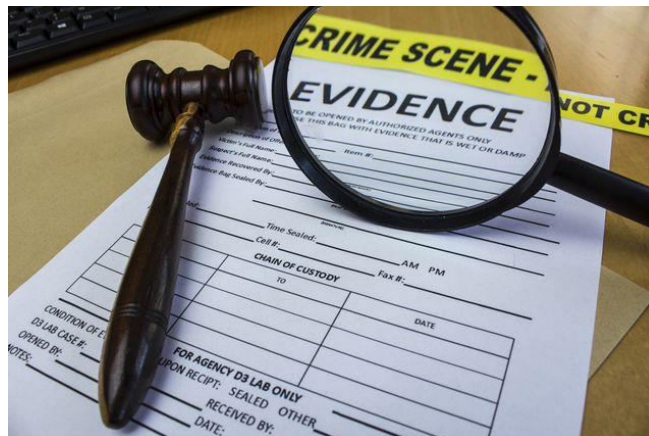


The Role And Impact Of Forensic Evidence In The Criminal Justice Process

(A case study of Kenya)



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Introduction

The term forensic evidence comprises of a wide range of acts and disciplines, where each of the disciplines has their unique approach and practices. Toxicology, drug analysis, writing tool marks and fingerprints are some of the most common techniques used in forensic science. People who encompass educational background and experience from chemistry, biology, laws and criminal science are mostly engaged in this field. This proposal shares lights towards the impact and role of forensic science, specifically in Kenya. Previously Kenya had massive records of rapes, murders and robbery.

In order to mitigate this issue, the prime justice of Kenya implemented new laws and regulations that work in favor of local people. However, a gap between the implemented law and actual practice remains consistent. Forensic reports, evidence and practices, therefore, in Kenya play a very significant role. In this part of the proposal, a brief discussion about the research rationale has been provided. The research questions share the importance of forensic evidence in Kenya and the last section. The methodology shares understanding about different ways in which data have been collected to get a significant conclusion for the research paper.

1. The rationale for the study

Forensic reports and evidence have played a significant role in providing justice and exoneration to many common people. The criminal justice in today's date cannot find any conclusion for a particular case without proper involvement of forensic evidence. However, a minute fault in the investigation can bring wrongful conviction in the entire criminal justice system. Since 2011, the cases of rape and robbery have increased to a considerable percentage (Chepkwony2018). The retired Chief Justice of Kenya, Willie Mutunga has considered that slow pace evolution of forensic science of Kenya as the biggest reason for the faults in criminal justice and wrongful conviction of the judges for many cases. The critical perception of Chief Justice of Kenya reveals that there are significant chances that the convictions and judgments have either taken a very long period of time or have shared wrong justice to the needful people for the cases of rapes, robbery and other crimes in Kenya that have been provided justice.

However, according to Dror (2015), criminal justice has the most substantial potential to solve crimes in Kenya or any other places in the world. Therefore, gathering effective and efficient information is a crucial step in criminal justice. The visible or hidden information that is gathered from the crime scene should be preserved and investigated by the criminal investigator in Kenya. Each piece of evidence is collected, tested and preserved for future use in different entities. Mislead of the investigator can slip any clue from the crime scene and interpret wrong information, thereby leading to waste several months of investigation in vain (Freeman 2017). Therefore, the role and impact of forensic investigation for criminal justice in Kenya shall fund information about the following objectives with the help of this proposal:

- I. To understand the current and future state of forensic investigation in Kenya
- II. To determine the process of forensic investigation in Kenya
- III. To establish quantum training to the people associated with forensic investigation in the country
- IV. To determine the faults and demerits in the code of ethics for criminal justice and forensic investigation of Kenya
- V. To establish appropriate recommendations for the challenges faced by the department in the country

