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## **Strengthening the Role of Psychologists in the Kenyan Criminal Justice System: An Analysis of the Counsellors and Psychologists Act, 2014**

By: *Michael Sang* \*

### **Abstract**

*This comprehensive study delves into the intricate interplay between psychology and Kenya's criminal justice system, highlighting its paramount contribution to expanding access and understanding of criminal behavior. Grounded in real-life cases like the Shaka Hola Forest incident and the unsettling actions of individuals such as Onyancha, the paper explores the nuanced dynamics of extremist ideologies, ritualistic violent crimes, and terrorist radicalization. The examination extends beyond Kenya's borders, drawing lessons from international experiences in the United Kingdom and South Africa. The UK's emphasis on a unified professional body, rehabilitative interventions, and validated screening tools provides valuable insights. Meanwhile, South Africa's legal frameworks, including the Criminal Procedures Act and the Mental Health Care Act, offer comprehensive models for evaluating criminal responsibility and protecting the rights of individuals with mental disorders. Crucially, the study scrutinizes Kenya's own legal landscape, focusing on the Counsellors and Psychologists Act, 2014. This legislation, while making strides in regulating the profession, is critically analyzed, pointing out merits and demerits. The paper advocates for the alignment of this Act with international best practices, suggesting amendments to address deficiencies, including a lack of unified professional bodies and screening tools. In proposing measures to enhance the integration of psychology into Kenya's criminal justice system,*

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\* LLM, University of Cape Town, South Africa; LLB, Moi University; PG Dip. in Law Kenya School of Law. The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which he is affiliated

*the study recommends the establishment of a unified professional body, explicit requirements for psychologists in assessments, recognition of different categories of psychologists, and a stage-wise process for determining criminal capacity. Ultimately, the paper contends that by collaboratively intertwining psychological insights with legal frameworks, Kenya can pave the way for a more informed, compassionate, and effective criminal justice system.*

**Key Words:** *Psychologists, Kenya, Criminal Justice System, Counsellors and Psychologists Act*

## **1. Introduction**

In Kenya, the intersection of psychology and the criminal justice system holds immense potential for unraveling the complexities surrounding criminal behavior. Cases such as the Shaka Hola Forest massacre<sup>1</sup> the chilling actions of serial killers like Onyancha,<sup>2</sup> ritualistic violent crimes, and the troubling phenomena of terrorist radicalization and violent extremism underscore the critical need for professional insights into the intricate patterns of human behavior and mental states. These cases pose unique challenges that extend beyond conventional criminal investigations, demanding a nuanced understanding of the psychological dimensions involved.

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<sup>1</sup> Fiorillo, Chiara (2023). "Four cult members starve to death in Kenyan forest after 'fasting to meet Jesus'". *The Mirror*. Retrieved 13 April 2024.

<sup>2</sup> Paul Ogemba (2021) 'Self-confessed serial killer Philip Onyancha freed for lack of evidence' *The Standard* available at <https://www.standardmedia.co.ke/article/2001417753/self-confessed-serial-killer-philip-onyancha-freed> accessed 13 April 2024.

The Shaka Hola Forest incident<sup>3</sup> for instance, exposed the influence of psychological factors on individuals willing to follow extreme ideologies. The discovery of emaciated followers and shallow graves highlights the need for a profound comprehension of the psychological dynamics that lead individuals to engage in self-destructive behaviors driven by religious fervor. This incident calls for a comprehensive examination of the role psychology can play in identifying and mitigating the risks associated with radical ideologies that endanger lives.

Similarly, the case of Onyancha, who confessed to the gruesome murder of 17 women and claimed to drink their blood,<sup>4</sup> presents a stark illustration of the intricate relationship between mental health and criminal behavior. Despite the court ruling<sup>5</sup> that he was not legally insane, Onyancha's admission of being disturbed by life events that destabilized his mental state emphasizes the importance of psychological insights in evaluating and addressing the mental health aspects of criminal conduct.

In the face of such complex criminal cases, the contribution of psychology becomes paramount. Beyond merely solving crimes, the discipline offers a unique lens to comprehend the underlying causes of criminality. By delving into the realms of human cognition,

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<sup>3</sup> The Senate (2023). Report of the Ad-Hoc Committee to Investigate the Proliferation of Religious Organizations and Circumstances Leading to More Than 95 Deaths in Shakahola, Kilifi County.

<sup>4</sup> Dennis Onsarigo (2017). The Devil Told Me to Kill 100 Women – 'Reformed' Serial Killer Onyancha. Accessed 13 April 2024.

<sup>5</sup> Paul Ogemba (2021) 'Self-confessed serial killer Philip Onyancha freed for lack of evidence' *The Standard* available at <https://www.standardmedia.co.ke/article/2001417753/self-confessed-serial-killer-philip-onyancha-freed> accessed 13 April 2024.

emotions, and behavior, psychologists can provide critical insights into the motives, triggers, and patterns that drive criminal actions. Understanding these factors is integral to developing effective strategies for crime prevention, rehabilitation, and ensuring public safety.

