

## Practice of Kenyan Legal Codes and the Effective Application of Informal Controls and Sanctions in Maintaining Social Order.

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### ABSTRACT

Despite being in existence since immemorial, informal controls and sanctions has never been given due attention in the practice of restoring social order by many legal systems. This is evident by the non recognizance of resolutions made informally by the jurisprudence. This has made many people contempt informal controls and sanctions in checking social misbehaviors. This paper seeks to find out whether the practice of Kenyan legal codes hampers effective application of informal controls and sanctions in maintaining social order in Chiakariga Ward, Kenya. This study employed interview method and structured interview schedule as a tool to collect primary data from 100 respondents and analyzed the collected data using SPSS version 20. This study finding found out that practice of Kenyan legal codes has down played informal controls and sanctions in maintaining social order in Chiakariga Ward. This suggests that informal controls and sanctions conflict with principles of Kenyan legal codes in practice rather than supporting and complementing each other. Study also indicated that aspects of modernization and social structure has made residents of Chiakariga ward shy away from informal practices due to their changed world view points.

**Keywords:** Community Perception, Social Order, Legal Codes, Informal Controls and sanctions

### INTRODUCTION

When crimes escalate beyond acceptable level affecting the habitants, blame goes to justice systems for failing to control and maintain security to ensure everyone lives in a safe and secure environment. Distilled information from several sources shows that social order is a key component in every person's life because it assures quality life. People can realize better life where there is peace, Gronewald & Peake (2004). Insecurity makes people loss property and confidence with security agencies, Lubuva (2004). Safety and security is essential for every human being, Ondinkalu (2005). It is against these underpinnings people consider safety and security as a key component and essence of every community wellbeing.

All legitimate governments considers formal sanctions as a central deterrent to crime and other deviant behaviors, however there exists informal controls and sanctions which also immensely contributes to deterrence to social disorders. These two approaches form the general justice system. Some of components of these justice systems are ineffective and inefficient (Faull, 2011). Crimes are not detected and deterred before they are committed; criminals are mostly not arrested and prosecuted (Singh, 2005), and due to lack of faith and delays in court processes many victims of crime withdraw their cases from the trial process, (Schönteich, 1999). Informal controls and sanctions are main recipe in procuring social conformity and in their absence; crimes and other deviance can be learned and reinforced in the society because formal sanctions alone cannot work effectively and efficiently without

argumentations of informal social sanctions. Social conformity is a reflection of community having shared values. Studies have shown that formal sanctions and other security related external institutions do not work effectively in communities which have no common values (Bishop, 1984; Fagan & Meares, 2008; Jiang & Lambert, 2009).

Existing reviews, experiences and literatures has revealed that informal controls and sanctions are mainly applied to teenagers and young adults by their parents and responsible people around them. However lack of informal forms corrections (controls and sanctions) by these groups of people has contributed to high crime rates among the youths and young adults (Dissel, 1997; de Wet, 2003; Nleya & Thompson, 2009) with some communities legitimizing violence among the youths as a way of attaining status (Pelser, 2008). This literature is supported by a study conducted in 2008 by the Centre for Justice and Crime Prevention in 245 schools in South Africa whose results indicated that violence is legitimated as a form of solving conflict by most learners (Mampane & Bouwer, 2011).

Existing literature about youth crime in South Africans indicates that youth between 15-25 years are at risk of committing criminal activities, whereas the majority (43.5%) of youth criminals in South Africa are aged between 10-15 years and 35.9% youth criminals are between 16-18 years old (Pelser, 2008). A study conducted in 2002 in South Africa shows that 36% of all sentenced prisoners were young people, and 53% of all awaiting trial prisoners were young people under 26 years (Palmary & Moat, 2002). According to crime annual reports from Marimanti police station indicated that there was an increase of rape cases in Chiakariga Ward in the 2014 from 40 cases to 47 cases in 2016. It is surprising to learn 75% of these offenses were committed by teenagers and young adults. This high engagement of young citizens in bad behaviors implies ineffectiveness of justice systems in the study area.

