Baseline Study:
Programme for Legal Empowerment and Aid Delivery in Kenya

Strengthening the Administration of Justice and Operationalizing the Use of Alternatives to Imprisonment in Kenya Project
Disclaimer

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UNODC
United Nations Office on Drugs and Crime
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ABBREVIATIONS AND ACRONYMS

ADR  Alternative Dispute Resolution
AJ S  Alternative Justice Systems
CS O  Community Service Orders
CUC  Court Users’ Committee
DOJ  Department of Justice
IDLO International Development Law Organization
IEC  information, education and communication
KPAS Kenyan Probation and Aftercare Service
NCAJ National Council on the Administration of Justice
ODPP Office of the Director of Public Prosecutions
PLEAD Programme for Legal Empowerment and Aid Delivery in Kenya
POs  Probation Officers
PTI  Prosecutors’ Training Institute
SOJAR State of the Judiciary and the Administration of Justice
SOPs Standard Operating Procedures
UNDP United Nations Development Programme
UNICEF United Nations Children’s Fund
UNODC United Nations Office on Drugs and Crime
VPOs  Voluntary Probation Officers
WPA Witness Protection Agency
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Significant changes have taken place in Kenya’s justice sector since the promulgation of the Constitution of Kenya, 2010. Changes to institutional structures have improved the administration of justice as well as citizens’ access to justice, as captured by various government reports. However, numerous challenges continue to constrain access to justice services, especially for the poor in urban areas and in marginalized counties. Widespread poverty, the costs incurred in accessing formal justice institutions and long distances to reach courts stand out as important challenges in this regard.

In consultation with the Government of the Republic of Kenya, the European Union has initiated the Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD) to address some of these challenges. PLEAD is implemented in 12 focal counties. It covers the five largest urban counties: Kisumu, Mombasa, Nairobi, Nakuru and Uasin Gishu. It also covers seven counties in Kenya’s most marginalized regions: Garissa, Isiolo, Lamu, Mandera, Marsabit, Tana River and Wajir.

PLEAD has the objective of enhancing the efficient delivery of justice and alternatives to imprisonment in the Kenyan criminal justice system. Launched in March 2018, the programme specifically aims to enhance the rule of law as an effective means of addressing insecurity, conflict and socio-economic grievances. It is based on the recognition that at the core of guaranteeing the rule of law is addressing the link between justice and poverty.

PLEAD partners seek four main outcomes:

1. Enhanced access to justice especially for the poor and vulnerable, focused on the provision of legal aid;
2. Strengthened court administration and case management;
3. Increased quality and efficiency in the criminal justice system; and
4. Improved coherence and cooperation throughout the justice sector.

Interventions are delivered under two components. One component concerns support for the provision of legal aid and encompasses outcome one. This is implemented by the United Nations Development Programme (UNDP) and the Department of Justice (DOJ) in the Attorney General’s Office. The other focuses on outcomes two, three and four which are combined in a project entitled, Strengthening the Administration of Justice and Operationalizing Alternatives to Imprisonment in Kenya. The United Nations Office on Drugs and Crime (UNODC) implements this component in tandem with the following institutions in the justice chain:

- National Council on the Administration of Justice (NCAJ);
- The Judiciary;
- Office of the Director of Public Prosecutions (ODPP);
- Kenya’s Probation and Aftercare Service (KPAS); and
- Witness Protection Agency (WPA).
This Baseline Study was commissioned to provide baseline indicators for the UNODC-implemented component of PLEAD. The assignment required identifying the baseline data and establishing targets and indicators for various interventions. It also involved determining the status of the administration of justice and use of alternatives to imprisonment in each of the 12 focal counties. The study commenced following the launch of the PLEAD partnership in March 2018 and concluded in October 2018.

**Summary of Baseline Study findings**

This Baseline Study identifies the present capacity of the key criminal justice institutions supported by PLEAD. All suffer major technical and institutional capacity gaps. These include gaps in: training and professional development; equipment, such as computers and special communication devices for remote areas; and mobility, mainly due to a lack of suitable work vehicles.

This study also identifies gaps in critical policies and laws to support key functions in the criminal justice chain, especially promotion of alternatives to imprisonment. It recommends interventions to address some of these challenges with respect to each institution. The success of interventions in achieving the outcomes desired by PLEAD partners will largely depend on the coordination role played by NCAJ. Monitoring and evaluation will be important in determining progress and identifying gaps. Again the role of NCAJ will be pivotal.

However, this study finds that NCAJ operates with skeleton staff and is yet to be fully institutionalized and operational. Its identity is co-mingled with that of the Judiciary and it has no current strategic plan to guide its evolution.

The state of administration of justice in the focal counties shows gaps in training and capacity development, inadequate equipment and staffing shortages. Each county has unique needs and capacity gaps that require attention. Court Users’ Committees (CUCs) should have a central role in facilitating coordination, under the guidance of NCAJ, yet many require support to become fully effective. Furthermore, interviews in the counties reveal generally poor relations between ODPP and investigating police officers. This manifests itself in delays in criminal trials and, with suspects held for prolonged periods in remand, contributes to prison congestion. These are important challenges that require solutions in order for PLEAD objectives to be achieved.

This study finds that the high numbers of those awaiting trial (at the time of data collection) is one factor contributing to congestion in Kenya’s prisons. Additionally, there are numerous petty criminals crowding the prisons. Dealing with this congestion is an urgent priority for the justice sector. This finding reinforces a 2016 audit published by NCAJ that highlighted prison congestion as a major challenge facing the criminal justice system.1

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The main hindrances to addressing prison overcrowding include the lack of a sector-wide approach, or strategy, for reducing prison congestion and poor adoption of alternatives to imprisonment. Despite the Judiciary developing Sentencing Guidelines that identify 14 sentencing options, imprisonment remains the preferred sentence, followed by fines. The result is that a high proportion of those found guilty of various offences end up in prison. Such alternatives as Community Service Orders (CSOs) and Probation Orders are not commonly applied. This is compounded by the fact that KPAS is poorly funded, understaffed, ill-equipped and its services are under-appreciated, even by the Judiciary whose duty it is to refer offenders to such services.