There is always an aim and objective for a particular research paper. According to Mageto *et al.* (2017), Kenya has been selected as the research site, because the cases of crime sense are the largest in number. Although there are many other countries where criminal justice is fragile and one-sided, Kenya has a large number of officers and a standard constitutional regulation for criminal justice. Besides then, the inabilities of the forensic investigators to cope up properly with the current state of Kenya are very unreliable. Therefore, the availability of strong criminal justice rules and regulation and failure of forensic investigation contradicts with the overall criminal justice system of Kenya (Menaker *et al.* 2017). Another major reason for choosing the case study of Kenya for this paper is that the forensic equipment in most of the countries is sourced from Kenya only. Kenya also consists of Departmental headquarters for criminal justice, which is not usually found in any other country.

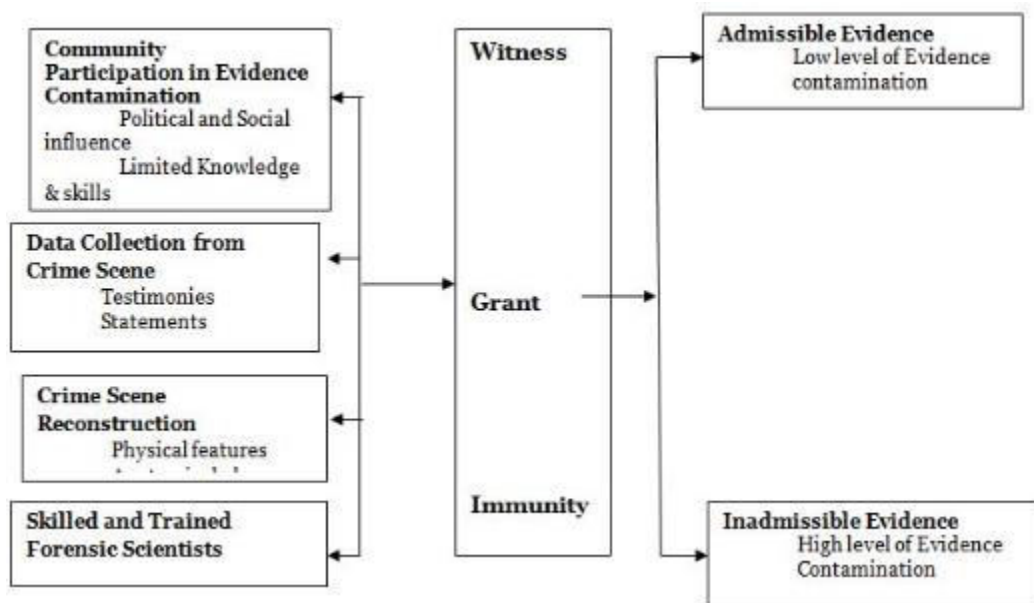


Figure 1: High-level forensic practice followed in Kenya

(Source: Menaker *et al.* 2017)

The series and steps of accusations from the global bodies and activists who are correlated with human rights convey that forensic investigation in Kenya is not thorough and reliable. As stated by Naimer *et al.* (2017) in order to bring significant changes in the criminal justice regulations and strategies to train the investigators about the advanced techniques, this research proposal is very apt. This research project shall also highlight a stabilized justice system for the people who ought

to conviction and unfair conflicts by the criminal justice regulations in Kenya. By the end of the project, a series of recommendations shall be drawn that will be beneficial for the forensic investigation department and governmental bodies for criminal justice in Kenya. Another major importance of this project is that there are very few research studies and papers have been published in favor of criminal justice and forensic investigation in Kenya.