This discourse explores the pivotal role that psychology can play in expanding access to criminal justice in Kenya. Through the lens of notable cases like Shaka Hola and Onyancha, it delves into the necessity of professional psychological expertise in deciphering the intricacies of criminal behavior. As Kenya grapples with evolving challenges in its criminal justice landscape, harnessing the insights of psychology becomes not just a necessity but a key avenue for enhancing our understanding of crime and developing targeted interventions to address offending behavior.

## **2. The Contribution of Psychologists to Criminal Justice Processes: An Overview**

### **2.1 Types of Psychologists**

#### **2.1.1 Clinical Psychologists**

Clinical psychologists play a crucial role in the criminal justice system by applying their expertise in mental health to understand, assess, and intervene in various aspects of the legal process.<sup>6</sup> Clinical psychologists are trained to conduct comprehensive psychological assessments.<sup>7</sup> In the criminal justice context, this involves evaluating

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<sup>6</sup> Kibira LM & Kipchirchir (2023). 'Between Arrest and Sentence: Treatment of Persons with Intellectual and Psychosocial Disabilities in Kenya' in Ambani & Sipalla (eds), *Mental Health and the Criminal Justice System* 77.

<sup>7</sup> Ibid

individuals for mental health disorders, assessing their cognitive functioning, and determining their psychological state. This information is valuable in understanding the accused, witnesses, or victims.<sup>8</sup>

Clinical psychologists can assess individuals for mental health issues, such as depression, anxiety, or psychosis.<sup>9</sup> Identifying these conditions is vital for understanding how they may impact a person's behavior, decision-making, and culpability in criminal activities.<sup>10</sup> Clinical psychologists often engage in forensic assessment, which involves applying psychological principles to legal issues.<sup>11</sup> They may assess issues like competency to stand trial, criminal responsibility, and risk assessment for potential future dangerousness.<sup>12</sup>

Clinical psychologists can provide therapeutic interventions to individuals involved in the criminal justice system.<sup>13</sup> This may include counseling for defendants, victims, or even prison inmates.<sup>14</sup> Addressing mental health concerns can contribute to rehabilitation and reduce the likelihood of reoffending. Clinical psychologists may

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<sup>8</sup> Zarbo, C., Tasca, G. A., Cattafi, F., & Compare, A. (2016). Integrative Psychotherapy Works. *Frontiers in Psychology*. doi: 10.3389/fpsyg.2015.02021

<sup>9</sup> Kibira LM & Kipchirchir (2023). 'Between Arrest and Sentence: Treatment of Persons with Intellectual and Psychosocial Disabilities in Kenya' in Ambani & Sipalla (eds), *Mental Health and the Criminal Justice System* 77.

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Hollin CR (2013). *Psychology and Crime: An Introduction to Criminological Psychology*.

<sup>14</sup> Ibid

also serve as expert witnesses in court.<sup>15</sup> They can provide insights into the psychological aspects of a case, helping judges and juries understand complex mental health issues that may influence legal decisions.<sup>16</sup>

Psychologists can contribute to the development and implementation of rehabilitation programs within the criminal justice system.<sup>17</sup> This can include programs focused on anger management, substance abuse treatment, and other interventions aimed at reducing criminal behavior. In situations involving crises, such as hostage negotiations or incidents with emotionally distressed individuals, clinical psychologists can offer their expertise to law enforcement to help manage the situation more effectively.<sup>18</sup>

### **2.1.2 Forensic Psychologists**

Forensic psychologists specialize in the intersection of psychology and the legal system.<sup>19</sup> Their contributions in the criminal justice context are crucial for understanding and addressing various legal issues.<sup>20</sup> Forensic psychologists may be involved in criminal profiling, a process that involves analyzing crime scenes, evidence, and behavioral patterns to create a profile of potential offenders. This information can assist law enforcement in investigations.<sup>21</sup>

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<sup>15</sup> Blau TH (2008). *The Psychologist as Expert Witness*.

<sup>16</sup> *Ibid*

<sup>17</sup> Kibira LM & Kipchirchir (2023). 'Between Arrest and Sentence: Treatment of Persons With Intellectual and Psychosocial Disabilities in Kenya' in Ambani & Sipalla (eds), *Mental Health and the Criminal Justice System* 77.