The Judiciary – a pillar of the criminal trial process – currently suffers from a large backlog of cases. Resolving the backlog is a focus area of the Chief Justice’s blueprint on Sustaining Judicial Transformation.\(^2\) Delays are in part caused by other actors, especially ODPP, but the Judiciary may also have contributed to the delays. Poor case management in turn results in adjournments and lengthy trial processes.

Citizens with complaints should be able to seek help from customer care desks at court stations. Unfortunately, the majority of these desks offer limited information and their staff are ill-equipped and not well connected to other actors in the justice chain. This limits the relevance of these desks to citizens seeking assistance.

Case backlog remains an issue of concern in many counties. The 12 focal counties together contribute about 48 per cent of national backlog. While Alternative Justice Systems (AJS) have helped reduce the burden on courts in the marginalized areas, the urban centres of Nairobi, Mombasa and Nakuru combined account for about 41 per cent of national backlog. The use of AJS faces several challenges, including lack of a clear policy on its application and linkages to the formal justice system. In addition, in marginalized counties, maslaha – a form of AJS – is applied even to murder and sexual offences thereby raising contestations of the constitutionality and legality of this application. In February 2018, the Minister for Interior reportedly directed national government officials, including chiefs, to cease the application of maslaha in determining sexual offences.\(^3\) This has increased conflict between AJS and the formal justice system.

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Key recommendations

This study recommends addressing the main challenges identified through interventions designed for specific partner institutions and for application to the entire criminal justice sector. Interventions will differ from county to county.

Due to the critical role that NCAJ and CUCs play in coordination within the criminal justice system, the study recommends support be extended to sustain their institutionalisation process. This includes a review of the legal framework establishing NCAJ and development of guidelines for operations and reporting by CUCs. Support should be extended to develop a strategic plan for NCAJ to guide the sector, and also to equip its secretariat so that it may fulfil its coordination role, including holding full Council meetings.

This study also provides several strategies to facilitate prison decongestion. These include supporting AJS in marginalized counties and linking these traditional systems with the formal justice system as well as self-representation by litigants, active case management and Judicial justice service weeks to help reduce case backlog.

All of the institutions assisted by PLEAD require support for capacity building, especially in terms of training and equipment. It is proposed that a training curriculum be developed for probation officers (POs) and voluntary probation officers (VPOs), prosecutors and for professional staff of WPA (protection officers). Sustainable and comprehensive training schemes should be implemented based on those curricula.

To address the equipment needs of the supported institutions, it is recommended that key equipment be procured for various agencies. These include vehicles for KPAS and computers for NCAJ, KPAS and ODPP. It is further recommended that ODPP county offices should be prioritized with regard to procuring computers.

There is a need to raise awareness of alternatives to imprisonment and promote their use. It is therefore recommended that support be extended to national government partners to enhance their visibility and improve understanding of their services. Assistance for NCAJ and KPAS should cover, among other things, the development of effective communication strategies and production of relevant information, education and communication (IEC) materials.
1 Introduction

Kenya’s justice sector has witnessed significant changes since the promulgation and implementation of the Constitution 2010. These changes include institutional restructuring, direction and coordination under the leadership of NCAJ, and increased resource allocation to the Judiciary and ODP. As a result, various reports illustrate improvements in the administration of justice and access to justice by citizens. For instance, the annual *State of the Judiciary and the Administration of Justice Report (SOJAR)* for 2016-17 shows progress in the form of new court stations, construction and refurbishment of court buildings and the recruitment of more judges, magistrates and support staff. It also shows the impact of these interventions on access to justice, including reduction in travel distance to courts for citizens, improved performance by justice actors and reduction of the case backlog.

Notwithstanding these efforts, numerous challenges continue to constrain the delivery of justice and access to justice, especially for the poor. Widespread poverty, compounded by the costs incurred in accessing formal justice institutions and long distances to reach courts, especially in marginal areas, stand out as significant problems. Indeed, the *Justice Needs and Satisfaction Survey in Kenya 2017*, acknowledges that poverty constrains access to justice.

Two recent developments underline the need for urgent intervention to improve access. Firstly, the enactment of the Legal Aid Act 2016 provides for rolling out a national legal aid scheme so as to ensure the poor and indigent members of society have access to legal representation when they encounter legal problems. This is important, especially in light of findings of the 2017 Justice Needs and Satisfaction Survey. The report showed that between 17.2 and 17.9 million Kenyans experienced legal problems over the four-year period from 2013 to 2017.

Secondly, an NCAJ report entitled *Criminal Justice System in Kenya: An Audit* reveals that Kenya’s justice system is skewed against the poor, whereby more poor people are arrested, charged and jailed than the ‘well-to-do’. The audit attributes this to many factors, ranging from criminalization of poverty, bail terms and the attitude of law enforcement and justice agencies.

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10 Ibid.
A 2018 rapid assessment by ODPP, contained in a preliminary report entitled *All for Justice: Remand Action Plan* reinforces these findings by showing there is a huge population of remandees, most of whom should not be in remand.11

### 1.1 Programme for Legal Empowerment and Aid Delivery in Kenya

In response to the challenges facing the criminal justice sector, the European Union is supporting it through the PLEAD partnership. The programme runs until 2022 and seeks to enhance the rule of law as an effective means to address insecurity, conflict and socio-economic grievances in Kenya. It is based on the recognition that at the core of guaranteeing the rule of law is addressing the link between justice and poverty. Consequently, PLEAD partners focus their interventions on four outcomes:

1. Enhanced access to justice especially for the poor and vulnerable, focused on provision of legal aid;
2. Strengthened court administration and case management;
3. Increased quality and efficiency in the criminal justice system; and
4. Improved coherence and cooperation throughout the justice sector.

