

**DETERMINANTS OF CHILDREN'S RIGHTS VIOLATIONS IN  
PROSECUTION: A CASE OF NAIROBI CITY COUNTY, KENYA**

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**DECLARATION**

This research project is my original work and has not been presented for any other degree in any other University.

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## ABSTRACT

Kenya's criminal justice system empowers the office of Director of Public Prosecution (DPP) to prosecute all criminal cases including those that are related to violation and abuse of children's rights. Article 53 of The Constitution of Kenya 2010 read together with the Children's Act 2001 Laws of Kenya guarantees all children in the Republic of Kenya protection of their fundamental rights. The best interest of the child is understood to be paramount in all cases relating to violation of children's rights in Kenya. Further, existence of policies and programs such as the Five-Year National Prevention and Response Plan on violence against children confirms efforts made so far in protecting children's rights in Kenya. However, despite all these preventive measures in place, violations of Children's rights in Kenya is still on a worrying trend. Effectiveness or otherwise in implementation of the Constitution, the laws, policies and programs relating to violations of children's rights in Kenya stood out as a relevant area worth critical examination. There was need therefore to establish determinants for effective prosecution in relation to children's rights violations in Kenya, focusing on Nairobi City County. The study specifically sought to find out if violations of Children's rights in Nairobi City County is determined by the level of prosecutors' competence, workload prosecutors have and depth of investigations carried out by police investigators. The study was informed by the Rational Choice and Routine Activities Theories. The study used integrated quantitative with qualitative designs. The study was conducted at the head office of DPP and Makadara Law Court. The study targeted court prosecutors and parents who are complainants of children's rights violations. Purposive sampling was used to select 20 prosecutors and 20 parents who are complainants in Children's rights violation cases. Data was collected using oral interviews, questionnaires and by observation of court sittings in relevant court cases. Statistical Package for Social Sciences (SPSS) was used to aid in analysis of both inferential and descriptive statistics. The study found that depth of investigations stood at (84.3%) percent in determining the outcome of Children's rights violation cases. Workload assigned to prosecutors followed closely at (60.8%) percent as another determinant that influenced the outcome of these cases. Competence of the prosecutors was also found to be the lowest determinant at (52%) percent. The study concludes that although all the three variables determine the outcome of prosecutions against violations of the rights of children, depth of investigations mattered most. The study recommends that there is need to motivate and support prosecutors through legal framework, so as to enhance their interest, efficiency and knowledge in prosecuting children's rights violations cases. The number of prosecutors need to be enhanced so as to commensurate the workload assigned to them. The study also recommends that the police investigations should be enhanced so as to secure prosecution and punishment of the children's rights violators. The study suggests that a study on prosecution of violators of rights for people with disabilities, women and other vulnerable groups should also be conducted to ascertain effectiveness of the abilities and efficiency of the prosecution.

## **ACRONYMS AND ABBREVIATIONS**

ACRWC	-	African Charter on the Rights and Welfare of the Child
AIDS	-	Acquired Immuno-Deficiency Syndrome
APHRC	-	African Population Health Research Centre
CA	-	Children Act 2001
CRC	-	Convention on the Rights of the Child
CSO	-	Civil Society Organizations
DPP	-	Director of Public Prosecution
ECD	-	Early Child Development
EU	-	European Union
HIV	-	Human Immuno-Deficiency Virus
NCCS	-	National Council for Children's Services
SC	-	Save the Children
SPSS	-	Statistical Package for Social Scientist
UN	-	United Nations
UNICEF	-	United Nations International Children's Emergency Fund

## **OPERATIONAL DEFINITION OF TERMS**

<b>Children's Rights Violations</b>	Any action/act that goes against the provisions of the Constitution that protects the welfare of children
<b>Civil Wrong</b>	Refers to an act against children's rights
<b>Crime</b>	An action or omission that constitutes an offense against children's rights that may be prosecuted by the state and is punishable by law.
<b>Prosecution</b>	A suit that seeks to address a wrong, a breakage of law or violation of the children's rights
<b>Prosecutors</b>	A lawyer or police officer who conducts the case against a defendant in a criminal court.
<b>Sympathy</b>	Feelings of pity and sorrow for children's misfortune, particularly for the abandoned or street children

## TABLE OF CONTENTS

DECLARATION.....	ii
ABSTRACT.....	iii
ACRONYMS AND ABBREVIATIONS.....	iv
OPERATIONAL DEFINITION OF TERMS.....	v
TABLE OF CONTENTS.....	vi
LIST OF TABLES.....	ix
LIST OF FIGURES.....	x
CHAPTER ONE: INTRODUCTION.....	1
1.1 Background of the Study.....	1
1.2 Statement of the Problem.....	6
1.3 Objectives of the Study.....	7
1.4 Research Questions.....	7
1.5 Justification and Significance of the Study.....	8
1.6 Scope of the Study.....	9
1.7 Limitations of the Study.....	10
CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK... 11	
2.1 Introduction.....	11
2.2 Empirical Review.....	11
2.2.1 Prosecutor’s Competence.....	11
2.2.2 Prosecutors’ Workload and Prosecution of children’s rights violations.....	12
2.2.3 Depth of Investigations and Prosecution Children’s’ rights Violations.....	13

2.2.4 Rights of Children under the age of five years.....	15
2.3 Theoretical Review.....	16
2.3.1 Rational Choice Theory.....	16
2.3.2 Routine Activities Theory.....	17
2.4 Conceptual Framework.....	18
CHAPTER THREE: RESEARCH METHODOLOGY.....	20
3.1 Introduction.....	20
3.2 Research Design.....	20
3.3 Study Site.....	20
3.4 Target Population.....	21
3.5 Sample Size and sampling Technique.....	22
3.6 Data Collection.....	22
3.7 Validity and Reliability.....	23
3.8 Data Analysis.....	25
3.9 Ethical Considerations.....	25
CHAPTER FOUR: DATA ANALYSIS AND DISCUSSIONS.....	26
4.1 Introduction.....	26
4.2 Descriptive Statistics.....	26
4.2.1 Response Rate.....	26
4.2.2: Reliability Analysis.....	27
4.2.3 Demographic Profile of the Respondents.....	28
4.3 Prosecutor Competence and Prosecution of Violations of Children’s Rights.....	31
4.4 Workload of Prosecutors and Prosecution of Violations of Children’s Rights.....	35

4.5	Depth of Police Investigation and Prosecution of Violations of Children’s Rights	39
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CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND

	RECOMMENDATIONS.....	46
5.1	Introduction.....	46
5.2	Summary of Findings.....	46
5.3	Conclusion.....	48
5.4	Recommendations for Policy Implications.....	48
5.4.1	Contribution to the study for Knowledge.....	49
5.4.2	Policy Implications.....	50
5.5	Recommendations for further Research.....	51
	REFERENCES.....	52
	APPENDICES.....	61
	Appendix I: Letter of Introduction.....	61
	Appendix II: Questionnaire.....	62
	Appendix III – Interview Guide.....	67
	Appendix IV: Observation Schedule.....	68
	Appendix V: Budget Estimation.....	69



## LIST OF TABLES

Table 3:1: Target Population.....	21
Table 4:1: Response Rate.....	27
Table 4:2: Reliability Analysis.....	28
Table 4:3: Results of job category of the Respondent.....	28
Table 4:4: Prosecutor competence in prosecution of children rights violation.....	32
Table 4:5: Workload on Prosecutors in prosecution of children rights violation.....	36
Table 4:6: Depth of police investigation in enforcing of children rights laws.....	40

## **LIST OF FIGURES**

Figure 2:1: Conceptual Framework.....	19
Figure 4:3: Respondent level of experience in years.....	30
Figure 4:4: Rating of Prosecutors competence.....	31
Figure 4:5: Other reasons related to Prosecutors competence.....	33
Figure 4:6: Extent to which workload on prosecutor influence children laws.....	35
Figure 4:7: Other reasons related to workload on Prosecutors.....	37
Figure 4:8: Depth of Police Investigation and Children Rights Laws.....	39
Figure 4:9: Other reasons related to depth of police investigation.....	42

## **CHAPTER ONE: INTRODUCTION**

### **1.1 Background of the Study**

Children's rights violations continue to occur daily across the globe. Hardly does a child stay for a day without his or her right being violated or abused. On child victim, violence causes damage, pain and suffering (GRND, 2014). According to CRC articles (17), (19), (23), (25), (27), (29), (32) and (39), children suffer violations and abuses that include; physical abuse, psychological abuse, utilization of kids in furnished struggle, child labor, forswearing of schooling and hardship of play. CIWG (2013) reports that such violations and abuses usually result into frustration, self-contempt and a lack of a sense of belonging, as well as increasing reliance on others. A reasonable image of the suffering of the Kenyan children is depicted on the desperate actions taken by their mothers to provide food on the table. The mothers come with their children who are below the ages of 5 years to the city center to beg. They see begging as the only means of earning a living, regardless of negative health implications it may pose to their children (Onyango, 2015).

In the European Union (EU) for example, children suffer violence in residential care, within the family, in the community and in other settings. For instance, in Germany and United Kingdom (UK) two children die from abuse and neglect every week while in France three die in a week (EURONET, 2005). Though Asia and Pacific enjoy a rapport of a great and vibrant economic zoning, it has become a residence of forced child labor between the ages of 5-14 years comparatively to global performance with an estimated

population of 122 million who earn their living without even having time for basic education (ILO, 2015).

Many African children undergo through various kinds of abuse that include; economic and immorality in sexual acts, gender alienation in the provision of basic education for all and their engagement in armed conflict. Further, it is estimated that Africa has more than a third of its population involved in forced labor for the minors (UNICEF, 2007). In Ethiopia, for instance, has had inter community wars involving civilians for quite a number of years and subsequent change to democracy caused economic, social and political challenges leading to a halt in the operations of the social services such education, health and recreational facilities. In the end, the country has to encounter escalated levels of infantry, death rates and malnutrition for children under 5, reduced levels of school enrolments impacting negatively on education and reduced level of immunization programs affecting the provision of health services (Save the Children, 2003).

In Kenya, Children face myriad of challenges that affect their growth and development, in their early years of life. Many children are daily rendered orphans by deaths resulting from HIV/Aids and other easy- to- treat ailments like Malaria and Diarrhea (Seager, 2006). Out of five children, one child does not live to see his or her fifth birthday and below five mortality has risen from approximately 110 to 115 deaths per 1000 live births (Kenya Demographic and Health Survey, 2003).The upsurge has been largely attributed to a poor health system; cost sharing charges meant for health service providing facilities; abject poverty and poor leadership; ever rising death rates as a result of malaria infections,

resistance to relative medications and related deaths associated with HIV/ AIDs (UNICEF, 2009).