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

Forensic psychologists assess an individual's competency to stand trial.<sup>22</sup> This involves determining whether a defendant has the mental capacity to understand the legal proceedings against them and assist in their defense. Forensic psychologists play a critical role in evaluating claims of insanity.<sup>23</sup> They assess whether a defendant was mentally impaired at the time of the crime, which can impact their criminal responsibility.<sup>24</sup>

Forensic psychologists conduct risk assessments to evaluate the likelihood of an individual reoffending.<sup>25</sup> This information is valuable in sentencing decisions and the development of parole or probation plans.<sup>26</sup> They examine the reliability of eyewitness testimony and the accuracy of memory recall. They can provide insights into the factors that may influence the reliability of witness accounts in criminal cases. Forensic psychologists may work with victims of crime, providing support and counseling. They can help victims cope with trauma and navigate the legal process.<sup>27</sup>

Forensic psychologists may engage in research to inform policies within the criminal justice system. This research can address issues such as the effectiveness of rehabilitation programs, the impact of legal interventions, and the development of evidence-based practices.<sup>28</sup>

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<sup>22</sup> Brown J, Shell Y & Cole T (2015). *Forensic Psychology: Theory, Research, Policy and Practice*.

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*



### **2.1.3 Criminal Psychologists**

Criminal psychologists, often referred to as criminal or forensic psychologists, specialize in understanding and applying psychological principles to criminal behavior, legal processes, and the functioning of the criminal justice system.<sup>29</sup> Criminal psychologists may engage in profiling to create a psychological profile of an offender based on crime scene analysis, behavioral patterns, and other relevant factors.<sup>30</sup> This information can assist law enforcement in investigations. They assess the risk of reoffending among individuals within the criminal justice system. This involves evaluating various factors, including the individual's history, behavior, and potential for rehabilitation.<sup>31</sup>

Criminal psychologists contribute to the development and implementation of treatment and rehabilitation programs for offenders.<sup>32</sup> This includes addressing issues such as anger management, substance abuse, and other factors contributing to criminal behavior. Criminal psychologists may serve as expert witnesses in court, providing insights into the psychological aspects of criminal cases. This can aid judges and juries in understanding the motivations and mental state of individuals involved in criminal activities.<sup>33</sup>

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<sup>29</sup> Yoon, I. A., Slade, K., & Fazel, S. (2017). Outcomes of psychological therapies for prisoners with mental health problems: A systematic review and meta-analysis. *Journal of Consulting and Clinical Psychology*, 85(8), 783-802.

<sup>30</sup> Chan HC & Adjorlolo (2021). Crime, Mental Health and the Criminal Justice System in Africa: A Psycho-Criminological Perspective.

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid

They study patterns of criminal behavior, looking at the psychological factors that contribute to criminal acts. This analysis can inform preventive measures and intervention strategies. Criminal psychologists may work with victims of crime, providing psychological support and helping them cope with the trauma associated with criminal incidents.<sup>34</sup>

## **2.2 Emerging Prominence of Victimology in the Criminal Justice Process**

Victimology has gained increasing prominence in the criminal justice process as psychologists recognize the importance of understanding and addressing the experiences and needs of crime victims. Victimology emphasizes the rights of crime victims, recognizing them as integral stakeholders in the criminal justice process. This includes the right to be treated with dignity, to be informed about the progress of the case, and to receive support and assistance.<sup>35</sup>

Psychologists involved in victimology assess the psychological impact of crime on victims. This involves understanding trauma, stress, and coping mechanisms, which can inform interventions and support services. Victimology promotes the provision of immediate crisis intervention and long-term counseling for crime victims. Psychologists play a crucial role in offering psychological support, helping victims process their experiences, and assisting in the recovery process.<sup>36</sup>

Psychologists contribute to assessing the ongoing risks and safety concerns for victims, especially in cases of domestic violence or

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<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Ibid

stalking.<sup>37</sup> They collaborate with law enforcement and victim advocates to develop safety plans tailored to individual circumstances. Victimology encourages restorative justice practices, which aim to involve victims, offenders, and the community in addressing the harm caused by the crime. Psychologists contribute by facilitating communication between victims and offenders, promoting empathy, and facilitating restitution.<sup>38</sup>

### **2.3 The Necessity of Psychologists in Kenya's Criminal Justice System**

#### **In the Investigation Process:**

Psychologists can contribute to the investigation process by advising law enforcement on effective and ethical interrogation techniques. They can help design interviews that minimize false confessions and ensure the reliability of information obtained from suspects. Psychologists may assist in identifying and managing psychological factors that could impact the accuracy of statements made during police interviews.<sup>39</sup>

#### **In the Trial Process:**

Psychologists can provide insights into juror or court behavior, decision-making processes, and factors influencing perception and memory. They may assist legal professionals in jury selection, helping to identify potential biases or preconceptions that could affect the trial outcome. Understanding the psychology of witnesses, including stress and memory issues, can inform how evidence is presented and

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<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Rogers, C. (1956). The Necessary and Sufficient Conditions of Therapeutic Personality Change. *Journal of Consulting Psychology*, 21, 95-103.

evaluated in the courtroom.<sup>40</sup>

Psychologists can serve as expert witnesses to explain complex psychological concepts relevant to the case, such as the impact of trauma on memory, the reliability of eyewitness testimony, or the mental state of the accused. They contribute to the court's understanding of the psychological factors that may have influenced the actions of individuals involved in the case.<sup>41</sup>