Implementation of PLEAD is undertaken in two components. One component concerns support to provision of legal aid and is the responsibility of UNDP and the DOJ. The other component is the responsibility of UNODC. It is implemented under a project entitled, *Strengthening the Administration of Justice and Operationalizing Alternatives to Imprisonment in Kenya*. The project’s overall objectives are to strengthen efficiency in delivery of judicial services, strengthen alternatives to imprisonment and reinforce the ability of the justice sector to address and redress economic and political grievances, thus strengthening the rule of law in Kenya.

PLEAD is implemented in 12 focal counties: Garissa, Isiolo, Kisumu, Lamu, Mandera, Marsabit, Mombasa, Nairobi, Nakuru, Tana River, Uasin Gishu and Wajir. The interventions are intended to ensure that the constitutional promise of Kenya being a country governed by the rule of law, one where all are equal before the law irrespective of their economic and other status is adhered to and not negated as a result of poverty or social inequality.

The UNODC component of PLEAD targets support for, and engagement with, the following justice agencies:

- NCAJ;
- The Judiciary;
- ODPP;
- KPAS; and
- WPA.

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1.2 Baseline Study

The objectives of the Baseline Study included:

a. Development of a methodology for the study and formative work on PLEAD;
b. Desk research and field work, including consultations with various stakeholders with a view to identifying the current status of administration of justice and citizens’ access to justice, and gaps;
c. Drafting of a baseline report; recommendations; and proposed baselines, targets, and indicators;
d. Design of a succinct but efficient coordination mechanism for all PLEAD actors, including those involved under the component implemented by UNDP and DOJ;
e. Design of a monitoring and evaluation plan.

PLEAD partners seek to achieve a 50 per cent reduction in the backlog of criminal cases by 2022.
1.3   Methodology

The baseline data was collected using various methods. These included a comprehensive review of relevant documents and records, combined with depth interviews and focus group discussions with more than 150 representatives of different agencies and stakeholder groups. The researchers collected data from all key institutions including the national partners and CUCs.

1.3.1   Desktop literature review

The literature review focused on challenges in access to justice, the state of alternatives to imprisonment, capacity of key criminal justice institutions and on progress, if any, made in easing access to justice. The documents reviewed included reports by national partners and other studies on access to justice in Kenya. The review helped to identify existing data and gaps. These in turn informed the construction of a study questionnaire for use in interviews and during data collection from the 12 focal counties. The main documents reviewed are included in Annex 3: References.

1.3.2   Key informant interviews

The research team held meetings with both state and non-state actors in the head offices of the national partners and also visited all focal counties. Interviews with staff in the head offices of the criminal justice institutions supported by PLEAD ran simultaneously with the desktop review. The first round of interviews aimed to understand the present capacity of each institution and their main challenges, including probing the validity of data gathered from the desk review.

Interviews were also conducted in all 12 focal counties. Those interviewed included officers from each of the criminal justice institutions with a county presence supported by PLEAD. The researchers also held discussions with members of CUCs in each county and with officials from other relevant facilities and agencies, including prisons and the county governments.

1.3.3   Focus group discussions

Focus group discussions were convened in all focal counties. The participants included prosecutors, POs, VPOs, elders and members of CUCs. The focus groups helped to identify the range of challenges facing criminal justice institutions in the counties and to glean proposals for desired interventions PLEAD could support to address the challenges.

1.3.4   Limitations of the study

The research team encountered various issues with data collection. For example, the security situation in several marginalized counties resulted in interviews having to be
rescheduled and conducted in shorter timeframes. The researchers were unable to remain for more than one day in certain locations due to insecurity. In some cases, the freedom of movement of key stakeholders, for example to attend depth interviews, was also affected by security concerns.

In addition, the challenge of lack of data resulting from non-collection of data or poor record keeping constrained the pace of the entire study. In many instances, officers with institutional memory were counted upon to assist with information as agencies generally did not have a culture of maintaining up-to-date data or effective storage of records. It was rare that agencies retrieved their data with ease.

Related to this was the problem of limited coordination and information flow between agencies. The key role of CUCs in enhancing coordination had not yet translated into improvements in sharing of data and information among member institutions. Similarly, at the national level, NCAJ was neither fully staffed nor independently operational which constrained the Council in fulfilling its national coordination role. NCAJ has no strategic plan to guide its operations within the implementation period of PLEAD given its most recent report covered 2012-2016. Its identity is also comingledd with that of Judiciary.
Entrance to Lamu Law Courts, Lamu Island
2 The State of Delivery of Justice and Alternatives to Imprisonment: An Overview

2.1 Introduction

The desk review and interviews in the counties indicate numerous challenges that constrain access to justice. The findings reveal different challenges between the marginalized regions and the major urban areas. This section provides further details on the status of the criminal justice system and general challenges surrounding access to justice in the 12 focal counties. It also provides quantifiable indicators for the status of the criminal justice institutions supported by PLEAD and covered by this Baseline Study.

A significant challenge is the limited coordination among the criminal justice institutions. For example, there is no sector-wide policy to guide reduction of the prison population. Various other policies and guidelines, such as the Plea Bargaining Rules, Bail and Bond Policy and Guidelines and the Sentencing Guidelines are only partially implemented. Once fully operational, NCAJ will play a central role in improving coordination. Interventions will be required to enable NCAJ to convene regular meetings to promote dialogue and peer accountability. This will ensure that NCAJ members demonstrate viable progress in their respective institutions and collectively address the challenges facing the sector.