Therefore, this project will help those scholars to take their research further. This information, data and strategies that will be shared in the research project will also aim forensic anthropologists, forensic toxicologists, forensic pathologists and forensic archaeologists regarding the gap that persists in the ethics, human rights and forensic investigation system in Kenya. In order to carry out any research, there are always some assumptions that are considered before conducting the research. Same goes in this project as well. Following assumptions are considered while carrying out this research project:

- I. The forensic investigation is conducted according to the established regulations and rules in Kenya
- II. The criminal laws follow the basic human right ethics and code of conducts in Kenya
- III. Some problems, challenges and issues are being faced by the forensic investigation in Kenya
- IV. The training is minimum and competent for conducting the forensic investigation in Kenya

As it has also been discussed earlier that there are very few books and journals for forensic investigation Kenya, the research project for this proposal has considered some of those literature, views and opinions of the scholars and writers. From the discussion made in those papers, one thing has been found very common, that is the steps followed for forensic investigation in Kenya. A brief overview of these steps is provided below:

- **Collection:** Collecting the visible and invisible data from the relevant sources provide possible guidelines to integrate the collected data.
- **Examination:** Manual methods and a combination of automated criteria is the primary focus in this step (Peterson *et al.* 2015).

- **Analysis:** Analysis by using legal and justifiable records, techniques and methods develop relevant information to address the criminal justices queries and questions.
- **Reporting:** Reporting the result that has been found from the analysis is the next step for the forensic investigation. In this procedure, the techniques and tools are mostly used (Ribauxet al. 2015).

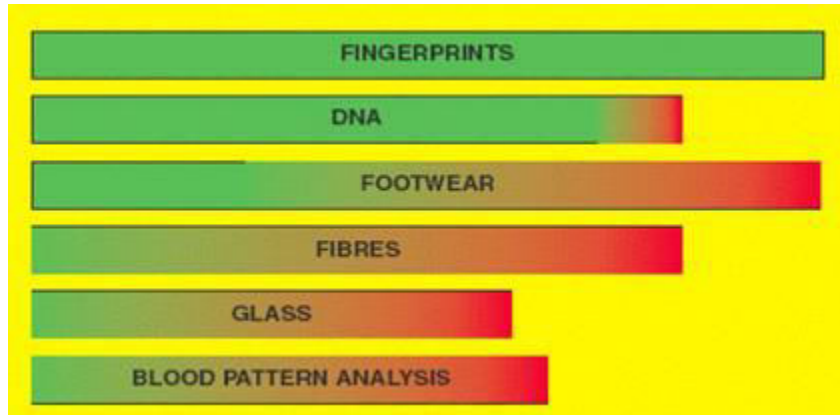


Figure 2: Major evidence for forensic reports

(Source: Ribauxet al. 2015)

2. Research questions

This study will explore the current state of the forensic investigation in Kenya by highlighting the following research questions:

- What are the procedures of forensic investigation in Kenya
- What level of training and expertise is provided to the people-oriented with the investigation in the country?
- What sort of ethics and human right practices are observed in the forensic investigation of Kenya?
- What are the challenges and issues faced by the forensic investigation department of Kenya?
- How the issues and challenges faced by forensic investigation can be mitigated in Kenya?

3. Methodology

a. Participants/Data collection

For this research project, the researchers will consider Nairobi city as the site of research. The selection of Nairobi city will be very apt because it connects the North West, North East, East and South East states of Kenya (Ribaux *et al.* 2016). The participants for this research will consist of police officers, field officers, laboratory officers, forensic investigators and crime scene officer. Moreover, the departmental head of forensic investigation of Kenya is also placed in Nairobi city. The research was conducted in two main phases. The first phase comprised of semi-structured interview with a forensic expert. This phase is important because it will help the researcher to collect both qualitative and quantitative data.