*“Many children are weaned prematurely and have inadequate complementary feeding coupled with poor childcare practices at home. The vicious cycle of poverty perpetuates inequity from generation to generation; the more impoverished the family, the more likely that the child will be malnourished”*  
(State of the World Children, 2006)

Aware of the aforementioned challenges and the vulnerability of the Kenyan child, specifically those who dwell in slum areas, the government has put its focus in fulfilling its obligation under the UNCRC and strengthening the national legal framework in order to comply with international child rights standards (SC, 2005). Consequently, the government has ensured the Rights of Children have been enshrined in several legal instruments. These local legislations being the promulgated Kenyan constitution of 2010 and the Children’s Act enshrined in the same constitution, Act No. 8 of 2001. Further, in accordance to the Constitution of Kenya (2010), it provides the general policies and procedures of the international law forming part of the Kenyan law. It therefore alludes that all the international law Instruments becomes ratified as part of the Kenyan law by convention.

It is therefore not in doubt that, Laws that are in accordance with the rights and children’s welfare have been enacted and put in place. With the enactment of these relevant legislations and more so on the Children’s Act of 2001 and the Kenyan constitution (2010), the Kenyan government has made a significant step in the compliance with the

rules under the Convention on the Rights of the Child (CRC) alongside the African Charter on the Rights and Welfare of the Child (ACRWC). These instruments states it is the key role of the state parties to be involved in reviewing comprehensively the local legal policies and to ascertain the level to which treaties have been complied to (Republic of Kenya, 2010).

The Geneva Convention of 1924, in its principles state that it is the right of every child to be provided for means needed for his or her normal growth both materially and spiritually and be placed in a condition to earn livelihood, earn protection against exploitation and consciously be brought up with the best qualities to be used in the service of fellow men .The law therefore defines the manner which considers a child should be brought up.

Shamalla (2011) concluded that the provisions on the sexual offences act can be used to protect children from sexual abuse despite the challenges concerning the prosecution are not properly addressed. Shamalla (2011) also found out that joint effort by all the stakeholders in the field is key to ensuring that the sexually abused children receive utmost care services and that all the issues pertaining the way the affected children are handled in a cautious and a professional manner. The findings did not specifically identify the determinants of prosecution of the children rights violation despite the similarity on the research topic.

The enforcement of laws relating to the rights of children where the Director of Public Prosecution (DPP) is in charge of the investigation and prosecution of crimes under the

Constitution of Kenya (2010). The affected does not have the right as per the constitution to institute a private prosecution. (Article, 157). Nonetheless, the powers given to the office of the DPP allows them to take over or even halt any prosecution that have been privately prosecuted (CoK, 2010). The office of the DPP prosecutes cases through the state prosecuting counsels which ordinarily only deals with the high court cases. Children rights cases are conducted by the police prosecutors who are not trained lawyers in the lower courts (Deche, 2013).

Given the number of prosecutors available at the office of the DPP, their workload make them hardly have time to hold pretrial conferences, acquaint themselves well with the cases, witnesses and even engage and effectively understand how the investigation has been carried out. In some cases, it is upon the victim to make arrangements through their lawyer to participate in pretrial meetings with the prosecutor. Where the victim has no legal representation, no pretrial meeting occurs before the beginning of the trial. Further, the DPP successful prosecution of criminal cases is dependent on the depth of investigation carried out by the police, the availability of the prosecutor to handle the case and the availability of water-tight evidence to warrant a conviction. It is for these reasons that the study set out to investigate on the various determinants of prosecution of violations against the rights of children within Nairobi City County.

## **1.2 Statement of the Problem**

The laws protecting rights of the vulnerable children are available, yet cases of child rights abuses continue to be reported at an alarming rate. The efforts by government, the civil society groups, the Non-governmental organizations, State agencies and individuals, have never been adequate enough to ensure that each child and specifically the vulnerable and voiceless, get what is best for them, which are already enshrined in the constitution and other international conventions. The Declaration of the Rights of the Child (1959), the first global instrument to serve children's rights, subsequently introduced the principle of "the best interests of the child". It strongly pointed out that all children, without exception, must be provided with security for social welfare so as to enjoy the maximum benefits thereof.

The government should, in the spirit of the constitution and other conventions on international laws such as the International Covenant on Economic, Social and Cultural Rights, 1966, which urges governments to recognize on the unique measures to adopt in order to protect children from all sorts of exploitations, be it socially or economically and to save lives of the vulnerable children of Kenya by implementing all the relevant local laws and ratified international instruments. Kenya's criminal justice system empowers the office of DPP to prosecute all criminal cases including those that are related to the violation and abuse of children rights (Article 157 (6)).



Proper prosecution of child rights violation and abuse cases is a sure method of deterring children's rights violation and abuse (Shead, 2014). Yet, in Kenya, the persistent violation on the rights of children is still at a worrying trend (OMCT, 2006) necessitating the current study which sought to examine the determinants of prosecution of children's rights violations specifically in the County of Nairobi. The key focus of the study was primarily on the competence of the prosecutors, the workload of the prosecutors and the depth of their investigations determined the prosecution of the violations against the rights of children.

### **1.3 Objectives of the Study**

The study specifically sought to:

1. Evaluate the prosecutor's competence in determining the prosecution of Children's rights violations in the County of Nairobi.
2. Examine the prosecutors' workload in determining the prosecution of Children's rights violation in Nairobi City County.
3. Analyze how the depth of investigations conducted by the police determine the prosecution of Children's rights violations in Nairobi City County.

### **1.4 Research Questions**

The study was guided by the following questions

1. How does the prosecutor's competence determine the prosecution of children's rights violations in Nairobi City County?

2. How does the prosecutor's workload determine the prosecution of children's rights violations in Nairobi City County?
3. To what extent does the quality of investigations carried out by the police determine the prosecution of Children's rights violations in Nairobi City County?

### **1.5 Justification and Significance of the Study**

Prosecution is a fundamental legal process of proving the innocence or the guilt of an accused person in any criminal proceedings. Prosecution relating to violation of children's rights is therefore permanent to our society given the vulnerability of the children. Prosecution is the only channel perceived to be fair, legal and civilized. A study on determinants of prosecution of children's rights violations in Kenya shall directly address the question as to the effectiveness of the prosecution of the violators of the children rights and remedies to the problems associated with it in Kenya.

The study would help in the prosecution of the rights of children violations in that it will provide an understanding to the prosecutors and the investigating officers on how the investigations can secure a prosecution or not. It also provides information to the government (prosecution and the police) on how the parents feel and think about how prosecutions of such violations have gone before. It also provides an understanding of the parents on the need to secure evidence when violations occur and the necessity of reporting and informing the relevant authorities, such occurrences. It is fundamental for the prosecution also to learn the extent to which the workload and their efficiency in prosecution can influence their ability to secure convictions or not. This is key in even

pushing for additional staff being appointed to investigate and even other to prosecute so that they enhance their efficiency at work.

The study will also increase the awareness of children rights among parents and the general population and how such cases are prosecuted. This is a major milestone in the realization of the SDGs.

Nairobi City County was identified as the scope because of its metropolitan in nature having a higher number of population compared to other towns, its numerous courts which prosecutes violation of the rights of children cases. Moreover, it hosts the Office of the Attorney General and the Director of Public Prosecution is situated is considered ideal for this study. The County also has the largest number of children rights violations recorded given that it has the largest population.

### **1.6 Scope of the Study**

The study was carried around the City of Nairobi. Data was collected from the DPP's office and Makadara law courts with the respondents being the prosecutors of children cases and parents who are complainants of children's rights violations. The study focused on three determinants of the prosecution of rights of children violations including the competence and workload of the prosecutors as well as the depth of investigations as carried out by the police.

## **1.7 Limitations of the Study**

Guided by the sensitivity of the matter with many parents not willing to share the ordeals their children went through, how the prosecution was handle nor how they view the matters relating to children's rights, data collection on the affected became a serious challenge. The researcher assured them of their confidentially, anonymity, and objectivity in the research so as to enhance the response rate which really worked. The parents were also interviewed in private and their names or any form of identity was provided. Certain laws particularly the Children Act (2001) may generate vested selfish interests among the parents and the state. Therefore, this study encountered bottlenecks in its operation. The study mitigated against this challenge by effectively communicating the importance of this study to all parties and emphasizing that children deserve decent, credible and respectable life like any other human being.

## **CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

### **2.1 Introduction**

The empirical review of studies relating to the variables and objectives of the study including the role of prosecutors, effect of workload on prosecutors and influence of the depth of investigations by police investigators, on the prosecution violations against the rights of children. Relevant and applicable theories that spoke to the study are presented in this chapter while the schematic diagram that shows the relationship between the variables of the study is also provided in the chapter.

### **2.2 Empirical Review**

#### **2.2.1 Prosecutor's Competence**

The study by Omondi (2007) of USI on child protection from abuses found that the court procedures are adversarial in nature and affects negatively the prosecution of the violations of children's rights. Omondi (2007) conducted the study using sociological approach and studied the challenges that the implementation of the Children's Act of 2001 faced in a bid to protect the children from being abused. The study found that the Child Victim of Sexual Abuse (CVSA) impact, influenced how children were protected from abuse. The fact that most cases involving violation of children's rights are prosecuted by police prosecutors in the lower courts, does not make the situation any better (Children Act, 2001). The prosecution in these courts is left in the hands of corrupt police officers who often collude with the accused to evade punishment at the expense of

the child victim (TI, 2015). According to Kamau (2012) on the review of the court ruling delivered in Meru in 2013, found that the petitioners (group of girls) accused the government for what the court called “inaction” regarding violations of children rights, specifically defilement. The ruling agreed that the petitioners proved their case that the respondents were culpable for psychological and physical harms that had been suffered by the girls, given that the respondent (Government) had failed to conduct professional, effective and timely investigations on the reported defilement cases. The failure to conduct proper investigations had compromised the rights of children and created a “climate of impunity” for the defilement of children.

The National Center for Prosecution of Child Abuse (2004), argued that the successful prosecution of abuses and violations against children’s rights, has provided an uphill task for all the players. On the side of the key witness (victim), the demand, both cognitive and emotional, are enormous and overwhelming. The inability to coherently and systematically provide an account to the court or prosecution, implies that the culprit can easily escape from the punishment “for lack of sufficient evidence). In most cases, the accused offender, which the victim is expected to testify against, maybe a father, a sibling, an uncle, a cousin, a teacher, a church leader (pastor) or even a neighbour.

### **2.2.2 Prosecutors’ Workload and Prosecution of children’s rights violations**

The impact of large workloads and inadequate funding generate fundamental and obvious challenges for the prosecution function. Other studies illustrate that these challenges enhances the probability of prolonged case handling time, the presence or errors, plea bargains, burnout related stresses as well as the turnover rate for the prosecutors. These

challenges inhibits the ability of the prosecutor to handle the differences and disparities, adherence to Constitutional requirements and provisions and at the same time maintain the safety for the public. From the foregoing and studies, it has become apparent that the many investigations and prosecution are conducted under substantial and pressing pressure from the workload (Greenwood *et al.*, 1977; Innes, 2002; Nicol, Innes, Gee, &Feist, 2004). Studies done so far have not been conducted to determine how the quality of investigations influences case determinations and outcomes of such cases. However, it cannot be understated that the pressure from external sources significantly influence and affect the ability of investigations to search and process evidences in any particular case. Innes (2002) and Nicol *et al.* (2004) opine that the work environment and the time pressure upon which such investigation must be done, play a crucial role in determining the quality of investigations.