2.2 Structural challenges

The marginalized counties are expansive geographically. This poses difficulties in terms of access to courts, police stations and other justice institutions as citizens may have to travel long distances. The Judiciary often addressed this challenge through the use of mobile courts. However, budget cuts by the national government over several years led to the suspension or reduction of mobile court services.

Another challenge is poor investment in criminal justice institutions. For example, the SOJAR for 2016-17 shows that the Judiciary’s budget is less than one per cent of the national budget. This compares poorly with international standards which recommend 2.5 per cent of the national budget. The same SOJAR points out that other criminal justice institutions, such as KPAS and ODPP, are also in need of significant funding increases.

13 Ibid.
The official capacity of prisons in Kenya is 26,687 but the prison population was 52,833 as at 31 August 2018.\(^{14}\) The prisons in many counties were built during the colonial period to cater for small populations compared to today. Prison overcrowding is thus one of the greatest challenges facing the criminal justice system. This problem is in part due to the large number of remandees. In prisons, such as Eldoret prison and the Main Nakuru prison, the number of remandees is higher than those convicted (see Annex 1: Prison statistics). Furthermore, there are instances where the number of prisoners serving short-term sentences is higher than the number of those serving long-term sentences. As shown below, Kenya’s criminal justice system has not effectively utilized alternatives to imprisonment to help address these challenges.

At the moment, there are only 121 court stations in the country, manned by some 600 judicial officers, placing the ratio of judicial officers to the population at 1:67,000 which compares poorly to some established democracies.\(^{15}\) The problem is more pronounced in the marginalized counties covered by PLEAD. For instance, Lamu County – with a total surface area of 6,273 km\(^2\) composed of the mainland, 65 islands, 130 km coastline and water mass – has just two courts, on Lamu Island and in Mpeketoni. The largest county, Marsabit, with a total land area of 70,961 km\(^2\), has only two courts situated in Marsabit and Moyale townships. The country’s second largest county, Wajir – covering an area of 56,686 km\(^2\) – has just one court situated in Wajir town.

### 2.3 Operational challenges

Limited capacity in terms of human resources and physical infrastructure constrains the key criminal justice system institutions. They are thus unable to effectively undertake their roles and responsibilities. While this will be discussed in detail under sections on each institution, it is noteworthy that all national partners for PLEAD lack adequate staff, experts for specialized tasks and sufficient opportunities for professional development. They also have inadequate equipment and poor infrastructure and facilities. The high number of remandees in prisons and a lack of holding facilities for vulnerable persons, including children and persons with mental health issues, stood out as challenges rarely prioritized in almost all counties reviewed. However, these are outcomes of structural problems in the justice sector. Inadequate funding for infrastructure has continued to hamper reduce physical amenities that support the delivery of justice.

A large backlog of court cases – measured in millions of cases – has been a constant operational challenge for the criminal justice system. Backlog in this regard refers to cases that have taken more than one year to determine from the time of filing. Until 2013, the backlog figures were largely estimates. The figures included: 6,551,451 in 2004; 7,222,516 in 2005; and 8,335,759 in 2006, indicating an increase of close to one million cases per year.\(^{16}\)

\(^{14}\) Judiciary Performance Management Directorate data as at August 2018.
\(^{15}\) For example, the ratio in UK is 1:19600; Australia, 1:24,000; Canada 1:13,000. Available from http://articles.economictimes.indiatimes.com/2013-05-09/news/39144068_1_judges-high-courts-justice, accessed on 24 September 2018.
\(^{16}\) Judiciary of Kenya, Sustaining Judiciary Transformation.
Between December 2013 and January 2014, the Performance Management Division of the Judiciary undertook a baseline survey to determine the actual state of backlog in the Judiciary. In the survey, backlog was defined as above: cases which have taken longer than one year from the time of filing to be finally determined. This definition continues to inform use of the term ‘backlog’ by the Judiciary and is therefore maintained in this Baseline Study.

The *Sustaining Judiciary Transformation* blue print released by the Chief Justice in early 2017 reported a reduction in case backlog. The report noted that because of the existence of reliable data on case backlog and reduction strategies, the Judiciary had been able to reduce backlog from over one million cases in 2010 to an average of 530,000 cases. By 31 December 2016, the backlog stood at 360,284 as broken down in Table 1.

<table>
<thead>
<tr>
<th>Court Type</th>
<th>1-2 years</th>
<th>3-5 years</th>
<th>Over 5 years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>36</td>
<td>22</td>
<td>0</td>
<td>58</td>
</tr>
<tr>
<td>Court of Appeal</td>
<td>688</td>
<td>756</td>
<td>715</td>
<td>2,159</td>
</tr>
<tr>
<td>High Court</td>
<td>20,599</td>
<td>25,804</td>
<td>58,487</td>
<td>10,4890</td>
</tr>
<tr>
<td>Environment and Land Court</td>
<td>272</td>
<td>609</td>
<td>5</td>
<td>956</td>
</tr>
<tr>
<td>Employment and Labour Relations Court</td>
<td>2,614</td>
<td>2,552</td>
<td>5,709</td>
<td>10,879</td>
</tr>
<tr>
<td>Magistrates Courts</td>
<td>62,780</td>
<td>57,579</td>
<td>106,134</td>
<td>22,6459</td>
</tr>
<tr>
<td>Kadhis’ Courts</td>
<td>0</td>
<td>373</td>
<td>0</td>
<td>373</td>
</tr>
<tr>
<td><strong>All Courts</strong></td>
<td><strong>90,950</strong></td>
<td><strong>94,705</strong></td>
<td><strong>175,770</strong></td>
<td><strong>360,284</strong></td>
</tr>
</tbody>
</table>

Source: Judiciary, various records

The Chief Justice has set a target of clearing all cases older than five years by 31 December 2018. This notwithstanding, it is imperative that all backlog (of cases older than one year) be cleared if the Judiciary is to adhere to its performance targets.

