



Addressing Shrinking Civic Spaces in Communities in Kenya Project

Student-Police Dialogue



Report

Jubilee Hall, Catholic University of Eastern Africa

28 January 2022

Nairobi

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Abbreviation

ACHPR: African Court for Human and Peoples Rights

AU: African Union

ADR: Alternative Dispute Resolution

CPU: Child Protection Units

CUEA: Catholic University of Eastern Africa

EACJ: East Africa Court of Justice

IPOA: Independent Police Oversight Authority

I4C: Innovation for Change

KNCHR: Kenya National Commission on Human Rights

NPS: National Police Service

NLAS: National Legal Aid Service

OPDP: Ogiek People's Development Program

OB: Occurrence Book

OCPD: Officer Commanding Police Division

OCS: Officer Commanding Station

P3: Kenya Police Medical Examination Form

Background

Globally people go through various justice problems, the prevalence and severity of these justice related problems varies by country.¹The most common problems of justice relate to consumer issues, housing, money and debt. There is an estimated 5.1 billion people globally who cannot afford justice². Justice problems have a negative impact on the wellbeing of the affected and their families. For example, some may experience physical or stress related illnesses such as pressure due to the experience of the court, some get respiratory diseases due to incarceration, others end up with anxiety disorders while some lose their jobs. Additionally, some suffer from stigma that comes with passing through the justice system as an accused person or an offender and for children and youth it can lead to recidivism or school dropout especially when institutions discriminate against such children and youth.

The court process is often a time consuming and complicated process. Few cases are finalised in the period of time it ought to be finalised, this is due to witnesses not coming to court, adjournments and with Covid 19, court appearance became restricted and some had to appear in proceedings via zoom. Accused persons who did not have electronic gadgets such as mobile phones or lap tops suffered a lot. Many people also prefer settling out of court than going through the whole court procedure. When encountering legal problems, many people turn to friends for advice, others find it difficult to find money to pursue a case through lawyers. And within prisons, there are many cases of persons who complain of being locked up illegally.

As noted by the World Justice Project Rule of Law Index 2021, areas of decline in terms of justice globally include constraints relating to government power, civic space, timeliness of justice and discrimination. Kenya ranks 15th out of 33 countries in terms of Rule of Law and is positioned number 106 out of 139 countries worldwide.³

Introduction

Haki Nawiri Afrika is a 2020/2021 Winner of the Social Innovation for Change Award and is currently implementing a project on Addressing Shrinking Civic Space in Communities in Kenya. The project is supported by Innovation for Change (I4C) -Africa Hub. Student-Police Dialogue is one of the activities under the above mentioned project.

It is against the backdrop of challenges of access to justice and the negative impacts of shrinking civic spaces that Haki Nawiri Afrika is conducting Student-Police Dialogue, one of the activities under the project aimed at:

- Creating a platform for students and out of school youth to air their legal and human rights concerns
- Provide space for student and out of school youth to learn about justice procedures from the police and /paralegal perspective
- To identify what young people can do to address injustices in their learning institutions and communities
- Create avenue for meaningful collaboration with police officers

¹ <https://www.theguardian.com/global-development/2019/apr/29/global-justice-system-fails-5-billion-people-study#>

² <https://www.theguardian.com/global-development/2019/apr/29/global-justice-system-fails-5-billion-people-study#>

³ ibid

Participants

The participants were students from Catholic University of Eastern Africa (CUEA), a paralegal and a police officer representing the National Police Service (NPS). The courses undertaken by the participants included; Political science, Law, Education, Pure Science, Gender Studies and Economics. The dialogue had 64 participants.

Cross Section of Participants



Expectations

The participants stated their expectations as follows:

<ul style="list-style-type: none">• To know more about own rights and those of the police• To know how long an arrested person should stay in custody• To know what we can do to better strengthen police and citizens' relationship• Understand how to end police brutality• To know how the police cope with stress within and outside their working areas• Not to run away from the police when they come to effect an arrest• Know how the police cope with mental health issues and whether there is counseling offered to help them• <i>Lazima utoboke ukishikwa?</i>-Must one bribe the police when arrested?	<ul style="list-style-type: none">• To understand the effects of police brutality during Covi-19 including why deaths were experienced during police operations when protecting citizens from infection• To interrogate whether it is lawful for the police to take bribe• Understand why the police often violate citizens' rights• Understand why weed is illegal• Understand whether police violence is a solution• Interrogate whether there is security provided by the police especially in incidences of rape and recreation (clubs)• To know one's rights as a university student• Why call the police a friend when all they do it take bribes and are brutal?
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<ul style="list-style-type: none"> • How to fight for own rights when violated • What is to be done financially and socially for betterment of police services • To understand the rights of a police officer • Learn how to defend oneself against police brutality • Understand how to build a positive relationship with the police • To know whether one can be arrested without a warrant of arrest 	<ul style="list-style-type: none"> • Interrogate the effectiveness of police effectiveness investigations concerning murder and corruption (even when there is valid evidence) • Understand how the police can handle criminals without subjecting them to brutality • To understand how to build a positive relationship with the police • To explore the best ways of cooperating with the police
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Participants during the Student-Police dialogue session