The Seventh Congress (1985) underscored how important the impartiality and independence of the prosecutors in handling any case and consequently there is need to ensure fairness and merit in the recruitment and selection of the prosecuting team. The fairness in the appointment ensures that the professionalism reigns and that the cases will be handled and appropriate verdict achieved.

### **2.2.3 Depth of Investigations and Prosecution Children's' rights Violations**

It is the responsibility and central function for the police and government to detect and prevent crime. The detection is crucial in the making sure that the offenders receive their due fate of punishment and that the justice is delivered to the victims of such criminal activities. When criminal are finally served their due punishment, it reassures the public that the criminal justice system is not only active but effective, which ultimately acts as a

deterrent to other potential criminals and offenders (Maguire 2003). Crime detection is often seen as the ultimate outcome of thorough investigations by the police though the investigations serve to reduce crime and serve justice to the victims. The reduction of crime by the investigations occurs in that when the offenders are caught and punished appropriately, they are prevented from committing other crimes in the future while potential offenders and criminals are sent a warning shot when they see criminals being punished severely and imprisoned from such actions. Scuto (2009) opines that the investigations has an objective of bringing offenders into book, charging them in a court of law and irrespective of the effects that such crime reduction strategies have in the society at large. Jansson (2007) is of the view that although the focus in assessing the effectiveness of police investigations is on the ability of such investigators to detect crime, the outcomes of such investigations and should be considered as a measure of the effectiveness too.

According to Knutsson (2004) and Smith and Flanagan (2000), investigators will always feel under pressure to maintain the initial viewpoint where they face subsequent and new information. This standpoint provides a pressure towards *belief perseverance* in criminal investigations. It is also critical to observe that the investigations on crime are the focus of the public eye as well as the media. In cases of violent criminal activities, the public may demand that the criminals themselves be apprehended promptly and charged instantly, failure to which, criticism would arise and the investigators accused of being complicit, and even considered beneficiaries of such (Bayley, 1994; Greenwood *et al.*, 1977). The pressure to charge the offenders is a generated from the external actors while



the investigators try to piece and produce sufficient and compelling evidence which will secure a conviction.

#### **2.2.4 Rights of Children under the age of five years**

The Constitution of Kenya (2010) is the supreme law in the land and any law that is inconsistent with it is considered unlawful, null and void to the extent of the inconsistency. The Chapter on the Bill of Rights (Chapter Five), provides for the safeguarding of freedoms and rights of the population. However, the chapter does not expressly provide for nor does it guarantee the rights of children. The Penal Code (Cap.63 Laws of Kenya) provides for children protection including the acts against and omissions of such actions, results is punishable by the law. Sexual abuses including defilement, indecent assault, incest, rape, physical abuse among others are categorized as offences against the child and are punishable under the Penal Code.

A survey on *Violence Against Children Survey (VACS)* in 2019 found that 46% young women between the ages of 18 and 24 faced violence when they were children, but at 52% for men. In 2010, 76% and 80% of young women and men respectively, faced violence when they were young, an indication of some of form of progress, though minimal. The study sampled at least 2000 children and young men and women aged between 18 and 24 years from across the 47 counties and found that 38.8% of the women and 51.9% of the men reported physical violence as the most prevalent in their childhood. Over 15.6% of the women indicated that they experienced sexual violence while 6.4% of the men reported so. The sexual violence was perpetrated by intimate and close partners and friends. Emotional violence was reported by 32.2% women and 34.3% of men

perpetrated by parents and close confidants. Interestingly, 52% women and 51.5% men witnessed some form of violence at their home when they were children. The study also found out that only 12.5% of the women and 3% of men reported the violence and sought some form of help. Of those who did not report, 53.6% did not consider the violence meted on them as an abuse at all and that there was no need to even seek help elsewhere. Interestingly, the study found that the majority of the respondents (50.5% for women and 47.3% of men) thought that the violence should be tolerated and it was actually acceptable for a husband to beat up the wife.

### **2.3 Theoretical Review**

The study focused on the factors that determine the prosecution of violation of children's rights within the Nairobi City County in Kenya. This study was conducted with guidance of rational choice theory and routine activities theory.

#### **2.3.1 Rational Choice Theory**

The theory, proposed in 18<sup>th</sup> Century with the work of Beccaria is founded on classical criminology. Classical criminology argue that persons choose their behaviour without being inhibited and are encouraged by the desire to avoid pain but pursue pleasure. People assess their decision of activities as per every choice's capacity to create point of interest, joy and satisfaction. The theory provides a focuses on offenders at individual levels engage in particular crimes. It argues that the criminal engages in crime since it can be rewarding, it can easy, satisfies some ego and in some instances engaged in for fun and pleasure. The theory is premised on the argument that people are rational and that

their behaviour can be controlled by potentiality of punishment. The proponents opine that the sanctions should be limited based on that which is necessary punishment or fear of it, to deter anyone from engaging in any criminal activities (Siegel & McCormick, 2006).

The theory was relevant to this study on the basis that proper prosecution of Children's rights violations and subsequent punishments will deter future violations. The severity and intensity of the punishments will make those who violate the rights of children abandon the crime when the thought of being caught and the severity of the penalty is processed.

### **2.3.2 Routine Activities Theory**

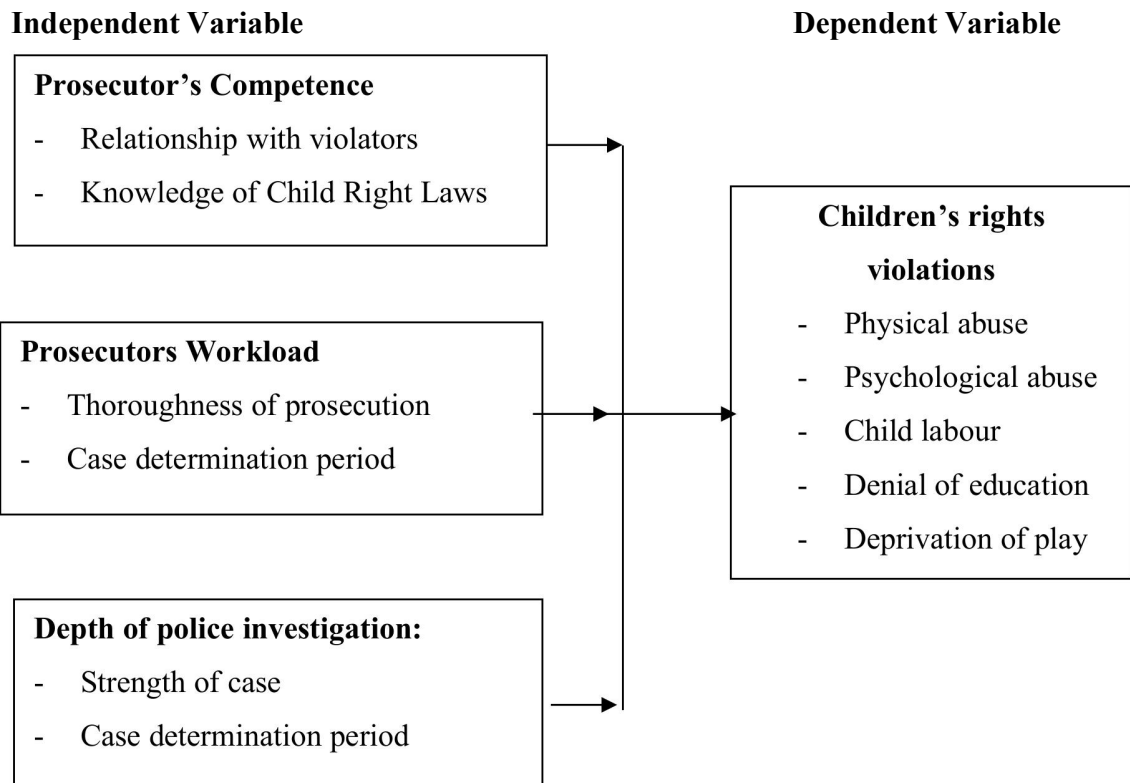
This theory was proposed by Cohen and Felson (1979). The theory works where no deterrent or guardian is sighted, a motivated person with criminal thoughts and that the person has the capacity and ability to perform on such thoughts. The theory predicts that crime and the rate of which criminals are victimized is influenced by alterations in both economic and social conditions. According to Felson and Cohen (1980), criminal activities are a "structurally significant phenomenon," or rather the crime and violations of law are not just random or miscellaneous occurrences. Consequently, the routine daily motions of life of different persons, makes others vulnerable and susceptible to criminal actions. The theory links the crime patterns to the daily social interactions by people implying that crime is highly dependent on the available chances and opportunities to engage in crime and is considered normal.

For the crime to occur, the offender/criminal is influenced by the perception that the criminal has about the vulnerability of the target. The more vulnerable the target, as perceived by the offender, the more likely the crime will be committed. The crime levels as well as violations of children rights is also dependent on the number of motivated criminal minds in the population, noting that if the offenders can realise their personal goals through legal and legitimate ways, the probability of them engaging in the criminal acts, is highly reduced. This implies that if alternative sources of livelihood for the criminals/offenders are available, then the desire to engage in crime is reduced significantly.

Therefore, in terms of children's rights violation and abuse the theory holds that; when children are not protected by their guardians or parents, there is likelihood that their rights will be violated or abused. Equally, when there is strict enforcement of children's laws and offenders are punished, criminals who violate children's will not be motivated to violate or abuse the rights of children.

## **2.4 Conceptual Framework**

The relationship between the independent and the dependent variables of the study is illustrated in figure 2.1



**Figure 2:1: Conceptual Framework**

**Source: Researcher (2019)**

The conceptual framework in Figure 1 below shows that the violations of Children's rights in Nairobi County is influenced by the level of prosecutors' competence, the workload prosecutors have and the depth of the investigation carried out by police investigators.

## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 Introduction**

The chapter focuses on the methodologies that are to be used in order to achieve the set objectives of the study. It consists of the research designed to be adopted in the research project, the targeted population, the procedure adopted in sampling, data type and source, instruments used in data collections and procedures to be used, empirical model, how data was analyzed, ethical considerations and expected outcomes. This chapter explains reasons as to the adoption of certain techniques and methodologies are employed in the design, analysis, and collection of data.

### **3.2 Research Design**

The study sought to investigate on the details pertaining to the prosecution to the children's rights violation. Descriptive research design was used in carrying out this study. Adoption of the descriptive research methodology was done since it permitted a comprehensive and synergistic data use (Wisdom, 2013) and it allowed the respondents to describe the situation at the law courts as they prosecuted the violations of children's rights.