However, limited collective action among criminal justice institutions prevents uptake of measures to address the problems afflicting the criminal justice system, resulting in delays and overcrowding in prisons. Although the CUCs provide a platform for coordinated problem-solving, field interviews revealed that the CUCs are not effective across the entire country. This can be attributed to poor training, lack of attendance by members and limited resources.
Although backlogs vary among the 12 PLEAD focal counties, as well as between courts within the counties, many of the courts visited recognized backlog as an area of concern. Lack of sustained use of mobile courts and failure of witnesses to appear in some cases have contributed to this problem especially in the marginalized counties. Furthermore, in almost all counties, poor relations between ODPP and investigating officers (police) tended to cause adjournments of many cases. This in turn slowed down trial processes.

Finally, lack of synergy between formal justice mechanisms and the AJS constrains effective administration of justice and the extent to which alternatives to imprisonment can be employed. Furthermore, the process to find out how to align AJS with the principles of the Constitution 2010 is still ongoing. In 2016, the Chief Justice appointed a Task Force on on Traditional, Informal and Other Mechanisms Used to Access Justice in Kenya to deal with the issues. The task force was mandated to formulate an appropriate judicial policy on AJS and to consider the methodology and viability of mainstreaming AJS. However, the task force is yet to develop a policy to ensure operationalization of AJS and linkages with the formal justice system. This has meant that judicial officers adopt an ad hoc approach to AJS as well as Alternative Dispute Resolution (ADR).

In addition to the task force on AJS, which focuses on traditional mechanisms for resolving disputes, there is a Judiciary committee dealing with operationalizing ADR, including arbitration and mediation measures. Despite these efforts, there is no structured or systematic training approach to promote use of both AJS and ADR within the justice chain. Indeed, some of the judicial officers interviewed noted that they use their own knowledge of the Constitution 2010 and experience to promote ADR and to adapt AJS.

The reasons for exploring the use of AJS and ADR relate to their speed, expedition and flexibility in resolving disputes. Promoting their use enhances access to justice. However, as a baseline assessment on ADR and its application in deepening access to justice in Kenya noted, both ADR and AJS face similar challenges. These include non-adherence to constitutional human rights threshold, poor documentation, undefined jurisdiction and subjection to formal laws. Dealing with these challenges will enhance effectiveness in application of both ADR and AJS.

In supporting initiatives to promote ADR and AJS, it is important that the distinction between the two be recognised and taken into account. ADR refers to all mechanisms that are alternatives to litigation. These include mediation, arbitration, conciliation, negotiation, facilitation and convening. AJS falls within the broad rubric of ADR but relates to practices that are used by communities to resolve disputes within their localities. It is informed by cultures, traditions, and customary rules adhered to by the respective communities. In this regard, there are those who view AJS as having a broader focus on ‘justice’ than ADR. In their argument, the term ‘AJS’ moves away from disputes to embrace quest for everyday justice; it is a bundle and a continuum that comprises

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recognition of rights, protection of rights and even harmony in the community.\textsuperscript{22} The 2017 Justice Needs Survey in Kenya found out that only 21 per cent of Kenyans who had a legal problem over the past five years went to court to resolve their problems.\textsuperscript{23} The report demonstrates that the formal justice system has the disadvantages of cost and delays. This justifies the promotion of both AJS and ADR. These mechanisms are not meant to replace reliance on courts but to strengthen the links between formal and informal justice systems.

\section*{2.4 Challenges of adopting alternatives to imprisonment}

The Baseline Study assembled data on the availability and use of alternatives to imprisonment. This section examines the legal framework surrounding these measures and the challenges faced in their application.

The alternatives to imprisonment available to courts are captured in Sentencing Guidelines. These include CSOs, Probation Orders, fines, payment of compensation, restitution, suspended sentences, forfeiture, and committal to rehabilitation centres and are in line with both the Penal Code and the Criminal Procedure Code.

The various sentences are anchored in specific acts of Parliament. Section 24(b) of the Penal Code and the Community Service Order Act provide for CSOs as an appropriate penalty to be meted out as an alternative to imprisonment. This is the option of requiring an offender who has been imprisoned for a term of three years or less, with or without an option of a fine, to instead perform specific community service. Community service involves public works undertaken for the benefit of a community and for which no payment is given to the offender.

Probation Orders are recognised in section 24(i) of the Penal Code and Section 4 of the Probation of Offenders Act, which allows the court to place them on probation, having regard to youth, character, antecedents, and home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances place them on probation. Fines, compensation and forfeiture are recognised by the Penal Code, while suspended sentence and restitution are captured in the Criminal Procedure Code. In addition, one can be committed to a rehabilitation centre under the provisions of the Narcotic Drugs and Psychotropic Substances Act.

The other alternative to imprisonment is a suspended sentence. This is provided for under section 15(1) of the Criminal Procedure Code. It requires that a court which has convicted an offender who has been imprisoned for a term of two years or less, orders that the sentence does not take effect unless the offender commits another offence within the sentence period.

Other alternatives include penalties imposed under AJS. These include orders for compensation and fines imposed by elders and maslaha courts especially in

\textsuperscript{22} Ouma Okoth, S., \textit{Alternative Justice System as a framework for access to justice} (2016).

\textsuperscript{23} Hague Institute for Innovation of Law, \textit{Justice Needs and Satisfaction in Kenya}. 
marginalized counties and/or Northern Kenya. They also include orders imposed by chiefs and the police during mediation between offenders and victims. While the envisaged AJS policy will provide anchorage for these alternatives under AJS, even under the current legal framework there are provisions that can be a basis for recognising the AJS penalties. For example, section 176 of the Criminal Procedure Code allows the Court to promote reconciliation in cases of offences that do not amount to a felony. The section also recognises compensation.