“It is important to know that in Kenya, all offences are bailable”-Inspector Charles Ongeri-Hardy Police Station

Part 1: Opening Remarks by Praise Wepundi- Law Student, Secretary General, Haki Nawiri Afrika -Catholic University of Eastern Africa -Chapter

The students were welcomed to the session and assured that this was the beginning of more sessions to come. The students were also called upon to ask as many questions as they could. Leonida Odongo the Executive Director-Haki Nawiri Afrika gave an overview of the organisation including the main pillars (Gender Justice, Climate Justice, Youth Engagement and Food Justice and the rationale for a Student-Police Dialogue.



Part 1: Skit: Access to Justice for the Poor and the Marginalised

A skit was presented where a young husband was arrested for not wearing mask. Upon being taken to the police station, the arrested person was asked very many questions, some of which were irrelevant. They were subjected to brutality in the line of questioning. When the heavily pregnant wife came to see him at the station she was also brutalised. Community members demonstrated and in the process some got arrested. An advocate then shared with the arrested community members about the rights of accused persons as contained in Article 49 of the Kenyan Constitution.

Skit on Arrest



Part 2: Justice through the National Police Service(NPS)

The participants were taken through the justice system from the police's perspective as follows:

Reporting cases of assault

It was said that the procedure of reporting to the police in cases of assault is to first go to the hospital, be given a P3⁴ Form, then take it to the police who will summon the accused person. It was said that the Kenya police is changing from a police form into a police service and that the sector is becoming more human. It was mentioned that to effect arrest, the police call you and explain to you why you are being arrested or being summoned. It was pointed out that not all police summons result into arrest and that the summoning is to get the other side of the story. An example was given of a situation where two people have fought and one goes to report to the Police Station that he or she has been beaten. The police will summon both parties to the station to ascertain the facts of the assault. It was said that when a police officer arrests you, insist to know the reason for the arrest because this is your constitutional right.

“Young people can quote Chinua Achebe, but how many can quote the Kenyan Constitution?” -Inspector Charles Ongeru

Deliberation on Justice from the Police Perspective



⁴ <https://www.nationalpolice.go.ke/downloads/category/4-police-forms.html>

Complaints against the police

Complaints levelled against the police cited by the students during the dialogue were:

- Wrongful accusations
- Not being booked in the Occurrence Book(OB)
- Planting of exhibits
- Police brutality
- Youth harassment
- Labelling of young people with dreadlocks as criminals or suspects
- Being arrested without a mask and being put in a crowded police vehicle, thus increased risk of Covid-19 infection
- Corruption among police officers
- Bribery

Sharing students' Concerns when it comes to the police



Part 3: Student Concerns: Question and Answer Session by Inspector Charles Onger-Hardy Police Station

The participants were asked to ask their justice related questions. The questions focused on bribery among the police, brutality, arrests and being held in custody, release of offenders, efficacy of police responsiveness and mental health of police officers.

Students Concerns in relation to the Police



Q. When you are arrested by the police for not wearing a mask, and in the process you get beaten by the police. When you get to the police station, what should take precedence, is it not wearing a mask or handling of the case of police brutality?

No police officer should subject any person to any form of brutality. It is against the law. If a police officer harms you, you have the right to report to the OCS at the station, or a higher office which is the OCPD. You can also report a case to IPOA which investigates cases of police brutality. IPOA is capable of investigating cases and bringing the culprits to book. For example, the case of Kwekwe Mwandaza⁵, the police did a shoddy job to cover up for one of their own. IPOA did a thorough investigation and the police officers who killed Kwekwe were jailed for a term of 7 years.

Q. Which number should we call because 999 is not functioning? Try calling the number now and confirm whether it is working or not.