Informal controls and sanctions which are based on cultural values, norms and community expectations are designed to be implemented informally through informal structures. The controls and sanctions are executed by few appointed members of the community who come together and forms small justice institutions which acts as courts or an individual can implement them from his own informed opinion guided by the community cultural values, norms and expectations. Principles used by these controls and sanctions in conflict resolution are not coded for generality neither are the implementers have known qualifications to implement them only they rely on their personal experiences which cannot be verified. In the long run implementation of informal controls and sanctions finds themselves contradicting principles of Kenyan Legal Codes and Legislations which generally governs our interactions and conducts. Example, according to Sexual Offences Act, 2006 Section 8(1) a person who commits an act which causes penetration to his genital part with a child with his genital part is guilty of an offence termed defilement. Whoever commits this act should be arraigned in court and due process to be followed for the culprit to be punished; however you will find still some communities in Kenya are not willing to follow this legal process and instead they wish to settle the matter informally simply because handling the case in court is against their culture. This is against the general rule of law and it has caused friction between the two. This has hampered effective application of informal controls and sanctions.

### **PROBLEM STATEMENT**

However informal sanctions when they partner with formal sanctions, formal sanctions become very effective in crime control, there has never been mutual coexistence between the two. Informal controls and sanctions by design they are implemented through informal institutions and structures which derive credibility and unofficial authority from the community they serve or from personal informed opinion without observing Kenyan legal

procedures legally established to guide our interactions and interrelations. This in most times has precipitated hostilities between formal justice institutions with informally held resolutions due to lack of legal credibility.

### **RESEARCH OBJECTIVES**

- 1) To assess whether the practice of Kenyan legal codes facilitates social disorders.
- 2) To examine whether the practice of Kenyan legal codes limits use of informal controls and sanctions in maintaining social order.

### **RESEARCH METHODOLOGY**

This study adopted a descriptive survey design to examine the problem under study. This is because descriptive survey design is ideal for gathering information about people's perception, attitude, opinions, and a variety of social issues, allow details to be obtained from multiple sources of information and evidence and verified through in-depth probing on the targeted sample. All the factual inaccuracies suffered by this design due to subjective nature of respondents, were checked during data collection.

This study on practice of legal codes and effective application of informal controls and sanctions in maintaining security was conducted in four locations, the Chiakariga, Tunyai, Nkarini and Kamarandi of Chiakariga Ward, Kenya in the months of August-September 2017 using a sample cross-sectional survey design.

This study targeted people between 15-55 years in Chiakariga Ward. Stratified, convenient and purposive sampling methods were adopted in this study. The study employed stratified sampling to group targeted study area into administrative units and group the target study sample into interval of 15-25, 26-35, 36-45 and 46-55 years. Convenient sampling was employed to conveniently pick respondents from the sample blankets. The number required from each location was equally distributed among the year's intervals. Purposive sampling purposefully sampled key informants because they had required information regarding this study. To determine the sample size, the study used Neuman (2003) assumption that 20% of target population is appropriate in a descriptive study. A sample of 100 respondents was interviewed drawn from the adult age blankets irrespective of gender. Two pastors, 2 chiefs and 2 assistant chiefs, 2 head teachers, and 2 Njuri Nceke representatives from Chiakariga ward formed part of key informants.

Due to nature of data to be collected, available time as well as the objectives of the study, this study employed interview method and an interview schedule guide tool to collect primary data. This method enabled the researcher to balance between quality and quantity of data collected and collect information required to explain the variables under study.

Data collected was, coded, analyzed and categorized according to research objectives. Data collected was descriptively analyzed through the Statistical Package for Social Science Research (SPSS version 20) program.) Software. The data from the field was first analyzed by categorizing the instruments into their homogenous groups, coded and then synthesized to come up with thematic data. These methods of data analysis were used because some respondents gave similar answers to particular questions. These data analysis methods met the expectations of the qualitative research design of this study. Information from key informants was compiled and summarized into themes, and triangulated with findings from the main respondents. To harmonize conflicting field data corroboration with published works was done.

## RESULTS AND DISCUSSIONS

### Practice of Kenyan legal codes and Social Disorders

This study sought to establish whether the soaring rape cases in Chiakariga Ward are attributed to the practice of Kenyan legal codes. Majority (92%) percent of the respondents agreed citing that practice of Kenyan Legal codes are too procedural, Informal controls and sanctions are undermined jurisprudence, Criminals are shield by human rights codes, Kenyan legal system gives delayed deterrence to wrongdoers, Informal resolutions are not recognized by jurisprudence and formal systems are not expedient enough to give immediate correction of bad acts as shown in table below.