### **In Sentencing:**

Psychologists play a crucial role in conducting comprehensive psychological assessments of individuals involved in the criminal justice system. They assess factors such as mental health, risk of reoffending, and rehabilitation potential, providing valuable information for sentencing decisions. This information assists judges in tailoring sentences that consider the individual's psychological well-being and the likelihood of successful rehabilitation. They can design and implement interventions focused on mental health treatment, substance abuse counseling, and skill-building to reduce the risk of reoffending.<sup>42</sup>

## **3. Analysis of Kenya's Legislation on the Role of Psychologists in Criminal Justice: Counsellors and Psychologists Act 2014**

### **3.1 Merits of Counsellors and Psychologists Act**

#### **1. Professional Standards and Regulation:**

The Act establishes a regulatory framework for the training,

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<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid

registration, and licensing of counsellors and psychologists. This is crucial for ensuring that individuals practicing in these professions meet specific educational and ethical standards.<sup>43</sup>

## **2. Quality Assurance in Training:**

By outlining requirements for training programs<sup>44</sup>, the Act contributes to the maintenance of high standards in the education and training of counsellors and psychologists. This, in turn, enhances the quality of services provided to individuals within the criminal justice system.

## **3. Ethical Practice:**

The Act includes provisions related to ethical guidelines and professional conduct for counsellors and psychologists. This ensures that practitioners adhere to ethical standards, promoting trust and integrity in their interactions with clients, including those involved in the criminal justice system.<sup>45</sup>

## **4. Licensing and Registration:**

Licensing and registration requirements are essential components of the Act, ensuring that only qualified and competent individuals are authorized to practice as counsellors and psychologists.<sup>46</sup> This helps protect the public and maintains the credibility of the professions.

## **The Counsellors and Psychologists Board (Functions):<sup>47</sup>**

The Act assigns various functions to the Counsellors and

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<sup>43</sup> Counsellors and Psychologists Act, 2014, long title

<sup>44</sup> Counsellors and Psychologists Act, 2014

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid, Part II

Psychologists Board, which include accreditation of Training Programs, licensing and Registration, development of Professional Standards, ethical Oversight and Continuing Professional Development among others.<sup>48</sup>

### **3.2 Demerits of the Psychologists and Counsellors Act**

#### **3.2.1 Lack of a Unified Professional Body**

One significant demerit of the Psychologists and Counsellors Act is the presence of numerous fragmented professional associations within the fields of psychology and counseling. This fragmentation could result in a lack of consistency in qualification requirements, accreditation processes, and practice standards across different associations. Professionals may belong to various associations, each with its own set of rules and standards, potentially leading to confusion among practitioners and the public.<sup>49</sup>

The absence of a unified professional body may contribute to a lack of standardized qualification requirements for psychologists and counsellors. Different associations might have varied criteria for educational background, training, and experience, making it challenging to establish a universal benchmark for professional qualifications. This lack of uniformity could impact the overall credibility and coherence of the professions.<sup>50</sup>

The presence of multiple professional associations may lead to

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<sup>48</sup> Ibid

<sup>49</sup> Kamoyo, J. M., Barchok, H. K., Mburugu, B. M., & Nyaga, V. K. (2015). Effects of imprisonment on depression among female inmates in selected prisons in Kenya. *Research on Humanities and Social Sciences*, 5(16), 55-59.

<sup>50</sup> Ibid

inconsistent accreditation processes for educational and training programs. Programs accredited by one association may not necessarily meet the standards set by another, creating challenges for aspiring psychologists and counsellors in choosing accredited and recognized educational paths.<sup>51</sup>

### **3.2.2 Due Process Shortfalls**

Due process typically involves a fair and transparent disciplinary process for professionals accused of misconduct or ethical violations. Due process shortfalls may arise if the Psychologists and Counsellors Act lacks clarity in outlining the specific procedures and steps involved in investigating and addressing complaints against psychologists and counsellors. The absence of well-defined processes can lead to confusion and potential injustices in disciplinary proceedings. Due process is designed to protect the rights of professionals accused of misconduct, ensuring fair treatment and a proper opportunity to respond to allegations.<sup>52</sup>

A robust due process includes the provision of appeal mechanisms for professionals dissatisfied with disciplinary decisions. If the Psychologists and Counsellors Act lacks clear and accessible avenues for appeal, professionals may find it challenging to contest decisions that they believe to be unjust or based on procedural errors. Due process requires consistent and unbiased enforcement of regulations and disciplinary actions.<sup>53</sup>

Due process should protect individuals who report misconduct (whistleblowers) from retaliation. If the Act fails to provide adequate

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<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Ibid

safeguards for whistleblowers, professionals may be hesitant to report unethical behavior, fearing reprisals, which can impede the effectiveness of the regulatory system.<sup>54</sup>