### **3.3 Study Site**

This study was conducted in Nairobi City County, because of its population size and a cosmopolitan County and with the largest urban population in Kenya. The population in Nairobi is more knowledgeable and exposed on their rights and the rule of law and may

not hesitate from pursuing such rights and laws against offenders of the same (KNBS, 2019). Further, Nairobi City County is preferred because of the location of the office mandated with the public prosecution. Prosecutors in conduct of all criminal proceedings including those relating to offences against children rights are officers under the office of the [DPP] and form part of the study population herein.

### 3.4 Target Population

The study focused on the Court Prosecutors, the non-governmental organizations handling matters relating to prosecution on Children’s rights, probation officers, parents and guardians of such children and police officers who investigate children rights violations commonly known as IO’s. The study targeted all of these officers based within the County who are 75 as tabulated in table 3.1. The targeted group were considered suitable since they are the ones affected or handle the violations of children’s rights and would provide suitable and appropriate feedback to the study.

**Table 3:1: Target Population**

<b>Category</b>	<b>Target</b>	<b>Proportion (%)</b>
Prosecutors	20	26.67
NGO	10	13.33
Probation	10	13.33
Parents	20	26.67
Police officers	10	13.33
Magistrates	5	6.67
<b>Total</b>	<b>75</b>	<b>100</b>

**Source: Judiciary (2019)**

### **3.5 Sample Size and sampling Technique**

According to Kothari (2004), a sample is a collection of units chosen from the universe to make its representation. According to Black (2004, 2011) sampling is defined as the selection of individuals from within a population so as to yield some knowledge about the entire population purposely for making predictions based on the statistical inference. Since census could not be attained for the research study, a sample was picked in the study. Purposive sampling was used to select 20 prosecutors, 10 Non-Governmental Organization Officers, 10 probation officers, 20 parents and 10 police officers [IO's] and 5 magistrates presiding over the minors related issues to make a total of 70 respondents. The number was picked since the study was concentrated at the Makadara Law courts, the parents and guardians were identified since they are the complainants in most of the cases and they are the ones who know how the case has moved, whether justice have been served for their children and whether they have the confidence of the law courts and their decisions. The NGOs were identified since they are they are the once who defend the rights of children, while the police officers and the prosecutors were identified since they prosecute all such cases and would know the veracity of the cases. Magistrates were also picked since they preside, hear the parties and make the final determination of the cases.

### **3.6 Data Collection**



Data collection commenced after the Graduate School approved the research title and the proposal. The approval was then used to secure the go ahead to conduct the research from the National Commission for Science, Technology and innovation (NACOSTI), which was then used to obtain research authorization from the County Commissioner, Nairobi City County and the Registrar of the Judiciary. The authorization enabled the researcher distribute the questionnaires at the Makadara law courts as well as interviewing parents and key informants. Questionnaire, both open ended and closed was used as the primary data collection technique on the sampled respondents of the research study. This study also used the observation and questionnaire instruments respectively. The study used interviews on the 20 parents who gave their views in camera regarding the competence of the prosecutor, the workload of the prosecutor as well as the depth of investigations of the violation(s).

### **3.7 Validity and Reliability**

In order to maintain reliability and validity in the study, the same type of questionnaire were administered to all subjects without any alterations. The assumptions made was that all the respondents had the same interpretation of the research questions. A pilot test was carried out on the reliability and validity test. The questionnaires in the research was pre-tested to a selected sample to test for the validity and reliability of the content. The study maintained the integrity of the conclusions generated from the study, which could be used repeatedly over time.

Cozby (2003) states that for most measures the correlation should probably be at least 0.8. The views were evaluated and reevaluated to ensure the reliability of the collected data.

Reliability was tested by use of 5 questionnaires which were piloted with randomly selected subjects who had been interviewed before by the use of questionnaire.

### **3.8 Data Analysis**

Zikmund, Babin, Carr and Griffin (2010) refer data analysis as the application of reasoning so as to make meaning of the collected data. The analysis helps in determining patterns and making summarizes of the critical details with an aim of making conclusions. The data collected was sorted, coded and inserted into the Statistical Package for Social Sciences (SPSS) to allow for the production of graphs and generation of both descriptive and inferential statistics. The measures of dispersion were used to analyze the quantitative data while frequency polygons, percentages and graphs were used to present the analysed data. Chi square was also used to determine test the hypotheses.

### **3.9 Ethical Considerations**

Ethical considerations that the study undertook was ensuring confidentiality of the respondents' information which was meant for the research purpose only. There was informed consent from the research participants who provided enough information to aid the participants to be make an informed decision to participate or not. In addition, the researcher sought permission from Makadara Court authorities to so as be allowed to sit in court in order to carry out observations. The respondents were required to voluntarily agree by signing a consent from them before they could embark on responding to the questionnaire.

## **CHAPTER FOUR: DATA ANALYSIS AND DISCUSSIONS**

### **4.1 Introduction**

This chapter provides the various findings of the analysis and highlights on the various diagnostic tests conducted during the study. This chapter analyzes on how competence of prosecutors in prosecution of the violation of children rights, workload handled by them and the how the depth in investigations was carried out by the police in charge of the prosecution against the rights of children at the Makadara Law Courts within Nairobi City County.

### **4.2 Descriptive Statistics**

#### **4.2.1 Response Rate**

Out of the total number of the questionnaires administered, 75 were administered to 20 prosecutors, 10 non-governmental organizations, 10 Probation Officers, 20 parents, 10 Police Officers and 5 Magistrates. 51 questionnaires were correctly filled and returned representing a responsive rate of 68 percent, which is within the required range. According to Mugenda and Mugenda (2003), a response rate of at least 65% is sufficient to allow for data analysis. The response rate of 68 percent therefore is a good rate acceptable for drawing conclusions on the current study. The results are as shown in Table 4.1.

**Table 4:1: Response Rate**

	<b>Target</b>	<b>Respondents</b>	<b>Response rate (%)</b>
Prosecutors	20	15	75
NGO	10	8	80
Probation	10	5	50
Parents	20	16	80
Police officers	10	5	50
Magistrates	5	2	40
<b>Total</b>	<b>75</b>	<b>51</b>	<b>68</b>

**Source: Research Data (2019)**

#### **4.2.2: Reliability Analysis**

A pilot study was carried out on 5 respondents to ascertain on the reliability of the data collected. Cronbach's alpha test was used to test for the internal consistency and reliability of the research instrument. Tavakol and Dennick, (2011) suggested a standardized minimum for alpha value at 0.7 which guided the current study. The results are as presented on table 4.2

**Table 4:2: Reliability Analysis**

<b>Variable</b>	<b>Cronbach's Alpha</b>	<b>Decision</b>
Prosecutor Competence	0.708	Reliable
Workload on prosecutor	0.836	Reliable
Depth of police investigation	0.759	Reliable

**Source: Pilot Data (2019)**

Cronbach alpha test was standardized for each objective under the study, which constituted a scale. The Prosecutor Competence was least reliable with an alpha value of 0.708 while the Workload on Prosecutor was the most reliable with an alpha value of 0.836. This demonstrated that all the current study variables were reliable as they had reliability values that surpassed the recommended minimum standard of 0.7.

#### **4.2.3 Demographic Profile of the Respondents**

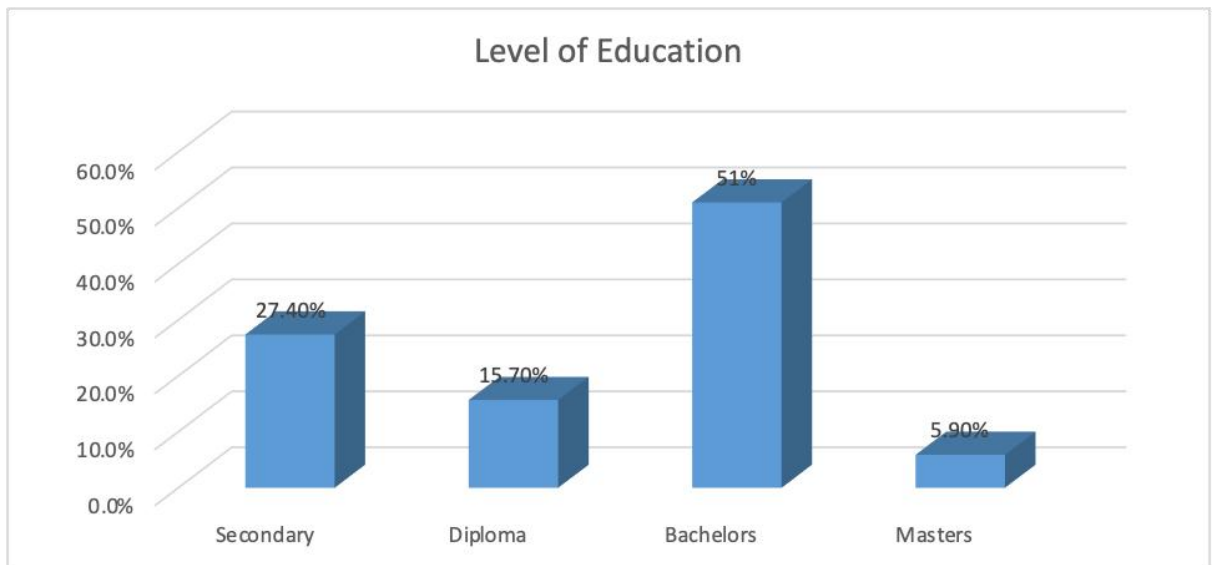
This section presents the demographic characteristics of respondents, based on job category, years of experience and level of education.

**Table 4:3: Results of job category of the Respondent**

<b>Job category</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Trained police office	5	9.8
Trained lawyer	17	33.3
Others (Parents)	33	56.9
<b>Total</b>	<b>51</b>	<b>100</b>

**Source: Research Data (2019)**

Findings in Table 4.3 indicate that 9.8 percent of the respondents were trained Police Officers while trained lawyers comprised 33.3 percent of the sample. However, out of a total of 51 respondents, 29 were neither trained officers nor Police Officers but were from other job categories.