**How the Legal Codes have contributed to social disorders**

	N	Percent of Cases
Kenyan legal system is too procedural	43	46.7%
Informal controls and sanctions are undermined jurisprudence	35	38.0%
Criminals are shield by human rights codes	29	31.5%
Kenyan legal system gives delayed deterrence to wrongdoers	25	27.2%
Informal resolutions are not recognized by jurisprudence	21	22.8%
Formal systems are not expedient enough to give immediate correction of bad acts	17	18.5%

These responses registered above are a clear impression the people of Chiakariga Ward have over the Kenyan formal legal system in relation to maintaining social order in the area. The results are not a credit to the system as a justice system. The results are a reflection on how Kenyan legal codes practitioners perceives and treats informal justice system and resolutions made through them whenever presented to them. This causes anomie a hotbed for the flourish of deviant behavior among the residents.

Legal codes are a set of written down rules and regulations setting out people's interactions and interrelationships. It outlines negative rewards for transgressors of these coded norms. It is in this backdrop that the person of Chiakariga Ward expects Kenyan legal codes to regulate behaviors amongst the residents and rewards transgressors appropriately for conformity. When this is realized, the legal codes is said to be functional and effective in managing the society's social order because it is able to check any emerging anti social behavior. Organic society which is transiting from mechanical society requires functional laws to regulate emerging behaviors and other deviate acts due to rapid social transition because it experiences social pathologies (social disorders) Durkheim (1964). This can be possible if the practice of legal codes work systematically with other justice systems to achieve a common goal of restoring social conformity.

### Informal Controls and sanctions and Kenyan Legal Principles

This study examined whether when informal controls and sanctions are being applied to punish evils follow legal principles and if they do not follow what is its implications. Results indicated that they do not follow the principles when solving conflicts arising in the community. This is because of the way they are designed. They are designed to be implemented informally which do not engage formal procedures.

Ideally for objectivity, public controls and sanctions should be engaged on commonly known standards to all persons and applied through generally known structures by qualified staff. This helps to check subjective feelings from implementers which can make justice not be seen to be served because the controls and sanctions are not subject to subjective application when dispensing justice.

### **Kenyan Legal Codes and Informal Controls and Sanctions on Maintaining Social Order**

The objective of this study was to establish whether practice of Kenyan legal codes hampers informal controls and sanctions in any way in ensuring peace, safety and security in Chiakariga Ward. Results showed that all the respondents asserted that practice of legal codes in Kenya has totally hampered proper use of informal controls and sanctions in effecting security in the study area. The respondents cited that implementers of Kenyan legal codes penalize those who enforces informal controls and sanctions an act that curtails their morale, majority people of Chiakariga Ward have non legality perception towards informal controls and sanctions, practices of Kenyan legal codes are foreign to many of the respondents and that they have long procedures therefore discouraging the users. The study also noted that respondents had the opinion that the informal controls and sanctions lacks credibility, their mode of application is not standardized, they do not use credible evidence when making resolutions and they have no well established mechanisms to deal with issues, as shown in the table below.

#### **How Practice of Kenyan Legal Codes influences informal controls and sanctions in maintaining social order**

	<b>N</b>	<b>Percent of Cases</b>
Legal codes implementers penalize those who reinforce informal codes thus limiting their implementation	23	28.0%
Non legality perception	21	25.6%
Practices of Kenyan legal codes is foreign to many of the respondents	19	23.2%
They have long procedures therefore discouraging users	16	19.5%
Informal controls and sanctions lacks credibility	15	18.3%
Their mode of application is not standardized	14	17.1%
Do not use credible evidence when making resolutions	13	15.9%
Have no well established mechanisms to deal with issues	11	13.4%

The findings above is a clear indication of the view residents of Chiakariga Ward have over the practice of Kenyan legal codes in relation to constructive use of informal controls and sanctions. In summary practice of Kenyan legal codes do not give informal controls and sanctions conducive environment to realize its intention of maintaining social order; and secondly, Chiakariga Ward people are contemptuous about the informal controls and sanction in serving their purpose fairly. This is due to the unconstitutional design of informal controls and sanctions and change of resident's world view due to civilization.