### **3.2.3 Lack of Screening Tools**

A significant demerit of the Psychologists and Counsellors Act is the absence of standardized screening tools or guidelines for conducting assessments. Without clear and consistent screening tools, psychologists and counsellors may use varying methods, leading to inconsistent assessment reports. This lack of uniformity can affect the reliability and credibility of the information provided in legal contexts. The lack of screening tools can result in variability in the quality and reliability of expert evidence provided by psychologists and counsellors. In legal proceedings, where expert testimony is crucial, inconsistencies in assessment reports may undermine the overall value of psychological evidence and impact the court's confidence in the information presented.<sup>55</sup>

In the absence of standardized screening tools, psychologists and counsellors may face challenges during cross-examination in court. Legal professionals may question the validity and reliability of assessments, potentially leading to doubts about the credibility of psychological evidence presented in the case. Without standardized screening tools, the risk of inaccuracies or biases in psychological assessments may increase, potentially influencing sentencing, competency determinations, or other legal judgments.<sup>56</sup>

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<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid



### **3.2.4 Non-compliance with Convention on the Rights of Persons with Disabilities**

The Convention on the Rights of Persons with Disabilities (CRPD) emphasizes the rights and dignity of individuals with disabilities, including those with mental health conditions or intellectual disabilities<sup>57</sup>. A demerit of the Psychologists and Counsellors Act is its non-compliance with the principles and provisions outlined in the CRPD. This could include shortcomings in safeguarding the rights and well-being of individuals with mental or intellectual disabilities.<sup>58</sup>

The Act's failure to make a clear distinction between mental illness and intellectual disability is notable. Mental illnesses and intellectual disabilities are distinct conditions with unique characteristics and implications for treatment and support. If the Act lacks clarity in distinguishing between these two categories, it may lead to inappropriate interventions and services.<sup>59</sup>

The Act's non-compliance with the CRPD may result in inadequate protections for the rights of persons with disabilities within the fields of psychology and counseling. This may include insufficient provisions for reasonable accommodations, accessibility, and inclusive practices in psychological services, potentially leading to discrimination or neglect of individuals with disabilities.<sup>60</sup>

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<sup>57</sup> Convention on the Rights of Persons with Disabilities, art 1, 25, 26

<sup>58</sup> Agasa, E. O. (2015). Effects of imprisonment on inmates at Industrial Area Remand and Lang'ata Women prisons in Kenya. *IOSR Journal of Humanities and Social Science*, 20(11), 11-20.

<sup>59</sup> *Ibid*

<sup>60</sup> *Ibid*

The lack of a clear distinction between mental illness and intellectual disability may impact how psychologists and counsellors assess and treat individuals. Differentiating between these conditions is crucial for tailoring appropriate interventions. Failure to do so may lead to misunderstandings, misdiagnoses, and inappropriate treatment plans. Non-compliance with the CRPD and the lack of distinction between mental illness and intellectual disability may contribute to stigma and discrimination against individuals with these conditions. Clear guidelines in the Act can help promote a more inclusive and supportive approach to psychological services, aligning with the principles of the CRPD.<sup>61</sup>

### **3.2.5 Inclusivity Gaps**

One demerit of the Psychologists and Counsellors Act is its failure to adequately represent diverse perspectives and experiences. If the Act lacks provisions that consider the needs and concerns of various demographic groups, including those from different cultural, ethnic, religious, or socioeconomic backgrounds, it may result in services that are not inclusive or culturally competent. Inclusivity gaps arise when the Act does not address the concept of intersectionality, which recognizes that individuals may face multiple forms of discrimination or disadvantage based on various intersecting factors such as race, gender, and socioeconomic status.<sup>62</sup>

The Act has shortcomings when it does not explicitly address the needs of marginalized communities, including LGBTQIA+ individuals, persons with disabilities, and other groups that may face discrimination or marginalization. Lack of attention to these

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<sup>61</sup> Ibid

<sup>62</sup> Ibid

communities may result in psychological and counseling services that do not adequately meet their unique needs.<sup>63</sup>

Inclusivity gaps may manifest in limited accessibility to psychological and counseling services for certain populations. This could include individuals in rural areas, economically disadvantaged communities, or those facing language barriers. If the Act does not address these accessibility issues, it may contribute to disparities in mental health care. The Act may fall short if it does not emphasize the importance of cultural competence in the practice of psychology and counseling. Lack of guidance on cultural competence may result in practitioners who are ill-equipped to understand and address the diverse cultural backgrounds and perspectives of their clients.<sup>64</sup>

### **3.2.6 Deficiencies of Forensic Psychological Services**

One demerit involves inconsistencies in the training standards for forensic psychologists outlined in the Act. Without clear and standardized requirements, forensic psychologists may have varying levels of expertise and competence, leading to inconsistencies in the quality of forensic services provided. The Act does not adequately recognize and define forensic psychology as a specialized field within the broader discipline. This lack of specialization recognition may result in practitioners without specific training or experience in forensic settings, potentially compromising the quality of forensic psychological services.<sup>65</sup>