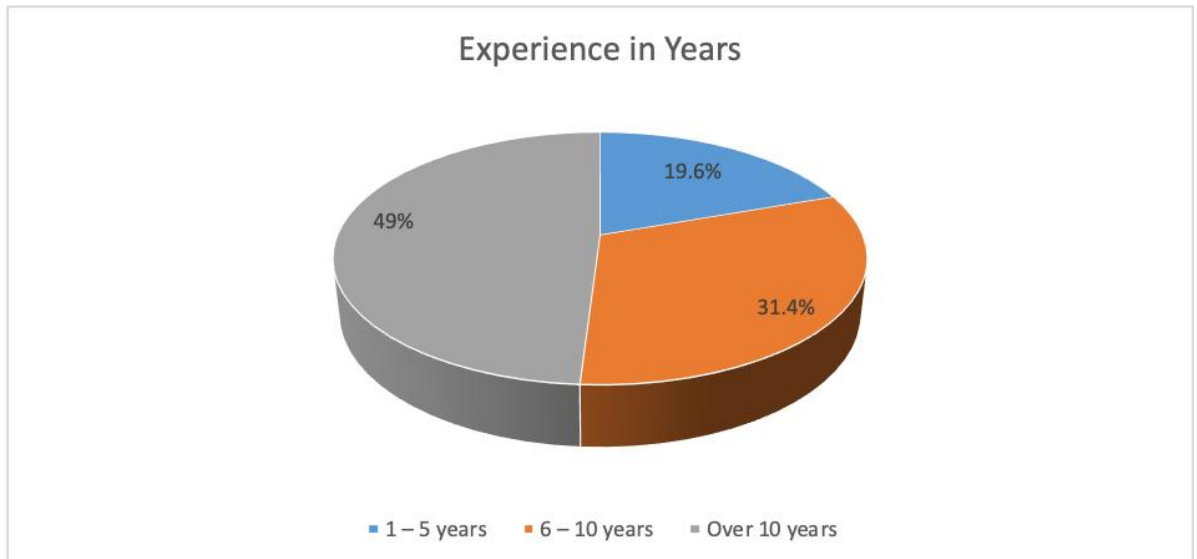


**Figure 4:2: Respondent level of Education**

**Source: Research Data (2019)**

Figure 4.1, indicates that none of the trained lawyers had attended high school as their highest level of education. This is consistent to the demands of the industry under study as one requires post-secondary school qualifications to understand its operations. More than half of the respondents, 51.0 percent had a university degree as their highest level of education. 15.7 percent of the respondents were diploma holders, 27.4 percent had secondary education while 5.9 percent were masters' holders. This shows that the prosecution in Kenya is filled by highly skilled individuals. This guarantees reliable responses and therefore reliable findings by the study. The results agrees with the works of Omondi (2007) who found that many lawyers were well educated while some

prosecutors and police officers did not have any the basic degree and somehow influences the investigations and prosecution of cases.



**Figure 4:3: Respondent level of experience in years**

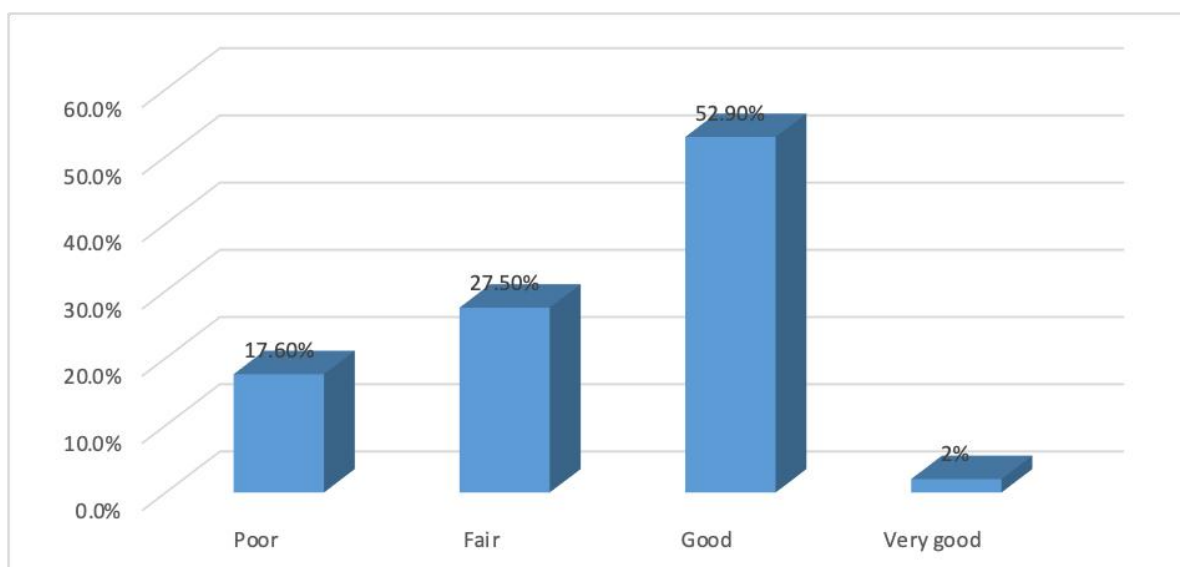
**Source: Research Data (2019)**

The data shows that 10 out of the possible 51 sampled respondents which represented 19.6 percent had served the organization for a length of 1 - 5 years. Further, 31.4 percent of the respondents had served for 6 – 10 years while the rest which represented 49.0 percent had served for over 10 years. Therefore, the respondent’s responses can be relied upon for investigation of the challenges in the prosecution of children rights violations in Kenya. Ongoya (2007) found that the most prosecutors had served long in the Kenyan courts yet some of them had not prosecuted cases against children’s rights violators, a situation which highly compromised the ability of such prosecutors to secure a conviction for the violators.



### 4.3 Prosecutor Competence and Prosecution of Violations of Children’s Rights

Objective of the study was to investigate on the competence of the prosecutor determines the prosecution of children’s rights violations in Kenya. Respondents were requested to rate on the performance of prosecutor competence in the prosecution of children rights violation. The results are given in figure 4.3.



**Figure 4:4: Rating of Prosecutors competence**

**Source: Research Data (2019)**

More than half of the respondents felt that prosecutor’s competence had good rating in persecution of children rights violation as indicated by 52.9 percent. 27.5 percent of the respondents rated prosecutor competence as fair while the remaining 19.6 percent of the respondents rated the prosecutor competence as poor and very good respectively.

The results are in tandem with the works of Wabwile (2010) who found out that the competence of the person prosecuting a case is quite fundamental in the successful

prosecution or not of the culprit. Nyaundi (2005) also agrees with these results as he argues that the competence of the prosecutor plays a critical and big role in convicting the violators of the rights of children. The responses were on the level of 1 to 5 which are based on agreement or disagreement on statements on prosecutor competence. The results are given in Table 4.4.

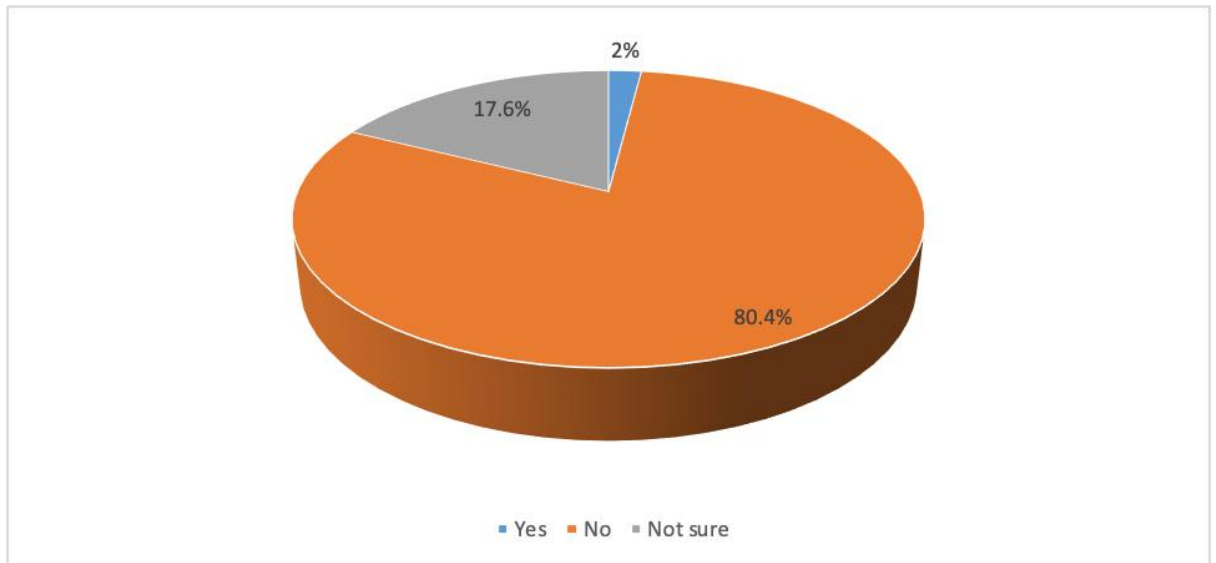
**Table 4:4: Prosecutor competence in prosecution of children rights violation**

Description	Mean	Std. deviation
Prosecutors collude with child right violators	3.22	1.119
Prosecutors are not knowledgeable about children rights laws	4.35	0.594
Prosecutors do not have interest in prosecuting child right cases	2.85	1.755

**Source: Research Data (2019)**

On average, many of the respondents were neutral on whether prosecutors collude with child right violators to defeat the justice and enforcement of the children’s rights laws as indicated by the mean score of 3.22 with standard deviation of 1.119 that showed that respondents had diverge views on whether prosecutors collude with child right violators. A mean of 4.35 disagree that prosecutors are not knowledgeable about child right laws with respondents’ high level of agreement as indicated by standard deviation of 0.594. The Respondent agreed with a mean of 2.85 and a standard deviation of 1.755 that showed that respondents had diverge views on whether prosecutors do not have interest in prosecuting child right cases. The findings of Odongo (2005) however, differs with the views from the parents about the ability and competence of the prosecutor to secure a

conviction for the violators of children's rights violators. Odongo (2005), opines that the quality of the investigation is more critical than the competence of the prosecutor since, if the investigations are thorough and conclusive, then the conviction would be secured, whether the prosecutor is competent or not. These results are presented at the figure 5.



**Figure 4:5: Other reasons related to Prosecutors competence**

**Source: Research Data (2019)**

From the responses 80.4 percent of the sampled respondents indicated that there are no other reasons related to prosecutor competence that affect prosecution of children rights violations. 17.6 percent were not sure while the rest indicated that there are other reasons related to Prosecutor competence that affect prosecution of children rights violations.

