Do you think the religious activities if any are sufficient to your wellbeing?

Tick (✓) as appropriate.

I. Yes

II. No

27. Does the institution have any counseling programs? Tick (✓) as appropriate

I. Yes

II. No

28. If yes, do you think they are sufficient? Tick (✓) as appropriate.

I. Yes

II. No

29. Does the institution have any program to help you re-integrate back into

society after the end of your sentence? Tick (✓) as appropriate.

I. Yes

II. No

30. If yes, please state with details.....

.....
.....
.....
.....
.....

31. In your opinion, do you think the environment at Shikusa rehabilitates the youthful offenders? Tick (√) as appropriate.

I. Yes

II. No

III. I am not sure

32. What are some of the recommendations that you can propose to address the challenges you face at Shikusa?

.....
.....
.....

APPENDIX III

Key informant Guide

1. When was the institution started?
2. What kinds of children are sent to Shikusa?
3. What is the total number of children held at the institution from inception and also for the last 6 months?
4. What are the most common crimes committed by these children?
5. What is the total number of officers in the institution?
6. What measures have been put at the institution to ensure that rehabilitation of children punitive treatment is achieved?
7. Do you have any programs aimed at the integration of children into the society after release?
8. What are the statistics of recurring crimes of any?
9. Do the officers have any special training in dealing with children?
10. Do you have any challenges in carrying out your mandate?
11. What changes if any either policy or laws have been established to improve Borstal Institutions in Kenya?
12. Any recommendations that you may suggest for more effective rehabilitation of children in Borstal institutions?

APPENDIX IV

Focus Group Discussion (FGD) Guide

1. Do you think Shikusa Borstal is effective in the rehabilitation of children in conflict with the law?
2. If yes why? If no what are your reasons?
3. Has the child been integrated back to society?
4. If yes how?
5. What are some of the suggestions or recommendations that you may give towards improving Borstal Institutions?