Q. What is the best way to fight corruption within the National Police Service(NPS)?

Police officers are just human beings like any other, they have their failures. Not all police officers are corrupt.

Q. Why do police release offenders?

Prior to releasing an offender, the police have to investigate a case. Sometimes the cases do not warrant a person being kept in custody. Sometimes it is because of jealousy among people that one reports the other to the police. It is worth noting that the police only deal with criminal cases and not civil cases. Civil cases and other misunderstandings can be sorted out at the chief's camp or the Civil Court.

Q. How is the mental health of the police handled?

We have seen cases of police committing suicide, killing their colleagues and killing citizens.

⁵ <https://www.ipoa.go.ke/kwekwe-mwandaza-conviction-a-case-of-misuse-of-firearms/>

The National Police Service is collaborating with organisations providing counselling services to address issues of mental health among police officers. The police are just human beings like any other person and go through normal challenges. Apart from the uniform and the gun, the police is just like any ordinary Kenyan citizen.

Q. Why is there always conflict between the police and students?

This happens when students engage in wrong doing, the police also draw their mandate from the National Police Act. The police have a responsibility to prevent crime, protect lives and property.

Q. How many people students in this forum have read the National Police Service Act?
None

Q. In this forum, how many people are familiar with the Constitution?

10 students. How can you talk about rights violations when you have not gone through the Constitution to understand what your rights are?. Rights are contained in Chapter 4 of the Kenyan Constitution, furthermore, the rights of an accused person are under Article 49 of the Kenyan Constitution. If you familiarise yourselves with the law you will not have problems.

Q. For how long should an arrested person be in police custody?

The arrested person should be held in police custody for a period of 24 hours. If you are held longer than 24 hours when you are taken to court you should raise your hands and lodge a complaint. The police can keep you at the station for over 24 hours under special circumstances for example where the accused person has to travel a long distance to get to court. For example, a person arrested in Nairobi but they stay in Kisumu, when the investigation on the accused person's case is not yet completed. To hold someone longer than 24 hours, the police go to court and explain the circumstances why they are holding the accused person for long.

"If the police are able to prevent commission of offences, then life will be okay" -Inspector Charles Ongeri, Hardy Police Station-Karen

Q. Why do the police release some people after they have been arrested?

When the police arrest a person, they carry out investigation to dig deeper into the case. When the police find out that a case does not warrant arrest, they release the suspect. It is also important to note that in Kenya all offences are bailable. Some people also report cases to the police and do not make follow up. If you take a person to the police station and upon investigation the police find out that there is no case, you can get sued by the accused person, additionally the police can be sued for illegal prosecution. Whenever you report a case to the police, ensure that there is enough evidence and that you will be attending court proceedings.

Q. Why are the police always labelling youth with long hair as criminals?

Dreadlocks was a feature of *Mungiki*⁶ - an outlawed sect. This makes police be always wary of persons with dreadlocks. Not everybody who has dreadlocks is a criminal, however, it stems from association of dreadlocks with the Mungiki sect. When you have dreadlocks and police summon you and find out you are not a criminal, they will let you go.

"When you get summoned by the police, it is not necessarily that you will get locked up"- Inspector Charles Ongeri -Hardy Police Station, Karen

⁶ <https://www.reuters.com/article/us-kenya-gang-mungiki-sb-idUSTRE52537620090306>

Q. What happens when you are not taken to court after 24 hours in Kenya?

If you are not taken to court after the 24 hours have elapsed, you are being held illegally in the police station. Some people keep quiet and do not complain when held for over 24 hours at the police station and only complain when they go to court. For one to be held in police custody for over 24 hours, there must be compelling reasons.

When arrested by a police officer please comply, because when you resist you will be charged for resisting arrest and for the offence for which you had been arrested”-
Inspector Charles Ongeri-Hardy Police Station, Karen

Question and Answer session on Legal Rights and access to justice



Part 4: Access to Justice through Paralegalism

It was said that there are various institutions and organs responsible for promoting rights. These include the Kenya National Commission on Human Rights (KNCHR), which is responsible for investigating human rights violations and monitoring of government institutions. It was mentioned that Kenya has a Witness Protection Act which provides for the protection of witnesses in proceeding for example cases such as Extra Judicial Killings (EJK), it was mentioned that the Act also establishes the Witness Protection Agency. East Africa Court of Justice(EACJ) was cited as another institution responsible for justice. It was explained that EACJ was established in 1999 and is based in Arusha. It was said that the court can be accessed directly by individuals. It was pointed out that is no requirement that applications exhaust domestic remedies before bringing an application to the court.