Forensic psychologists often conduct assessments for legal purposes,

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<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid

such as competency evaluations or risk assessments.<sup>66</sup> Deficiencies in the Act include a lack of detailed guidelines or standards for conducting these assessments, potentially leading to variations in the methodologies employed and the reliability of the results. Forensic psychologists face unique ethical challenges when working within the legal system. The Act does not provide sufficient guidance on navigating these challenges, such as maintaining objectivity, avoiding conflicts of interest, and ensuring the protection of clients' rights in legal proceedings.<sup>67</sup>

#### **4. Strengthening the Role of Psychologists in the Kenyan Criminal Justice System**

##### **4.1 United Kingdom**

###### **4.1.1 Psychology Professionals in the UK Criminal Justice System**

In the United Kingdom, psychology professionals play integral roles within the criminal justice system, contributing expertise in various areas. Forensic psychologists in the UK are extensively involved in areas such as criminal profiling, risk assessment, and the rehabilitation of offenders. They contribute to the understanding of criminal behavior, provide expert testimony in court, and assess the mental health and risk factors of individuals within the criminal justice system. Clinical psychologists work with individuals in the criminal justice system to assess and treat mental health issues. They may be involved in therapeutic interventions, such as cognitive-behavioral therapy, and contribute to the development of

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<sup>66</sup> Ibid

<sup>67</sup> Ibid

rehabilitation programs.<sup>68</sup>

Counselling psychologists provide support and counseling services to individuals affected by crime, including victims and witnesses. They may also work within rehabilitation programs to address psychological factors contributing to criminal behavior.<sup>69</sup>

## **Lessons for Kenya:**

### **4.1.2.1 Establishing a Unified Professional Body**

The UK has established professional bodies such as the British Psychological Society (BPS), which provides a unified platform for psychologists. BPS offers accreditation, ethical guidelines, and a collective voice for psychologists, ensuring consistent professional standards.<sup>70</sup>

Kenya can benefit from establishing a unified professional body for psychologists involved in the criminal justice system. This body can set standards, offer accreditation, and provide a centralized resource for training and professional development.

### **4.1.2.2 Rehabilitative Interventions:**

The UK emphasizes evidence-based rehabilitative interventions within the criminal justice system. Psychologists contribute to designing and implementing programs focused on addressing the underlying causes of criminal behavior.<sup>71</sup>

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<sup>68</sup> Jacobson, J., Heard, C., & Fair, H. (2017). *Prison: Evidence of its Use and Over-Use from Around the World*. London: Institute for Criminal Policy Research

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Ibid

Kenya should prioritize the integration of psychological expertise in the development and implementation of rehabilitation programs. Psychologists can play a key role in designing interventions that address mental health issues, substance abuse, and other factors contributing to criminality.

#### **4.1.2.3 Validated Screening Tools:**

Forensic psychologists in the UK use validated screening tools for assessments, ensuring reliability and accuracy. These tools are evidence-based and contribute to informed decision-making within the criminal justice system.<sup>72</sup>

Kenya should focus on implementing standardized screening tools for psychological assessments. Validated tools can enhance the quality and consistency of assessments, aiding in decision-making processes related to competency evaluations, risk assessments, and other psychological interventions within the criminal justice system.

## **4.2 South Africa**

### **4.2.1 Criminal Procedures Act**

#### **Section 77 Criminal Procedures Act**

Section 77 focuses on the accused's fitness to stand trial<sup>73</sup>. It allows for a court inquiry into the accused's mental capacity to understand the proceedings and assist in their defense.

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<sup>72</sup> Ibid

<sup>73</sup> Criminal Procedures Act, sec 77

### **Section 78 Criminal Procedures Act**

Section 78 deals with the retrospective mental state of the accused at the time of the alleged offense. It considers whether the accused was criminally responsible due to a mental disorder when the offense occurred.<sup>74</sup>

### **Section 79 Criminal Procedures Act**

Section 79 requires the appointment of two or three psychiatrists (and potentially a clinical psychologist) to assess the accused's mental state. The aim is to provide expert input in determining the accused's fitness to stand trial and their mental state at the time of the offense.<sup>75</sup>

#### **4.2.2 Mental Health Care Act 2002**

The Mental Health Care Act of 2002 in South Africa is a significant piece of legislation that provides a comprehensive framework for the care, treatment, and protection of individuals with mental disorders.<sup>76</sup> The Act places a strong emphasis on protecting the rights of individuals with mental disorders, ensuring that they are treated with dignity and respect. It outlines procedures for the involuntary admission and treatment of individuals with mental disorders, balancing the need for care with the protection of individual rights.<sup>77</sup>

The Act establishes Mental Health Review Boards, independent bodies tasked with reviewing cases of involuntary admission and treatment to safeguard the rights of patients. There is a focus on community-based mental health care, promoting treatment and support in the least restrictive environment possible. The Act