The second phase was composed of a direct interview with the administrators who are involved directly with the forensic investigation in Kenya. For the semi-structured interview, a series of questions will be asked to the participants whose views and opinions will be recorded in a voice recording machine. This step will be helpful because if the recording machine is not used, some vital and important information may miss out while presenting the project (Ribaux *et al.* 2017). All the participants in this research project are distinguished members of the National Police Service Commission of Kenya. Involvement of these participants in the research will be helpful because they will be able to guide the researchers with valuable information about the legal procedure as well as laboratory procedures in the forensic investigation.

b. Materials

In any research project, the total study population is very large. Due to such a large volume, it becomes difficult for the researchers to conduct research from all the participants. Moreover, maintaining huge data also becomes very difficult to draw an effective and efficient conclusion. Therefore, for this research project, the sample of the population is only considered as the study population. Total of 12 respondents was therefore selected as the study population and critical case sampling for the research. This was practiced for collecting the primary data. However, for collecting the secondary data, the researchers have considered a series of books and journals on the same topic. The training materials and books that are provided to the police and forensic investigators before their training procedure will also be considered in the project. For cross-

checking the general powers of the police and their code of conduct, national police service act No 11A of 2011 will always be taken help from. For determining the qualitative data from the informant and in-depth interview, a thematic procedure of data analysis and interpretation will be considered. The subsequent introduction of each of the respondents will be done by the departmental headquarter. The first set of the interview will be conducted to the branch manager of the forensic department. Later on, it will be preceded by the department of scenes where the second round interview will be conducted. The subsequent third fourth and up totwelfth interview will be conducted to the final investigators and detectors.

c. Method/Procedure

The data collection method was conducted in two major steps:

1. Semi-structured interview

The semi-structured interview is considered a systematic approach that relates to the views and opinions of the individuals who are involved in the research project. According to Silaliet *al.* (2017), a semi-structured interview takes less time and resources than the formal mode of interview. Moreover, for an unstructured interview, the formalities and permissions are also very difficult to manage in every aspect. Distinguished managers and stakeholders do not allow all sorts of researchers to get permission for an unstructured interview. Therefore, to conduct an interview with the investigators and police officers, a set of the semi-structuredquestionnaire will be drawn, and the questions will be asked directly to them.

2. Key informant interview

The people involved in the key informant type of interview are considered as knowledgeable people who have a high value of understanding on the research topic (Smalarzet *al.* 2016). For assessing the collected data rapidly, the key informant data are most appropriate. The respondents for the key informants were chosen purposively on the basis of their experience, knowledge and understanding of their respective position, duties and responsibilities. Before conducting the key informant interview, the researchers will consider a key informant interview guide(*Refer to Appendix 1*). This guide will assist them to know about the basic criteria and responsibilities that are played by the respective respondents in their fields of work.

The semi-structured interview will help the researchers about the overview of the policies and regulations of the forensic investigation in Kenya, while the informant interview will help them to analyze the challenges, problems and issues present in the forensic investigation in criminal justice of Kenya.

d. Analysis

Data analysis is regarded as the interpretation of the information that has been collected with time in a research project. Data analysis is one of the most important parts within a research project as all the important and vital information is shared in this part (Smith *et al.* 2017). In this research project, the researchers will collect the data both by a qualitative and quantitative method. For the qualitative research method, the researchers have considered a review of a wide range of literature. Internet resources, peer-reviewed journals, books and websites have been widely used to analyze the objectives of the research project. For the quantitative research, two types of the interview have been considered Viz; semi-structured interview and key informant interview.

Both these interviews will be conducted to analyze the current practice of forensic investigation in Kenya. The key informant interview was conducted to determine the problems, challenges and issues in the department. Therefore, the data analysis of this project will be done based on both types of collected data. Interpreting an elaborative and descriptive conclusion out of these data collection procedures, the data analysis will guide the readers to analyze three major aspects of forensic investigation, the success factors of the department, thoroughness in the work procedure and preceding cautions within the organizational culture. Wangamatiet *al.* (2019) considered three main stages of forensic investigation, which are pre-investigation phase, the investigation phase and the post-investigation phase. All these phases have a unique approach and reliabilities. Therefore, the data analysis and interpretation of this research project will consider all these three stages of forensic investigation in Kenya and relate them with the success factors, thoroughness and challenges within the organizational culture.