These and other measures, if effectively utilized, would have the impact of decongesting prisons and also help in changing public attitudes to imprisonment. AJS is more restitutive and promotes reconciliation as opposed to imprisonment, which is viewed as exacerbating conflict and disagreements in communities.

However, this study’s findings reveal several challenges that prevent effective use of alternatives to imprisonment. First, judicial officers use such measures on ad hoc basis. This is despite the existence of Sentencing Policy Guidelines intended to standardize how magistrates should approach different cases brought before them. The Sentencing Guidelines provide criteria to be used in determining whether to give custodial or non-custodial sentences and specifically state that ‘Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.’  

The use of alternatives to imprisonment is generally dependent on the individual magistrate in charge of the station. In this regard, some magistrates are more proactive than others in how they approach alternatives to imprisonment. There are those who make a conscious decision to pursue such measures while others prioritize imprisonment of an offender in the first instance. There is no guidance on how this should be done.

Secondly, there is limited or ad hoc implementation of Kenya’s Bail and Bond Policy Guidelines. A general lack of awareness of their existence, varied interpretation of what compelling grounds are for denial of bail, plus high levels of poverty have hampered the success of the application of the policy and resulted in high pre-trial detention numbers in prisons. Moreover, many of those interviewed stated that the use of the Bail and Bond Policy is left to individual judicial officers who exercise their discretion without any standard procedures.

Costs relating to fines and bail as well as lack of collaterals to support bonds also make it difficult to fully utilize the policy and avoid crowding the prisons with those awaiting trial. Many respondents were categorical that some of the defendants are so poor that they cannot pay fines or afford bail nor do they have substantial collateral to provide for bonds. Poverty, therefore, makes it hard to effectively implement the Bail and Bond Policy. The need for clearer rules to clarify compelling reasons and enhanced awareness of the Bail/Bond Policy are matters being considered by the Bail and Bond Implementation Committee.

Thirdly, from the interviews at the counties, most people do not value probation and community service. Instead, they would like to see offenders put in prison. The lack of awareness of the significance of probation and community service is so widespread in the counties that it makes it hard to effectively use these measures. Indeed, communities do not view probation and community service as ‘punishment’. Many prefer imprisonment of criminals rather than to have them back in their communities on probation.
These findings from the interviews are not unique. In a UNODC study on alternatives to imprisonment in Kenya, it was noted that just like in many countries, the people do not recognise the advantage of alternatives. They do not consider advantages such as community safety, fairness to victims, or best return on public investment. Lack of awareness of the importance of probation and community service limits the significance of these alternative measures. In addition, KPAS has inadequate resources (finances and trained staff) to effectively supervise those on probation and community service. Judicial officers have also not been proactive in pursuing these measures as significant alternatives.

Fourthly, the county governments are inadequately involved in the criminal justice sector yet devolution of basic services provides many opportunities through which alternatives to imprisonment can be implemented, such as providing a link to community service. There is, however, a lack of effective linkage between county governments and the criminal justice sector in the counties. The county governments and criminal justice institutions only cooperate on an ad hoc and needs basis without any structured approach to their engagement.

In some areas, the county governments are not members of CUCs despite the NCAJ guidelines providing for their membership. This is despite the fact there are county courts in Nairobi, Nakuru, Kisumu, Eldoret and Mombasa. These courts contribute to the prison population since those arrested for disobeying county laws who are unable to pay fines inevitably find their way to prison. Additionally, although county courts are staffed by judicial personnel, the level of interaction between the justice system and counties is unstructured and far from uniform.

Finally, use of AJS prevails in the marginalized counties but is not adopted by formal justice institutions in a structured and predictable manner. In some instances, respondents observed that maslaha is even used in criminal cases without reference to the formal institutions. In this traditional justice system, elders play a central role in dispute resolution. Many of those interviewed pointed out that the decisions are binding for everyone. Communities respect the decisions and those failing to abide by them face potentially severe social consequences, such as their family or clan being ostracized for generations.

Also common in marginalized counties is the use of chiefs in resolving disputes. Chiefs are generally viewed as helpful in dispute resolution and are the first point of reference for many people wanting to seek justice. Community members reach out to chiefs because other formal institutions are far away and tend to take a long time to resolve their disputes. In addition, the communities see the method as more legitimate and satisfactory than formal dispute resolution mechanisms. However, use of maslaha and chiefs to promote alternatives to imprisonment is not well structured. Neither is it coordinated with the formal justice system.

Other challenges that affect the full application of AJS, despite its recognition in the Constitution 2010, include lack of a policy framework to guide AJS, weak knowledge among elders of basic human rights and the Bill of Rights in the Constitution, and lack of documentation of proceedings for verification. Discrimination of some groups such as women, persons with disabilities and children in the case determinations, lack of clear guidance on evidentiary threshold in rulings, inadequate compensation being awarded to victims, ethnic or clan favouritism and exclusion of women in the adjudication panels are further challenges.26

All 12 focal counties for PLEAD have magistrates’ courts but their number vary from county to county the table below shows.