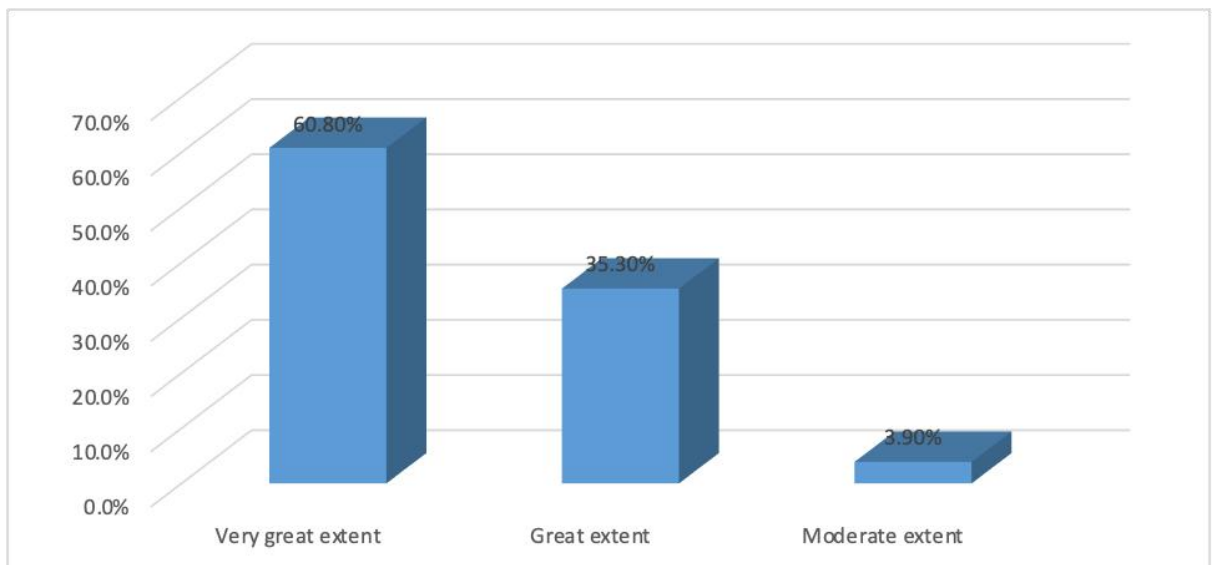
The interviews gathered that the prosecutors were well trained, understood their roles and responsibilities and have undertaken numerous training and capacity building workshops and seminars. These have enhanced their capacity to prosecute and their competence. The only challenge most of the prosecutors came as a result of the investigation of the cases

which goes hand in hand with the competence of the prosecutor. There is therefore need to synchronize the investigation and the prosecution of violations of children rights so as to secure more convictions where the offence and violations had actually occurred. The observation found that the prosecutors were competent enough considering their understanding of court procedures and processes. The magistrates when interviewed conformed that the prosecutor's competence and capacity played a crucial role in securing a conviction or otherwise.

The parents in the interviews had different views with parent 8 having a low opinion of prosecutors. She narrated her experience with a prosecutor who handled her five year old's defilement case that unfortunately was dismissed by the court. Her daughter's case was thrown out on a technicality which she explained that the Magistrate in her judgement stated that the charge sheet was defective and that no accused person can be convicted on the basis of a defective charge sheet. She blamed the prosecutor for incompetency. Another parent 3 expressed similar frustrations encountered with a prosecutor who handled his daughter's case. He stated that the prosecutor did not understand the procedure for handling and identifying relevant evidence in support of that case. That case was dismissed for lack of sufficient evidence to convict the accused person. He stated that the prosecutor failed to produce in court very critical documentary evidence in support of his case. He stated that the P3 form was not produced, the doctor's report was produced by the prosecutor instead of the doctor who examined the defiled child. Failure of the prosecutor to summon the doctor who prepared the medical report weakened the case tremendously. The accused person was consequently acquitted.

#### 4.4 Workload of Prosecutors and Prosecution of Violations of Children’s Rights

This sub section investigated how the workload on prosecutor determines the enforcement of children’s laws in Kenya. The respondents gave their option on to what extent they thought workload on prosecutor influenced enforcement of children laws. The results are as given in figure 4.5.



**Figure 4:6: Extent to which workload on prosecutor influence children laws.**

**Source: Research Data (2019)**

Majority of the respondents (60.8%) agreed to a very great extent that the workload of the prosecutor determined the enforcement of children rights laws while another 35.3% agreed to great extent that the workload of the prosecutor determined the enforcement of the children’s rights laws. This means that cumulatively 96.1% agreed that the workload determined while the remaining 3.9% responded that the workload determined the enforcement to some moderate extent.

The study attempted to substantiate the extent to which final sampled subjects concurred with the following diverge statements on components of workload on prosecutor influence the enforcement of children’s laws in the prosecution of children rights violations in Kenya. The responses were on the level of 1 to 5 which are based on agreement or disagreement on statements on workload on Prosecutors. The results are given in Table 4.5.

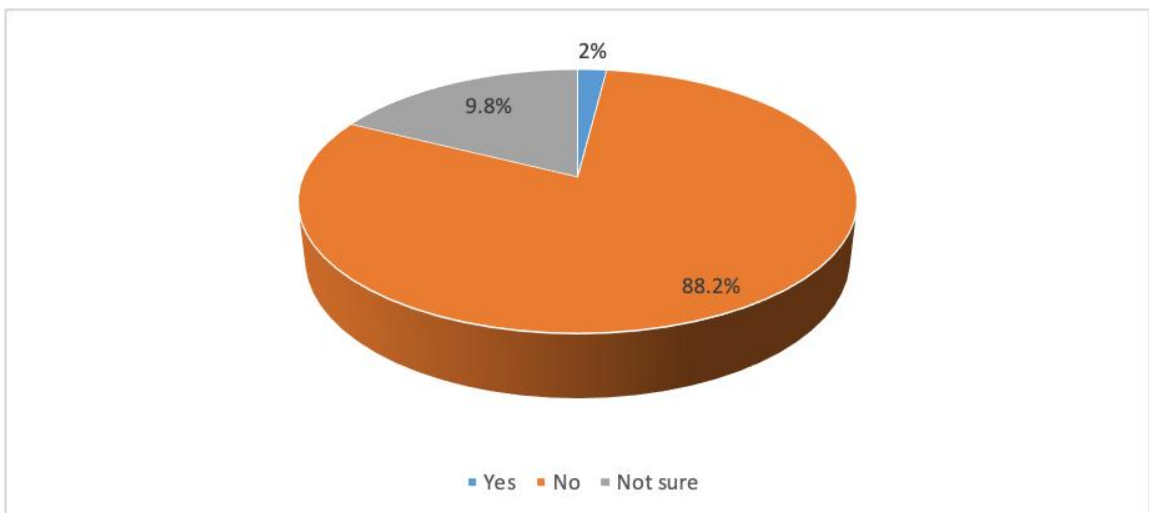
**Table 4:5: Workload on Prosecutors in prosecution of children rights violation**

Description	Mean	Std. deviation
Workload on prosecutors do not allow adequate time for thorough prosecution of child right violation cases.	2..22	1.129
Workload on prosecutors delay determination of child right cases	2.14	0.687
Workload on prosecutors leads to lost records of cases of child right violators.	2.06	0.813
Workload on prosecutors leads to low morale in prosecuting children’s rights violation cases.	2.56	0.792

**Source: Research Data (2019)**

The respondents agreed with a mean of 2.22 and a standard deviation of 1.129 that showed that Respondents had diverge views on whether Workload on prosecutors do not allow adequate time for thorough prosecution of child right violation cases. Respondents also agreed with a mean of 2.14, 2.06 and 2.56 with standard deviation of 0.687, 0.813 and 0.792 that showed that Respondents had high level of agreement on whether workload on prosecutors delay determination of child right cases, workload on

prosecutors leads to lost records of cases of child right violators and workload on prosecutors leads to low morale in prosecuting children’s rights violation cases respectively. When the respondents were asked whether there are other reasons related to workload on prosecutors that affect enforcement of children rights laws, 88.2% of them indicated that there were no other reasons related to workload on prosecution that influenced the enforcement of children’s rights laws in Kenya while 9.8% indicated that they were not sure if any other reason existed or not while the remaining 2% indicated that there are other reasons related to workload on prosecution that affect influence enforcement of children’s rights laws in Kenya.



**Figure 4:7: Other reasons related to workload on Prosecutors**

**Source: Research Data (2019)**

The prosecutors who were interviewed and the subsequent observation done within the office of DPP, provided a glimpse of the overwhelming cases and workload that the prosecutors have to contend with. The interviewees confirmed that the workload in most cases was too much and handling each case sufficiently and allocating enough time to conduct proper investigating was frustrating and may end up being thrown out for lack of

sufficient evidence to secure a prosecution. The researcher also observed that the prosecutors would have as many as 3 or 4 cases to prosecute per day while the magistrate's court would be sitting for a few hours.

On the feedback from parents, parent 10 explained how the prosecutor who handled the child's case on violation of her rights demanded money to concentrate on her case. She stated that her son's case staggered for many years before she decided to engage the prosecutor who openly complained that he had been assigned all criminal files including those involving violations of Children's right to prosecute. The court had over 1000 active criminal files against one prosecutor therefore efficiency in handling all these files had been compromised under the circumstances.

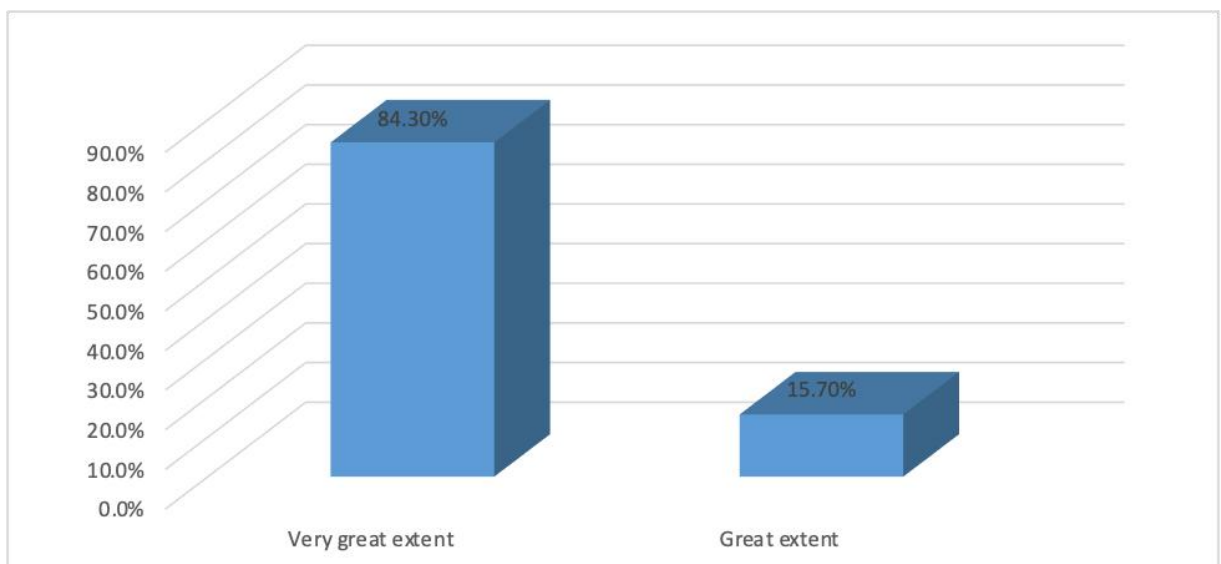
Parent 5 also stated that the prosecutor in his case was too slow, inordinately slow in collecting evidence in support of his child's case. He stated that it was a challenge travelling frequently to pay visits to the prosecutor's office to inquire about when the case shall be ready to proceed for a hearing. It took over one year to collect relevant evidence. The emotional trauma to the family and anxiety of the long wait was unfortunate, he lamented. This parent also confirmed that the prosecutor was on many occasions not in his office but attending to various other criminal matters in other courts. The sentiments and comments from the interviewed parents concurred with findings of Odongo (2004) and Shead (2014) who both argued that the competence of prosecutors plays the most crucial role in prosecution. They further argue that the office attendance, behaviour and



attitude of the prosecutor has a lot of impact on the success of the prosecution of the violators of children's rights.