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<sup>74</sup> Ibid, sec 78

<sup>75</sup> Ibid, sec 79

<sup>76</sup> Mental Health Care Act, 2002

<sup>77</sup> Ibid

provides a broad and inclusive definition of a mental disorder, encompassing various conditions that may affect a person's mental well-being. It enumerates the rights of mental health care users, including the right to confidentiality, informed consent, and the right to be treated in the least restrictive environment.<sup>78</sup>

The Act distinguishes between different categories of patients, including voluntary mental health care users, assisted mental health care users, and involuntary mental health care users. It outlines the roles and responsibilities of mental health care practitioners, including psychiatrists, clinical psychologists, and other professionals involved in the treatment and care of individuals with mental disorders. The Act provides for appeal processes, allowing individuals to challenge decisions related to their involuntary admission or treatment.<sup>79</sup>

#### **4.2.3 The Case of *S v Chretien* (1981):**

In the case of *S v Chretien*,<sup>80</sup> a significant precedent was set in South African criminal law, particularly regarding the defense of automatism. The Appellate Division ruled that even automatism arising from voluntary intoxication can serve as an absolute defense, leading to a total acquittal if the accused drinks to the extent that they lack criminal capacity. This decision had notable consequences, allowing for the complete exoneration of individuals who committed criminal acts while in a state of involuntary intoxication.<sup>81</sup>

However, seven years later, the legislature intervened to address the

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<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> *S v Chretien* (1981)

<sup>81</sup> Ibid



perceived destructive consequences of this decision. The Criminal Law Amendment Act introduced section 1(1), modeled on the German penal code, to create a special statutory offense. This offense pertains to committing a prohibited act while in a state of criminal incapacity induced by the voluntary consumption of alcohol. The legislative amendment shifted the burden to the prosecution to prove, beyond a reasonable doubt, that the accused is not liable for a common-law offense due to the lack of capacity resulting from self-induced intoxication.<sup>82</sup>

The complexities arise from the requirement that the prosecution prove both the lack of capacity and the connection to self-induced intoxication. This statutory provision presents challenges when the intoxication only impairs intention rather than capacity. The section has been criticized, and there is a call for reform or replacement with a more appropriately worded provision.<sup>83</sup>

This case exemplifies the evolving legal responses to cases involving mental states influenced by intoxication. It highlights the delicate balance between recognizing the impact of self-induced intoxication on criminal capacity and the need for legal frameworks that appropriately address the complexities of such cases.

### **Lessons for Kenya:**

#### **Unified Professional Body:**

Kenya can learn from South Africa's emphasis on a unified

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<sup>82</sup> Naidoo, S., & Mkize, D. L. (2012). Prevalence of mental disorders in a prison population in Durban, South Africa. *African Journal of Psychiatry*, 15(1), 30-35.

<sup>83</sup> Ibid

professional body. Kenya should establish a single professional body for psychologists to ensure standardized training, ethical guidelines, and consistent professional standards.

### **Explicit Requirement of Three Psychologists:**

South Africa's requirement for the appointment of three psychologists in the assessment process is noteworthy. Kenya can consider explicit guidelines on the number and types of psychologists involved in similar assessments, ensuring comprehensive evaluations.

### **Different Categories of Psychologists:**

Recognizing different categories of psychologists (e.g., clinical psychologists) in the legal process is vital. Kenya can benefit from acknowledging and leveraging the diverse expertise of psychologists in various specialties within the criminal justice system.

### **Stage-Wise Process of Determining Criminal Capacity:**

South Africa's stage-wise process for determining criminal capacity ensures a thorough assessment. Kenya can consider adopting a structured, multi-stage process for evaluating an accused's mental state to enhance accuracy and fairness.

### **Judicial Management of State Patients:**

The judicial management of state patients is crucial for their well-being. Kenya may explore mechanisms for judicial oversight and management of individuals found not criminally responsible due to a mental disorder.

By incorporating these lessons, Kenya can strengthen the role of psychologists in its criminal justice system, aligning procedures with

international best practices and ensuring a comprehensive and fair evaluation of mental health issues within legal contexts.

**Conclusion:**

The exploration of the role of psychology in Kenya's criminal justice system has illuminated the critical need for professional insights into the complex and multifaceted nature of criminal behavior. The cases discussed, including the *Shaka Hola* Forest incident and the unsettling actions of individuals like Onyancha, underscore the intricate interplay of psychological factors in criminality. The Shaka Hola Forest incident revealed the susceptibility of individuals to extreme ideologies, prompting a call for a heightened understanding of the psychological dimensions that drive people towards self-destructive behaviors in the name of religion. Onyancha's case, marked by gruesome murders and claims of spiritual possession, emphasizes the integral role of psychology in evaluating and addressing the mental health aspects of criminal conduct.