Table 2: Ratio of courts to population

<table>
<thead>
<tr>
<th>County</th>
<th>No. of Magistrates’ Courts</th>
<th>County population (2009 Pop Census KNBS)</th>
<th>Ratio of court to population</th>
<th>County surface area (km²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi</td>
<td>7</td>
<td>3,138,369</td>
<td>1:448,338</td>
<td>696.1</td>
</tr>
<tr>
<td>Uasin Gishu</td>
<td>5</td>
<td>894,179</td>
<td>1:178,835</td>
<td>3,345.2</td>
</tr>
<tr>
<td>Mombasa</td>
<td>4</td>
<td>939,370</td>
<td>1:234,842</td>
<td>229.9</td>
</tr>
<tr>
<td>Nakuru</td>
<td>4</td>
<td>1,603,325</td>
<td>1:400,831</td>
<td>7,495.1</td>
</tr>
<tr>
<td>Wajir</td>
<td>2</td>
<td>727,965</td>
<td>1:363,982</td>
<td>56,685.9</td>
</tr>
<tr>
<td>Marsabit</td>
<td>2</td>
<td>316,206</td>
<td>1:158,103</td>
<td>70,961.2</td>
</tr>
<tr>
<td>Tana River</td>
<td>2</td>
<td>261,348</td>
<td>1:130,674</td>
<td>38,862.2</td>
</tr>
<tr>
<td>Lamu</td>
<td>2</td>
<td>112,551</td>
<td>1:56,275</td>
<td>6,273.1</td>
</tr>
<tr>
<td>Isiolo</td>
<td>1</td>
<td>143,294</td>
<td>1:143,294</td>
<td>25,700</td>
</tr>
<tr>
<td>Garissa</td>
<td>3</td>
<td>923,060</td>
<td>1:322,287</td>
<td>45,720.2</td>
</tr>
<tr>
<td>Kisumu</td>
<td>5</td>
<td>968,909</td>
<td>1:193,781</td>
<td>2009.5</td>
</tr>
<tr>
<td>Mandera</td>
<td>1</td>
<td>1,025,756</td>
<td>1:1025,756</td>
<td>25,991.5</td>
</tr>
</tbody>
</table>

3.1 Case backlog and policies or guidelines promoting alternatives to imprisonment

A backlog of cases remains a key challenge across the courts in the focal counties. The major urban areas of Nakuru, Nairobi and Mombasa contribute about 41 per cent of national backlog (see Table 3). The share of backlog by other focal counties is only seven per cent. That is, the amount of backlog in courts in the marginalized counties is relatively smaller compared to these urban counties. This is due, in part, to the overall low caseload and population size and growing use of AJS as demonstrated in the interviews especially with respondents in the marginalized counties. However, despite prevalent use of AJS, there is neither a policy framework in place nor formal links between the systems and the judicial system. The only exception is Isiolo where, despite lack of a policy, the court has created a working arrangement with AJS which includes providing space for their operations inside the court station.
### Table 3: Case backlog in focal counties

<table>
<thead>
<tr>
<th>County</th>
<th>Case backlog per county</th>
<th>Percentage of nationwide case backlog - above 1 year (274,773 as at 31 July 2018)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi</td>
<td>39,829</td>
<td>14.5</td>
</tr>
<tr>
<td>Mombasa</td>
<td>37,834</td>
<td>13.8</td>
</tr>
<tr>
<td>Nakuru</td>
<td>33,965</td>
<td>12.4</td>
</tr>
<tr>
<td>Uasin Gishu</td>
<td>6,595</td>
<td>2.4</td>
</tr>
<tr>
<td>Kisumu</td>
<td>11,653</td>
<td>4.2</td>
</tr>
<tr>
<td>Mandera</td>
<td>232</td>
<td>0.1</td>
</tr>
<tr>
<td>Wajir</td>
<td>271</td>
<td>0.1</td>
</tr>
<tr>
<td>Marsabit</td>
<td>284</td>
<td>0.1</td>
</tr>
<tr>
<td>Tana River</td>
<td>401</td>
<td>0.1</td>
</tr>
<tr>
<td>Garissa</td>
<td>871</td>
<td>0.3</td>
</tr>
<tr>
<td>Lamu</td>
<td>357</td>
<td>0.1</td>
</tr>
<tr>
<td>Isiolo</td>
<td>734</td>
<td>0.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>133,026</strong></td>
<td><strong>48.4</strong></td>
</tr>
</tbody>
</table>

Sources: County field visits, Performance Management Directorate figures, August 2018
The Judiciary has introduced several measures to reduce case backlog and improve citizens’ access to justice. These include Active Case Management Guidelines, Bail and Bond Policy Guidelines and Sentencing Guidelines. However, such measures have not eliminated the case backlog.

One reason for limited success in eliminating backlog and improving access to justice is that judicial officers appear not to prioritize alternatives to imprisonment. Some officers have not fully embraced these measures, and many may have limited understanding of their application. This limitation is compounded by the absence of a systematic training on implementation of Bail and Bond Policy and alternatives to imprisonment over the past two years.

There is also a lack of a sector wide solution to prison overcrowding. For instance, Sentencing Guidelines have been developed but the emphasis on imprisonment remains in place. This is a challenge not just for courts but also for prosecutors and defence counsel whose preoccupation is on discussions around imprisonment or release of suspects. Very little emphasis is placed on alternative sanctions. It is, therefore, gratifying that the Director of Public Prosecutions has established a task force to review and propose guidelines to guide the decisions to prosecute and consequently explore alternatives to prosecution.27

In addition, many magistrates are not effectively utilizing the Active Case Management guidelines. Some have not familiarized themselves with them at all while others use them on ad hoc basis. This is because the guidelines have not yet been fully rolled out in all court stations. They are still in pilot phase and, except for Nairobi, none of the pilot courts include PLEAD focal counties. Magistrates have not been trained on how to use the Guidelines but some have devised numerous strategies for docket management.

