

Constitutional Transition and Criminal Justice: Proposals for Reform of Kenya's Youth Justice System Based on Restorative Justice Principles

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Abstract : Following the promulgation of a new Constitution of Kenya in 2010, wide-ranging proposals for reform of the criminal justice system have been made. Proposed measures include a clear and separate system of dealing with juvenile offenders with a greater focus on rehabilitation and reintegration. As part of a broader constitutional transition, this article considers the contribution of restorative justice to reforming the youth justice system. The paper analyses Kenya's juvenile justice legal framework measured against current international trends in youth justice. It identifies the first post-independence juvenile justice system as a remnant of the colonial period and notes that the post-2001 system is a marked improvement. More recent legal and institutional efforts to incorporate restorative justice are also examined. The paper advocates further development of the juvenile justice system by mainstreaming of restorative justice principles through national level legislative amendments. International and comparative perspectives are used to inform a diversion centered model of restorative justice. In addition, a case is made for the use of existing forms of alternative dispute resolution. Conscious of a tense political climate, the paper also proposes strategies to address challenges posed by a punitive penal environment, chiefly the linking of restorative justice to wider democratic goals and community spirit. The article concludes that restorative justice led juvenile justice reform will contribute to better treatment of young offenders under the criminal justice system and has the potential to set a new precedent for fair, sustainable and effective justice. Further, as part of far-reaching criminal justice reform, the proposed efforts may strengthen democratic progress in Kenya's ensuing phase of political transition.

Keywords : constitutional transition, criminal justice, restorative justice, young offenders

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