The key contribution of psychology lies not only in solving crimes but, more importantly, in enhancing understanding of the root causes of criminal behavior. By delving into the realms of human cognition, emotions, and behavior, psychologists offer invaluable insights that can inform effective strategies for crime prevention, rehabilitation, and the maintenance of public safety. As Kenya grapples with evolving challenges in its criminal justice landscape, the incorporation of psychological expertise emerges as an indispensable asset. Establishing a unified professional body, integrating psychological insights into rehabilitation programs, implementing standardized screening tools, and learning from international experiences, such as those in the United Kingdom and South Africa, are imperative steps to strengthen the role of psychologists in the

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Kenyan criminal justice system.

In essence, psychology stands as a beacon for expanding access to criminal justice in Kenya, illuminating the path towards a more informed, compassionate, and effective approach to understanding and addressing criminal behavior. Through collaborative efforts between the legal and psychological domains, Kenya has the opportunity to build a criminal justice system that is not only responsive to the nuances of human behavior but also committed to the principles of fairness, justice, and the protection of individual rights.

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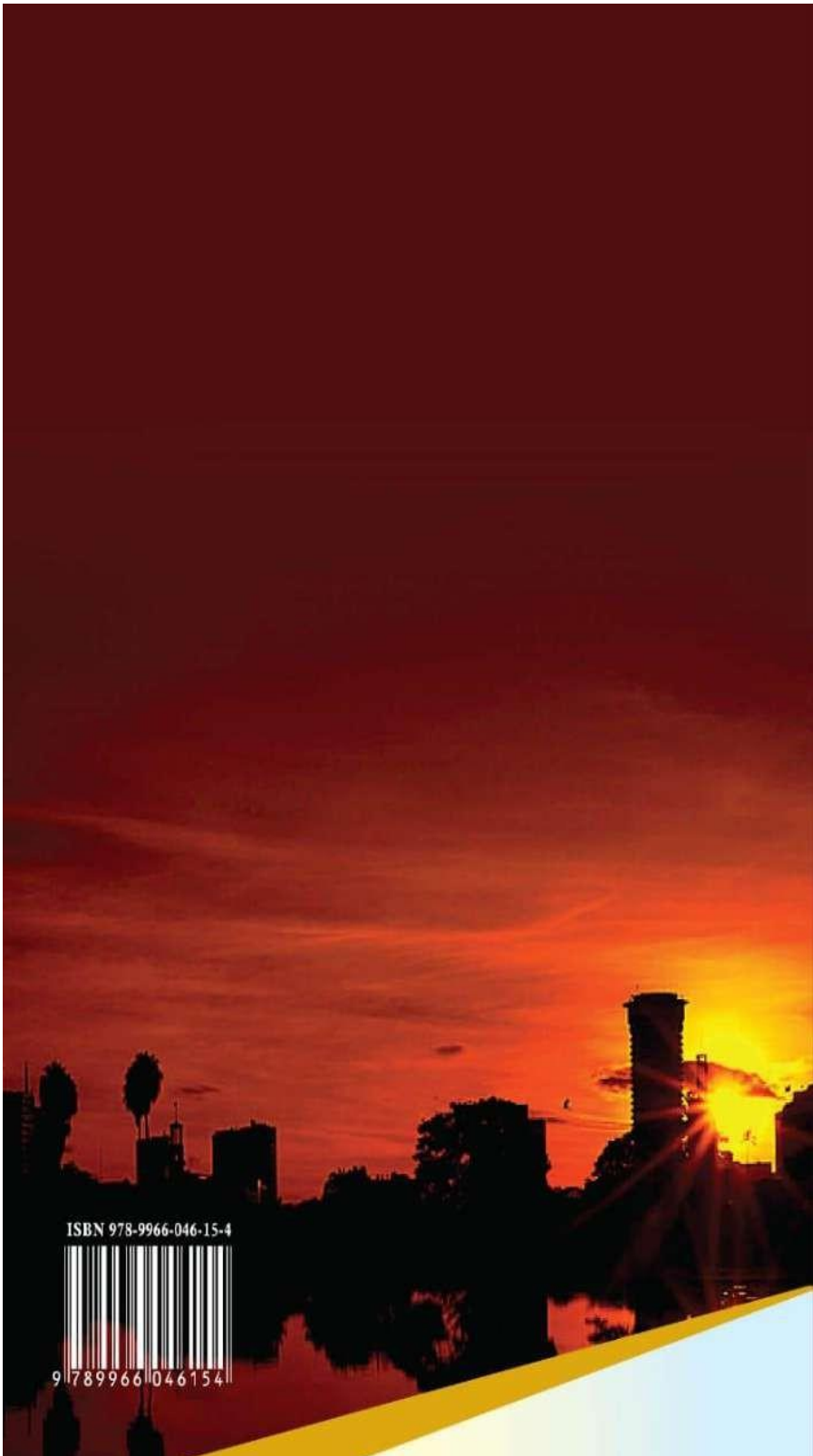
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