e. Ethical considerations

In order to make the research project effective and efficient, there is a certain code of ethics that are needed to be followed. Similarly, in this research project as well, the researchers will

follow certain ethics to make the entire research project appropriate and error free. Following are some of the major ethics that will be considered in this research project:

- No participants will be forced to participate in the research project, either physically or mentally.
- The respondents will be given prior notice regarding the use of voice recording machines while collecting the primary data.
- In the case of secondary data collection, only peer-reviewed journals, books and articles will be considered.
- The sites that will be considered in the course of time will only be used for information generation purpose only and not copying or breaching out of it.

f. Anticipated problems

Although it is assumed that the conduction of the research will be carried out smoothly according to the plan, yet certain issues occur while conducting the research. In order to get prepared for such unreliable stances, it is important for all the researchers to be ready for the anticipated problems. For this research paper, the major problem that might occur is the problem of managing time with the distinguished officers and police. Everyone would be busy in their respective jobs. Therefore, the researchers may not conduct the research according to their planned program. They might need to spend more time in the departments to get relevant time, from the officers. Another major problem that might occur during the course of time in this research project is the issue of time management. If extended time is spent mostly on collecting primary data, it will be difficult for the researchers to manage time for data analysis and interpretation.

Without proper data analysis and interpretation, the information shared in the research project will be vague and inappropriate. Another problem that the researchers might face during the data collection process is the issue of resource management. The money will be the primary factor. Travelling to different investigation sites along with investigation officers may demand more money than the expected. Moreover, the entry to the departmental headquarters sometimes also demands a certain amount of money from the visitors. This might impact the value transmission and resource management for this project. However, if the researchers spend most of the time

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with the investigators and try to observe their ways of working, a good rapport and confidence may be built up with them.

Summary

From the above discussion, it can be concluded that forensic evidence in Kenya has played a vital role in the conviction of crimes and prosecutions by implementing rules and regulations for criminal justice and forensic investigation. Advancement in some of the disciplines in forensic science has revealed the effectiveness of the overall justice system in Kenya. However, delaying in the justice system and lack of advanced technologies in forensic science is one of the major causes the failure of criminal justice. In order to mitigate this issue, the resources to the criminal investigation and specifically in the forensic investigation are the mandatory changes that need to be introduced in Kenya. The dissertation will focus completely on the above-discussed research question and will aim to find justified information for the research objective. By following the above-mentioned methodologies, specific strategies and recommendations can be made to bring a considerable change in forensic science practised in Kenya.

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Appendices

Appendix 1: Key informant interview guide

1. Which are the policies that govern forensic investigation in your field? (probe for details of the policies)
2. How effective are these policies in regulation of forensic investigation?
3. How are the policies formulated? (Probe for investigators consultation).
4. Generally, how are the policies? (Probe for their applicability and efficiency).
5. How are the experts selected for different tasks/duties in your field? (Probe for criteria and the ranking/grading).
6. Which facilities and technologies are available for forensic investigators? (probe for new technology and new facilities)
7. Are the facilities accessible to all investigators? (Probe for coverage).
8. Which are the protocols in your field of operation? (Probe for details).
9. Are there codes of conduct in your field of operation? (Probe for details).
10. Which ethical considerations are there in your field of operation?
11. How do you solve those ethical issues? (Probe for structure in place for solving them).
12. How do the issues of human rights apply in your field of operation? (Probe for effects of human rights).
13. How are issues of human rights dealt with in forensic investigation? (Probe for documentation of the details).
14. Are there formats in place for a forensic investigator to follow while on duty? (Probe for details).
15. Which are the challenges that you face as an expert in your field of operation? (Probe to get if the challenges are general to all investigators).
16. Has these challenges been solved? (Probe for ways to solve them and government involvement).
17. Are there external influences in the field of your operation? (Probe for political influence).
18. In your opinion how can challenges faced by forensic investigation be solved?

Figure 3: Key informant interview guide

(Source: Wangamatiet *al.* 2019)