#### **4.5 Depth of Police Investigation and Prosecution of Violations of Children's Rights**

The study also sought to investigate how the depth of police investigation determines the enforcement of children's rights laws in Kenya. The respondents were asked to give their option on to what extent they thought depth of police investigation influence enforcement of children rights laws. Majority of the respondents (84.3%) agreed to a very great extent that the depth of police investigation influenced children rights laws while 15.7% agreed to a great extent that the depth of the investigations by the police played a significant role in and determined the enforcement of the children's rights laws. The findings of this study are in tandem with the works of Shead (2014) who found that the prosecutors' work and effectiveness is a direct outcome of the quality of the investigations.



**Figure 4:8: Depth of Police Investigation and Children Rights Laws**

**Source: Research Data (2019)**

The study sought to substantiate the extent to which final sampled subjects concurred with the following diverge statements on components of depth of police investigation in the enforcement of children’s rights laws in the prosecution of children rights violations in Kenya. The responses were on the level of 1 to 5 which are based on agreement or disagreement on statements on depth of police investigation. The results are given in Table 4.6.

**Table 4:6: Depth of police investigation in enforcing of children rights laws**

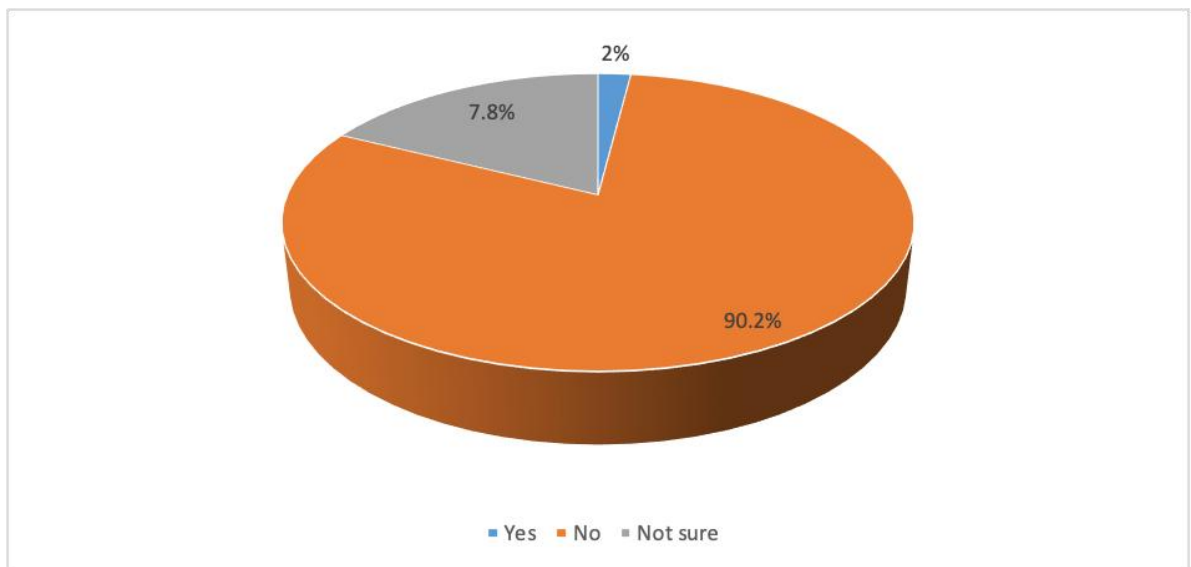
Description	Mean	Std. deviation
Depth of police investigation influence the outcome of the child right violation cases	2.08	0.733
Depth of police investigation can reduce or increase child violation cases	2.72	0.747
Depth of police investigation can prevent the offenders from or encourage the offenders to commit further child right violations	2.06	0.554
Depth of police investigation influence case determination period	1.55	0.635
Depth of police investigation serve justice by ensuring child right violators are caught and taken to court	1.72	0.608

**Source: Research Data (2019)**

Respondents agreed with a mean of 2.08, 2.72 and 2.06 with standard deviation of 0.733, 0.747 and 0.554 respectively that the level of agreement on whether depth of police

investigation influence the outcome of the child right violation cases, depth of police investigation can reduce or increase child violation cases and depth of police investigation can prevent the offenders from or encourage the offenders to commit further child right violations respectively. Respondents strongly agreed with a mean of 1.55 and 1.72 with standard deviation of 0.635, and 0.608 that showed that Respondents had high level of agreement on whether depth of police investigation influence case determination period and depth of police investigation serve justice by ensuring child right violators are caught and taken to court. The works of Shead (2014) and Omondi (2007) agrees with these results. The police investigation plays a fundamental role in the prosecution of violators of children's rights. Shead (2014) opines that the success of any case on children's rights is critically tied to the quality of the investigations and the capacity of the prosecutor.

Respondents were asked whether there are other reasons related to depth of police investigation that affect enforcement of children rights laws. The results are given in figure 9



**Figure 4:9: Other reasons related to depth of police investigation**

**Source: Research Data (2019)**

Most of the respondents (90.2%) responded that there is no other reasons related to depth of police investigation that affect enforcement of children’s rights laws in Kenya. The remaining 7.8% were not sure while the rest indicated that there are other reasons related to depth of police investigation that affect enforcement of children’s rights laws in Kenya.

When the interviews were done, majority of those interviewed confirmed that the depth of police investigations into the children’s rights violations was quite sufficient in some cases which ultimately secures conviction of the accused. In some cases, the investigation is shallow, evidence adduced before the courts insufficient and unconvincingly weak and unable to secure any conviction on the side of the accused. The police argued that the investigation success and depth is a tedious exercise, requires a lot of resources and sacrifice and in most cases require the willingness of the witnesses to be truthful and honest, which is not always the case.

The Rational Choice Theory and Routine Activities Theory played a fundamental role in guiding the study in that the more the prosecutors secure conviction of the violators of children's rights, the more it worked as a deterrent for the offenders and other potential ones. This also worked in the vice versa where, where convictions are not secured, it emboldens the culprits and other sympathizers to engage even more in the violations of the rights of children. The choice of culprits to violate the rights of children within their homes their neighborhoods is enhanced or diminished depending on the conviction or otherwise of offenders. A failure by the prosecution to secure a conviction of an offender, is likely to embolden the offender to repeat the violation, after all they can still roam around freely and if re arrested, the probability of a conviction is minimal.

Parent 7 indicated that in cases of parents reporting to the police on the violations of their children's rights, many cases go unattended for days, months or even never attended at all, since many investigators indicates that they are overwhelmed, underfunded and lack the necessary resources to investigate and handle all cases. This jeopardizes the successful prosecution of these violations even insulations that the culprits are known. Parent 7 said: "all these prosecutors are quite busy, *"mara wako Milimani, Kibera ama hayuko job (often you hear (sic) that they are in Milimani, Kibera or even, they are not on duty)*". This makes it quite difficult to even secure a date for hearing of such cases even if there was urgency". The parent shared her frustrations on accessing the prosecutor(s) handling the case and ultimately determines how long the prosecution takes as well as the ability or chance of such cases to secure a conviction of the perpetrator.

The case was reported at the Kamukunji Police Station and was handled by the same police but was handed over to the prosecutor at the Makadara law courts once the culprit was prosecuted.

Parent 6 was very specific on how his child's case was handled by the prosecutor from their estate of Umoja. He noted that investigations that were carried out by the prosecutor were shallow. He lamented that he lost his child's case on the ground of failure of the prosecution to support its case beyond reasonable doubt. There was insufficient evidence to support a conviction and his case was dismissed and the accused person acquitted. He further stated that in his observation the prosecutor did not gather enough evidence in preparation of the case. The prosecutor seemed to lack the necessary experience in collecting evidence. The parent lamented:

*“it was quite unfortunate that the prosecutor was aware of the case even from his neighbourhood but couldn't secure a conviction of the culprit. I suspect he was corrupted, coupled with the shallow investigations done. My daughter deserved better treatment from the courts and I confirm, justice was not served”.*

Parent 3 shared her disappointment when her daughter's case was equally dismissed on the ground that the prosecution failed to prove its case. She observed that the accused advocate was well prepared with evidence and case law to rebut the accusations against him. On the other hand, she says that the prosecutor handling her case appeared less prepared with evidence and authorities. That unpreparedness and insufficiency in producing evidence amounted to miscarriage of justice and prejudicial to protection of

her daughter's fundamental right. The parent lamented that the case involving her child could have not been investigated conclusively since they lived in Mukuru slums and the police did not think it warranted their much attention. The parent exclaimed:

*“It is laughable that the prosecution could not prove the case. You know what that means? That my child was not assaulted indecently...yet the culprit was caught red-carded, there are eye witness, yet still the case could not be proven? I blame lack of preparation from the prosecution perspective. He hardly had time to sit down and prepare nor even consult us on the witnesses and other related matters...its unfortunate...I leave it to God, to give justice to my child”*

## **CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **5.1 Introduction**

This chapter summarizes the findings of the study, provides the implications of the study in policy as well as the contribution of the study in the world of knowledge. It also provides the conclusion and contributions of the study as per the objectives of the study as well as the areas suggested for further research by future researchers.

### **5.2 Summary of Findings**

The study sought to establish the determinants of children's rights violations prosecution in Nairobi. The findings showed that most of the subjects had experience level of over ten years, and all the Respondents had at least a secondary school education, implying that they were well skilled to serve the organizations. Parents formed the highest respondents' rate followed by the prosecutors, NGOs, probation officers, police officers and magistrates comprising the smallest number of Respondents.

The first objective was analyzing the capacity of the prosecutor's competence to determine the prosecution of children's rights violations in Nairobi City County. Due to complexity and depth of investigation involved in child violation cases, most of prosecutors do not have interest in prosecuting child right cases. The respondents agreed that the competence of the prosecutors left a lot to be desired with 52.9% of the respondents indicating that indeed the competence of the prosecutor was fundamental in



determining the success of the case. The knowledge and understanding by the prosecutor on specific children rights provided for under our Constitution of Kenya (2010), The Children's Act Laws of Kenya and the International treaties and conventions on children rights is paramount and would, to a larger extent, reduce child violation cases in our country.

The second objective aimed at examining how prosecutors' workload in the prosecution determined the prosecution of children's rights violation. Workload on prosecutors was found to negatively influence adequate time for thorough prosecution of child right violation cases thus leading to delays in determination of child right cases with 60.8% of the respondents indicating that the prosecutors were too busy and overwhelmed with cases to handle. This compromised their probability of securing a conviction even in more straight forward cases. The parents interviewed indicated that their chance of securing a meeting with the prosecutor of cases, is not easy and when finally it happens, many of them do not accord the parents and victims to ventilate and think through the case and how to build a water tight case.

Delays in hearing and determination of such cases was associated to the workload of the prosecutors caused by the ever increasing number of cases of child rights abuse and violation being reported on a daily basis. Many prosecutors and investigating officers are not able to serve the cases effectively because they are few and ill equipped. Additionally, workload leads to loss of child right violation cases records since prosecutors may lack proper file record keeping skills leading to some files missing or misplaced. Workload was also found to lead to low morale in prosecuting child violation cases.

