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## Judicial Victim Satisfaction with the Criminal Justice System in Kenya: An Empirical Review

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### **Abstract:**

*The criminal justice system is a web of interactions where victims and offenders of crime are very critical persons in the world. Most studies in criminology have concentrated on offenders and less on victims of crime who bear the greatest burden. The focus of the study is on the judicial victim satisfaction with the criminal justice system in Kenya whose principal objective will be to ascertain whether the judicial victims normally gain intrinsically or extrinsically from the court process. Content analysis of published articles related to Victimology and Criminology will be used to study the judicial victim satisfaction with the criminal justice system. Specifically the study will assess the role of the victims, police, prosecutors, victim advocates, and judges and to rate their level of satisfaction. The findings of the study will benefit the judicial system in enhancing measures that address victims' needs in a positive manner which will encourage them to turn to the criminal justice system for assistance. This is not only important to set a sound agenda for future research, but also to create an enabling environment where judicial victims gain from the court process.*

**Keywords:** Criminal justice system, offenders of crime, victim satisfaction

### **1. Introduction**

The criminal justice system consists of the police, the courts, and corrections. The major tasks of the police include selectively enforcing the law, protecting the public, arresting suspected law violators, and preventing crime. The courts are responsible for assuring that suspected criminals receive fair trials and for determining the guilt or innocence of the accused. The goal of the correctional subsystem is to rehabilitate offenders or to alter their behavior so that they are socially acceptable and law abiding. The goal of all three subsystems is the reduction of crime in the community. Although there exists a series of steps followed by persons who enter the criminal justice process, the issue of whether that process reflects the unity of purpose implied by the term 'system' remains controversial.

Kenya's legal system is based on its statutory law, English common law, customary law, and Islamic law. It has evolved from the inheritance of its English Common Law tradition to modern day system adapting to the changing in social, economic and political trends. The Courts adhere to the principle of stare decisis, and like other common law countries, the legal system is adversarial in its procedure. Theoretically, a suspect is presumed innocent until proven guilty. In practice, however, the burden of proof is often placed on the prosecution.

The promulgation of the Constitution of Kenya 2010 brought far much needed reforms in the Criminal Justice sector. Some of the highlights include Article 2(5) which provides that general rules of international law shall form part of law of Kenya and Article (6) any treaty or convention ratified by Kenya shall form part of law of Kenya. The other key provisions touching on Criminal Justice System include, Articles 48 to 50 of the Constitution which provide for the right of Access to Justice, the presumption of innocence and the right to a fair hearing. Article 48 provides that the state shall ensure Access to Justice for all persons and if any fee is required, it shall be reasonable and shall not impede access to Justice. Article 49 provides for the rights of arrested persons, and can be summarised as requiring that an arrested person:

- Be informed of the reasons of their arrest,
- Their right to remain silent and the consequences of not remaining silent;
- Be allowed to communicate with a legal representative or any person whose assistance is required by the arrested person;
- Be held separately from persons who are serving a prison sentence;
- Be brought to court as soon as reasonably possible and not later than 24 hours after their arrest or the next court day if arrested outside the ordinary court days;
- Be informed by the court of first appearance of the reasons for continued detention or be released; and,

- Be released on bond or bail with reasonable conditions pending trial unless compelling reasons are given for continued detention. Article 49 further provides that a person should not be remanded in custody for offences punishable by a fine only or by imprisonment of less than six months

Much victimological literature has focused on the concept of victim satisfaction with criminal justice. From the mid-1970s onward, the victims' rights movement was fueled by the public's attention to the poor treatment of victims in the criminal justice system (Joffe, 2009; Smith, 1985). As a result, studies emerged covering a wide range of topics, ranging from satisfaction with involvement in criminal justice procedures (Erez, Roeger & Morgan, 1997), satisfaction with the various legal authorities victims come into contact with (Elliot, Thomas, & Ogloff, 2011; Felson & Paré, 2008; Johnson, 2007), and satisfaction with the sentence (Regehr, Alaggia, Lambert, & Saini; Erez & Bienkowska, 1993). In these studies, several underlying causes of victim (dis)satisfaction had been investigated. The results of these studies, however, are inconsistent and often contradictory, only sometimes finding significant associations between predictors and satisfaction. Consequently, it is important to take a more systematic approach toward victim satisfaction. It is hoped that doing so will provide some insights into the current state of victim satisfaction research.

Despite the inconsistencies, these studies did lay the groundwork for later theoretical conceptualizations regarding, for example, procedural and interactional justice in the area of criminal justice. The theories argued that aspects such as participation, interpersonal treatment, compensation, and retribution were important indicators of satisfactory justice. Outside of the victimological discipline, developments were being made regarding justice in the field of social psychology. Here it was found that both the outcome and the procedure of justice procedures were important to individuals, and had an impact on many different reactions. The 1990s witnessed the integration of these social psychological theories with the experience of the victim, taking from the knowledge gained previously from satisfaction studies. Consequently, more recent research is now using these theories to more systematically evaluate victim experiences with the criminal justice system (Elliot, Thomas, & Ogloff, 2011; Laxminarayan, 2012a; Wemmers, Van der Leeden, & Steensma, 1995). One drawback, however, is the applicability of these findings regarding procedural and interactional justice to all groups of victims, regardless of individual or situational differences. To address these shortcomings, this research will argue for a more systematic framework for measuring justice before proceeding to conduct a systematic review based on the framework that will be laid out. Moreover, as is one goal of any systematic review, the conclusions will question under what conditions the findings may hold true, arguing for a need to incorporate 'differential victimology' in future studies.