Informal controls and sanctions are those controls and sanctions which are informally developed and implemented by those people in community informal authority or from one's informed view to solve social disorders emerging in the community. They do not follow the general legal procedures when solving conflicts; however they have informal procedures although not anchored in law which they relatively adhere in solving conflicts. The procedures are not predictable and due to this parties partaking in the conflict solving feels disadvantaged by the informal justice system. Due to this unpredictability and unreliability, many people from Chiakariga Ward are turning away from informal controls and sanctions. This massive ideological migration from informal controls and sanctions to formal controls has made informal controls and sanctions suffer setback in terms of legitimacy. Ranging from lack of standardized platform of application, illegalism and change of people's world view due to civilization informal controls and sanctions have been reduced to unauthoritative entity in bringing social conformity. Although many people from Chiakariga Ward and other parts of the world may view informal controls and sanctions as a failed enterprise, it is still ideal in solving conflicts. Most conflicts have traditional origins therefore requiring informal approaches to

solve them, because cultural milieu is a key component to consider to resolve the conflict permanently, Boege (2006). Formal mechanisms do not give permanent solutions in conflicts Galadima & Konteh (2006).

Social controls and sanctions are those measures which are used to maintain and instill social values so that a society with similar value system can be realized so that social controls and sanctions can easily be executed. For the informal controls and sanctions they are implemented through informal justice mechanisms whereas formal controls are implemented through formal justice system to control anti-social behavior. However subordinate informal controls and sanctions may be in the view of Kenyan legal codes practitioners, they need to be recognized and empowered in order to support formal controls and sanctions in maintaining security in the study area. They are key in finding resolutions as many conflicts have traditional origins therefore requiring informal approaches to bring a permanent solution, Boege (2006). Strengthening and empowerment includes constitutional review to recognize informal controls both in existence and practice, constitutionally recognize study area traditional justice mechanisms, (*'kirimo'*, *'gaaru'*, *'mwiriga'* and *muuma*) in implementing justice and popularize them at local levels, promoting local informal controls and sanctions early enough among the community members by having them taught in schools, promoting the local culture and practices through cultural events and fronting use of family heads to enforce justice on the affected parties. Peaceful and systematic marriage between formal justice system and informal justice system strengthens relations between the two which together will help ensure social order.

### CONCLUSIONS

Despite Kenyan formal legal system being designed to install social order by preventing bad behaviors from happening, instead it has encouraged them. This is the expectation of all the participants, however this not the case. The participants felt by practice of Kenyan Legal Codes being too procedural, undermining informal controls and sanctions, shielding criminals through human rights codes, delaying in deterring wrongdoers due to delayed convictions, not recognizing informally made resolutions and formal systems not being expedient enough to give immediate correction to bad acts has made many social evils hike in Chiakariga Ward.

Participant also cited that lack of informal controls and sanctions to adhere to the principles of Kenyan legal codes when dispensing justice has caused legal lifts with the principles of the Kenyan legal system, has made resolutions made through informal controls have no legal authority, cast doubt on competence of the people making the informal resolutions and have a feeling that informal justice system is not objective because it does not adequately allow litigants defend themselves. This illegalism engulfing the design and application of informal controls and sanctions has not only borne setback to the controls and sanctions in terms of maintaining security and peace in the contemporary Chiakariga Ward but it has also caused residents of the area to slowly disregard and regard them as inconsequential, incredible, unstandardized and out dated. Failure to use convincing evidence when making resolutions has made participants further doubt credibility of the informal controls and sanctions.

Due to the general security welfare and other social welfare derived from any assuring and enduring security arrangement, harmonious working environment needs to be realized between formal and informal justice systems so as to work together interdependently to realize security and peace in chiakariga ward. According to the participant, this is by having constitutional review to recognize informal justice mechanisms and its operations, promoting and recognize local informal justice mechanisms instruments, (*'kirimo'*, *'gaaru'* *muuma* and

'mwiriga') solving conflicts informally be given a priority by community members and encourage local culture and practices through cultural events.

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