The third objective sought to investigate whether the depth of investigations conducted by the police in charge of the prosecution of rights of children's violations in Nairobi City County was found to determine the enforcement of children rights laws to a great extent. Majority of the respondents (84.3%) of the respondents affirmed that the depth of investigations was crucial in the determination of the conviction. The study also found that the outcome of child right violation cases was found to be determined by the depth of police investigations. In addition, it was found that the greater the depth of investigation the greater the number of child right violator will be jailed hence this will lead to reduction of child violation related cases. The study found that the deeper the investigation, the more likely the prosecution of the culprit is likely to succeed.

### **5.3 Conclusion**

The study found that depth of investigations stood at (84.3%) percent in determining the outcome of Children's rights violation cases. Workload assigned to prosecutors followed closely at (60.8%) percent as another determinant that influenced the outcome of these cases. Competence of the prosecutors was also found to be the lowest determinant at (52%) percent. The study concludes that although all the three variables determine the outcome of prosecutions against violations of the rights of children, depth of investigations mattered the most. To achieve effectiveness in prosecutions against violations of the rights of children, depth of investigations by the police as a critical determinant must be enhanced.

### **5.4 Recommendations for Policy Implications**

#### **5.4.1 Contribution to the study for Knowledge**

The research was on prosecution of children's rights violations in Kenya, with Nairobi metropolitan being the case study. The study would be beneficial to the government, state agencies, civil societies and NGO in understanding key elements that influence performance of prosecutors and police officers in Kenya. The study variables may be of help to researchers and practitioners in evaluating the most influential variable to performance of prosecutors and police officers responsible for prosecution of rights of children's violations in Kenya. It is important to note that previous studies on prosecution of children's rights violations have been done in other countries, but this study is done on Kenya child law courts.

This study further revealed that it is not only prosecutors' competence that directly influence performance of prosecutors in the prosecution of Children's rights violations in Kenya but also workload on prosecutors and depth of police investigation. The study enhances theoretical understanding of determinants in the prosecution of children's rights violations in Kenya. Other studies look at child rights violations in terms of physical abuse or psychological abuse or child labour or denial of education or deprivation of play separately whereas this study combines physical abuse, psychological abuse, child labour, denial of education and deprivation of play as indicators of child rights violations.

The study is beneficial to government agencies including the Office of the Attorney General, the Director of Public Prosecution, the judiciary and courts, civil societies and Non-Governmental Organizations. The study shows that the violations of the rights of children continues despite the efforts that the state agencies have put in place to curb

them. Many of these cases being prosecuted remain unresolved, many complainants (children and parents/guardians) have doubted the capacity of the prosecution to secure conviction of the perpetrators and violators of the rights of children

#### **5.4.2 Policy Implications**

Prosecutor competence should be considered to be as one of the major contributors towards performance of the prosecutors in the prosecution of children rights violation, since it affects prosecution to great extent. Therefore, the courts need to invest more in the capacity building through organized compulsory trainings to keep abreast to the current happenings and more informed to enable them identify factors that improve performance in their prosecution of children rights violation in Kenya.

Prosecutors ought to pay a lot of attention to workload level in enforcement of children laws in Kenya by formulating an appropriate workload - prosecutor ratio that will address the imbalance. In addition, the prosecutors should put more emphasis and pay additional attention to maintaining an optimal workload level since it is essential as it allow adequate time for thorough prosecution. Furthermore, workload on prosecutors leads to loss of record of cases of child right violators hence leading to delays in determination of cases or loss of child right cases. For these reasons, prosecutors ought to focus and invest more on maintaining an optimal level of workload so as not to affect productivity of prosecutors. There is also need to enhance training and capacity building which should be continuous to equip prosecutors with current knowledge which will help them to make better and informed decisions when investigating and protecting children' rights cases.

Depth of police investigation was found to influence enforcement of children rights laws

in Kenya to a great extent. Therefore, the investigating police should be committed in creating strong and positive great depth investigation culture which results to reduction of child violation related cases. Depth of police investigation enforces on the law and order by ensuring child right violators are handled in accordance to the laws therefore training for police conducting investigation should be conducted to equip them with necessary investigation skill and techniques.

### **5.5 Recommendations for further Research**

From the research report, a similar research should be carried out in other group categories such as women and person living with disabilities in Kenya. The current research can be duplicated but should use a longitudinal approach since prosecution and determination of a case is a process that occurs over time implying that a longitudinal approach would have been appropriate probably in rural area. The current study used prosecutor competence, workload on prosecutors and depths of police investigation as determinants in the prosecution of rights of children violations in Kenya thus leaving behind other important variables of importance to this research study. There is therefore need to conduct studies focusing on other determinants of prosecution of the violations of children's rights.

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## **APPENDICES**

### **Appendix I: Letter of Introduction**

Hasna Mbone Mudeizi  
C/O Kenyatta University  
Nairobi, Kenya.

Dear respondent,

**RE: CHALLENGES IN THE PROSECUTION OF CHILDREN’S RIGHTS**

**VIOLATIONS IN KENYA: A CASE OF NAIROBI CITY COUNTY, KENYA**

I am a continuing student of a master’s degree in Public Policy and Administration of Kenyatta University. In order to complete my degree, part of my assignment is to carry out a research and provide its findings on the “challenges in the prosecution of children’s rights violations in Kenya: the case of Nairobi County, Kenya”. You make part of my sample and your contribution to this research will be helpful. In order to fulfill this, I kindly request you to fill in the attached questionnaire to the best of your knowledge. Your contribution will be vital to the improvement on empowerment strategies in Kenya’s public sector. Any information given by you shall be treated with utmost confidence and used only for the purposes of this research.

Thank you very much for your cooperation.

Yours faithfully,

Hasna Mbone Mudeizi

## Appendix II: Questionnaire

Kindly answer the following questions. The researcher would like to assure you that the information gathered will be kept confidential and used strictly for the purpose of this research only. However, the usefulness of the information to the researcher will solely depend on your honesty.

Please tick [√] where appropriate or fill the information as necessary

### SECTION A: GENERAL INFORMATION

1. What is your job designation? \_\_\_\_\_
2. What is your background in regard to the following:  
Trained Police Officer   
Trained Lawyer   
Any other (Specify) \_\_\_\_\_
3. Which is your position in the organization? \_\_\_\_\_
4. How long have you worked in the organization?  
1 – 5 years  6 – 10 years  or  10 years
5. What is your highest level of education? Tick as appropriate  
Secondary  Diploma  Degree  Master's Degree   
Others specify.....

### SECTION B: PROSECUTOR COMPETENCE

#### *Information Sharing*

6. In your opinion, how do you rate the performance of e prosecutors in the prosecution of Children's rights violations in Kenya?



- Poor
- Fair
- Good
- Very Good

7. State your level of agreement to the following statements (Please indicate by using 1- Strongly agree, 2-Agree, 3- Neutral, 4- Disagree, 5- Strongly disagree)

Statement	1	2	3	4	5
Prosecutors collude with child right violators					
Prosecutors are not knowledgeable about children rights laws					
Prosecutors do not have interest in prosecuting child right cases					

8. Are there other reasons related to Prosecutors that affect prosecution of Children’s rights violations in Kenya?

- Yes  No  Not sure

If yes, explain?

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**SECTION C: WORKLOAD ON PROSECUTOR**

9. To what extent does workload on prosecutors’ influence enforcement of Children’s laws in Kenya

- Very great extent [  ]

Great extent [ ]

Moderate extent [ ]

Little extent [ ]

No extent [ ]

**10.** State your level of agreement to the following statements (Please indicate by using 1- Strongly agree, 2-Agree, 3- Neutral, 4- Disagree, 5- Strongly disagree)

Statement	1	2	3	4	5
Workload on prosecutors does not allow adequate time for thorough prosecution of child right violation cases					
Workload on prosecutors delay determination of child right cases					
Workload on prosecutors leads to lost records of cases of child right violators					
Workload on prosecutors leads to low morale in prosecuting Children's rights violation cases					

**11.** Are there other reasons related to workload on prosecutors that affect enforcement of Children's rights laws in Kenya?

Yes  No  Not sure

If yes, please explain?

.....

.....

.....

**SECTION D: DEPTH OF POLICE INVESTIGATION**

**12.** To what extent do depth police investigations influence enforcement of Children’s rights laws in Kenya?

Very great extent [ ]

Great extent [ ]

Moderate extent [ ]

Little extent [ ]

No extent [ ]

**13.** State your level of agreement to the following statements about the depth of police investigations (Please use 1-Strongly agree, 2- Agree, 3- Neutral, 4- Disagree, 5- Strongly disagree)

<b>Statement</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Depth of police investigation influence the outcome of the child right violation cases					
Depth of police investigation can reduce or increase child right violation cases					
Depth of police investigation can prevent offenders from or encourage offenders to committing further child right violations					
Depth of police investigation influence case determination period					
Depth of police investigation serve justice by ensuring child right violators are caught and taken to court					

14. Are there other reasons related to depth of police investigations that affect enforcement of Children's rights laws in Kenya?

Yes  No  Not sure

If yes, please explain?

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

**Thank you very much for taking your time to fill this questionnaire**

### **Appendix III – Interview Guide**

1. What is your current position?
2. What is your general view of the prosecution of the violations of children's rights in Kenya?
3. Some cases are successful and culprits punished while others fail, what would you think helps a case to nail culprits of children's rights violations?
4. In your opinion, does the competence of a prosecutor (or lack of it) influence the arguments of the case? If yes, in what ways?
5. Some cases succeed while others fail because the prosecutors have too much in their hands and may not accord the cases the attention they would deserve. Do you agree with this line of argument? Explain
6. Does the level of police investigation influence the outcome of the cases? Outline some of the ways in which it influences
7. What recommendations would you have for these cases to succeed in the future?

#### **Appendix IV: Observation Schedule**

The researcher will attend courts sessions dealing with the children's rights violations. The schedule will be obtained from the court registry. From this, the schedule of the court sessions will be developed. The researcher will then attend the sessions to observe the cases from the following perspectives

- i. Preparedness of the prosecutor
- ii. Time allocation for the hearing
- iii. The attendance of the cases from both parties (the complainants and the accused persons)
- iv. The nature of the children's rights violations being prosecuted
- v. The prosecutor's competence in arguing the cases
- vi. The schedule of the prosecutors
- vii. Hearings and final determinations of the cases

## Appendix V: Budget Estimation

No	Activities	Budget Calculation	Amount in Kshs
1.	Development of the questionnaire		
1.1	Review by expert	Honoraria 2 days x 6,000KES/day	12,000.00
2.	Data collection		
2.1	Research Assistants	Honoraria + Per diem 8,000 x 10days x 3persons	240,000.00
2.2	Transportation: Hire of vehicle for field for data collection	vehicle/driver x 8000KES x 10 days	80,000.00
3.	Thesis writing		
	Photocopying services	150 pages x KES.5 x 20 copies	15,000.00
	Grand Total		*347,000