The discipline of criminology and criminal justice tends to focus on the offender. However, the victim's cooperation with authorities, which often begins with a willingness to report the crime, is central to a successful investigation and prosecution. Yet, the crime victim exists today on the outskirts of the criminal justice system, limited in their role by the same authorities that need them to help. Despite increasingly retributive policies toward offenders, victims remain as unsatisfied with the criminal justice system as they were prior to the policy changes (Fisher, 2014).

## 2. Methodology

Content analysis of published articles related to Victimology and Criminology were used to study judicial victim satisfaction with the criminal justice system as discussed in the next section. This analysis was preferred since there were a few studies carried out in this area in Kenya. There was also need to justify recommendation for further research in this grey area. Many people (victims) have suffered quietly without enough knowledge on the steps to take in order to ensure that their needs are met satisfactorily.

## 3. Results and Discussion

Studies were reviewed and the following were the findings: A study was carried out by the Department of Probation and Aftercare, African Institute of Children Studies, Kenya Association of the Intellectually Handicapped, *Situational Analysis on Access to Justice for Persons with Mental Disabilities* (2018). In this study, a situational analysis was conducted on the status of access to justice for persons with intellectual and psychosocial disabilities. The report identified barriers that prevented persons with intellectual and psychosocial disabilities from enjoying the right to access justice throughout the criminal process. This is evident from the time a complaint is made against them at a police station to the person being arrested, detained, taken to court for trial, during the trial process, conviction, sentencing and even when seeking an appeal. The biggest take-home from the situational analysis report that reinforced the need to conduct this research was discovering that most offenders with intellectual or psychosocial disabilities within the criminal justice system were charged with petty offences.

Key findings of the Audit carried out by the National Council of Administrative Justice (NCAJ) confirm that Kenya's Criminal Justice System is largely skewed against the poor. It is an indictment of a system that is expected to guarantee justice to people from all walks of life, including all forms of vulnerabilities. The Audit found that more poor people are arrested, charged and sent to prison as compared to the well to do. It was an interesting finding that economic driven and social disturbance offences which are rated as petty, such as offences relating to lack of business licenses, being drunk and disorderly and creating disturbance, form 70% of cases processed through the justice system. A major concern as per the findings was that, serious offences such as organized crimes, capital offences and sexual offences were found to have the highest rate of acquittal and withdrawals. The Audit, therefore, stirred up deep reflections by the NCAJ to capitalize on the Audit recommendations for institutional reforms in our policing and prosecution systems.

Studies reviewed have been summarized below:

Author	Discipline	Type of Literature	Contribution
Gerald T. Hotaling & Eve S. Buzawa (2003)	Criminal Justice University of Massachusetts, Lowell	Academic Paper on Domestic Violence	Components of the Criminal Justice System had little relationship with Victim Satisfaction
Cortney Fisher (2014)	Criminology and Criminal Justice	Victim Satisfaction in a procedural justice and distributive justice framework	Reviewed curricula of criminal justice officials Propose legislative and policy changes
Kyle Richard Harney (2016)	Conflict and Dispute Resolution	Increasing Victims Satisfaction with Traditional Criminal Justice System: Lessons Learnt from Restorative Justice	Emotional Restoration and Increase in Victims' rights training in law enforcement personnel
Author's Dream Autism Trust (ADAT) (2018)	Criminology	The interaction between the criminal justice system and persons with intellectual and psychosocial disabilities in Nairobi, Kenya	Need for legal and policy reforms on Persons living with disability
National Council of Administrative Justice	Human Rights Standards in Kenyan Criminal Justice System	Audit Study on Conditions of Pre-trial detention and Case Law Management of the Criminal Justice System in Kenya	Kenya's Criminal Justice System is largely skewed against the poor. Recommendations made on the Criminal Justice System reforms

Table 1: Summary of Reviewed Studies

#### 4. Conclusion

From the above reviewed studies, it is concluded in relation to the basic principles of justice for victims of crime that:

- Victims should be treated with compassion and respect for their dignity. They are entitled to have access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
- Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
  - Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  - Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
  - Providing proper assistance to victims throughout the legal process;
  - Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
- Informal mechanisms for the resolution of disputes including mediation, arbitration and customary justice or indigenous practices should be utilized where appropriate to facilitate conciliation and redress for victims. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
  - Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
  - The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
  - The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.
  - Legal reforms as regards the Criminal Justice System be done and implemented to the letter.

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