It was explained that the Africa Court on Human and Peoples Rights(ACHPR) is the judicial arm of the African Union(AU). It was said that the role of the Court is to protect the human and peoples’ rights in Africa through delivery of judgements. An example was given as the case of the Ogiek through Ogiek People’s Development Program(OPDP) lodged a case. In 2009 the Ogiek lodged a case before the African Commission on Human and Peoples Rights (the African Commission) against the Government of Kenya. The case alleged violations of the right to life resources, development, religion, culture and non-discrimination under the African Charter on Human and Peoples’ Rights. On 26 May 2017, the African Court ruled in favour of the Ogiek.

Deliberation on Access to Justice from a Paralegal Perspective



“Yes we have the Legal Aid Act in Kenya, but are the poor accessing justice? -Benedict Aminer -Convenor, Centre for Rights Education Governance and Development (CREGD)

It was said that Chapter 4 of the Constitution of Kenya (Bill of Rights) , stipulates that the state shall ensure access to justice to all persons and that in case a fee is required it should be a reasonable fee. It was explained that in Chapter 10 of the Kenyan Constitution, has provisions for the judiciary and is mandated by law to promote Alternative Mechanisms of Alternative Dispute Resolution dispute resolution(ADR) such as mediation, reconciliation and traditional dispute resolution. It was said that traditional dispute resolution alternatives should not contravene morality or go contrary to the dictates of justice.

Legal Aid Act⁷ was described as a law enacted by the Kenyan Parliament and guaranteed by the Constitution (COK2010) for the purpose of facilitating access to justice. It was explained that the Legal Aid Act establishes the National Legal Aid Service(NLAS) and at the same time recommends the establishment of Justice Advisory Centres. It was further said that the Legal Aid Act is supposed to establish a Legal Aid Fund to pay for expense incurred by persons who seek legal aid (majority of whom are the poor and the marginalised) as well as pay for the remuneration of those providing legal aid services to marginalised groups.

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Roles of Paralegals in Access to Justice

The roles of paralegals in the community and through the courts were described as:

The roles of paralegals were defined as follows:

- Track and report human rights violations in the community
- Create awareness on human rights issues
- Support the community in resolving disputes using Alternative Dispute Resolution(ADR) mechanisms such as mediation and conciliation
- Support in drafting court documents for those unable to afford the services of an advocate
- Organise dialogues e.g between community and the police to raise justice concerns

Students Consulting to know more about Paralegalism and access to Justice



Challenges Facing Paralegals in the Field

- The challenges facing paralegals in the field were described as follows:
- Lack of financial resources to facilitate the work of a paralegal
- Mistrust between advocates and paralegals because advocates refer to paralegals as quacks
- Insecurity when handling sensitive cases e.g land

Challenges in accessing justice

The challenges in accessing justice were cited as follows:

- Elitism of the justice system
- Corruption within the judiciary
- Lack of legal literacy among the population
- Lack of human rights awareness
- Poverty
- Inability of litigants to access justice during Covid 19 (adjournments and virtual hearings, lack of electronic gadgets)
- Interference with freedom of privacy eg having to follow court proceedings in a cyber café due to lack of computer and smart phones
- Inadequate staffing of law related public institutions for example police stations, Gender Desks
- Lack of resources -citizens being told to go and photocopy abstracts and P3 forms (lack of photocopy machines and computers)
- Poor road infrastructure affecting movement to and from courts
- Inadequately resources Child Protection Units (CPU) within police stations

Questions

What is the status of court of petty sessions in Kenya?

Kenya is yet to adopt courts of petty sessions where cases which are not serious can be settled in a lower court and the time taken to dispense justice is faster. What Kenya has adopted is small claims court where the cap for the maximum amount one can sue for under the court is Kshs 1 million.

Sharing with International Students (Nigeria and South Sudan) and Kenya on how Haki Nawiri Afrika engages the Student Community



Wrap Up and Way Forward

The dialogue enabled students to learn about justice process from the police, courts and community perspective and also provided a platform for students to raise justice concerns. The forum was an eye opener on various justice procedures and the role of students in advancing access to justice within their learning institutions and communities. It was agreed that in future more students to participate in the dialogues to enable reaching out a wider audience with information on the law and justice system.

Catholic University Students Part of Haki Nawiri Afrika