The costs relating to fines, and bail and bond present a major obstacle to access to justice as they appear prohibitive for the poor. Many offenders are unable to meet even the lowest bail terms. Communal land ownership, absence of title deeds and low incomes in certain urban areas are especially challenging in this respect. Moreover, there is no uniformity in how the courts determine whether to grant accused persons bail, both in terms of procedure and substance. This makes it difficult for an accused person to predict how the courts would address their bail application.28

Among the measures to reduce backlog and improve access to justice included the deployment of mobile courts to various market centres in the marginalized counties to ensure reach to citizens. However, reduced budget for the Judiciary in the 2017/2018 budget has led to suspension of the use of mobile courts. Hopefully, however, with the supplementary budget, which increased allocation of funds to the Judiciary, the mobile courts will be resumed. Nonetheless, the mobile courts had great operational challenges even before the budget cut. Officers involved in running them in marginalized counties

stated in their interviews that they were expensive to operate because of extreme weather conditions and difficult physical terrain. The officers also lacked adequate and appropriate communication equipment for use in geographically isolated areas.

3.2 Customer care desks

As the first point of contact for litigants visiting courts, customer care desks provide an important service. They provide information to court users and act as a link between courts and citizens.

All of the courts visited in the counties have a customer care desk. The most effective customer care desks were at Mombasa Law Courts and Milimani Law Courts. The remainder of the customer care desks are ineffective. They are manned by staff with limited information about courts. They also lack relevant IEC materials and/or information to provide to court users. Some of them are also located where they are not visible to the court users and some have poor signage. None of the customer care desks have other criminal justice actors visiting them to provide the required information. Transforming customer care desks to customer care desks would make them more efficient and assist in serving their intended purpose.

A customer care centre, borrowing on the Huduma Centre concept already popularised in provision of key government services in Kenya, involves a one-stop-shop where a citizen accesses all the critical services. Applied to the criminal justice system, a customer care centre would have all the key staff in the criminal justice system providing services at the same place – including from ODPP, KPAS, the police and the Judiciary. In addition, such customer care desks would employ technical solutions, be linked to the criminal justice institutions and therefore able follow up on matters in real time. The presence of computers and phones at these customer care desks would therefore be essential.

As mentioned, this study’s findings show that no court has a customer care centre with staff from various institutions. All they have are customer care desks. These desks lack a cadre of employees recruited, trained and deployed specifically to staff them. Moreover, some of those trained to staff these desks are regularly transferred to other sections to carry out different functions.

It is recommended that pilot customer care desks be established in at least two locations and that basic support be provided to all existing customer care desks by giving them IEC materials and conducting staff training. This will enhance access to justice by providing the relevant information to court users.

In addition, policies and guidelines for improved administration of justice have been developed over the years. Currently there are Sentencing Guidelines, Plea Bargaining Rules, Bail and Bond Policy Guidelines and Pro Se Guidelines. These are in place but not fully implemented.
3.3 Pro Se Litigation

The Constitution 2010 gives everyone the right to access justice and to a fair trial. However, due to the technicalities of the legal process, citizens invariably seek the services of lawyers to represent them in court. The cost of lawyers’ services is out of reach for many citizens. As mentioned, the 2017 Justice Needs and Satisfaction Survey found that cost deterred many people with low incomes from seeking the services of lawyers.29

A lack of legal representation is a great hindrance to access to justice. Simple and clear guidelines can help litigants who are unable to hire lawyers to navigate the technicalities of legal representation. Such guidelines would support self-representation and thus enable those unable to afford a lawyer to represent themselves. Guidelines would be of great importance in marginalized areas where lawyers are not readily available. Indeed, interviews in those counties confirmed there is a paucity of lawyers to represent litigants. In these instances, self-representation is the only option. The development of a manual providing guidance on how to defend one’s case in court would therefore add value and contribute to improving access to justice.

3.4 Alternative justice systems

The Constitution 2010 provides for the courts to promote alternative forms of dispute resolution, including ‘traditional justice systems’ that operate on the periphery without formal recognition. What are now referred to as ‘AJS’ have great potential for improving access to justice and reducing the burden borne by the formal courts. They also help in reducing prison congestion as AJS focuses on sanctions that do not involve incarceration.

Justice sector reforms focus on the formal justice system despite the centrality of AJS in promoting alternatives to imprisonment and in administering justice. There has been limited investment in AJS. The bulk of investment on dispute resolution outside the courtroom targets formal ADR processes such as mediation and arbitration. This is done at the expense of AJS.

Despite prevalent use of AJS in marginalized counties, there is no support given to elders to help institutionalize such systems. Elders are expected to report their decisions, but they are not supported to do so. The work of elders is also undocumented. The absence of records makes it difficult to quantify the number of offenders who are processed through this system of justice. There are cultural challenges too. In all the marginalized counties visited, respondents observed that some aspects of AJS tended to discriminate against women. Women are often not involved in making decisions. Furthermore, female victims do not get compensation. This is given to their families instead.

There are no formal linkages between AJS and the courts in most of the focal counties. Because of this, judicial officers and prosecutors may not know of cases that have been processed through AJS.

resolved outside the courts. Files may be kept active, yet the parties have reached a settlement through AJS.

To address many of these challenges, the Judiciary established a task force in 2016 to spearhead multi-stakeholder deliberations on a policy and legal framework for mainstreaming AJS.30 The task force registered some progress, such as conducting research on the status of AJS across Kenya, the different best practices and experiences, and also training of elders. However, two years later, it is yet to develop the Judicial Policy on AJS that it was instructed to develop. It is important that the task force finalises its work so that AJS can be mainstreamed. However, the task force remains largely underfunded. Further, some government officials appear not to regard AJS favourably because of its use in cases involving sexual violence.

Lady Justice by artist Boniface Kimani greets visitors to the Judiciary Museum of Kenya, housed at the Supreme Court of Kenya, Nairobi
4.1 Support to ODPP

ODPP is the national prosecuting authority and acts independently in criminal cases investigated by the National Police Service and other investigative agencies. The Office has a presence in all of Kenya’s 47 counties. The Strategic Plan for the period 2016-2021 showed that ODPP had, at the time it was developed, a total of 982 staff (610 prosecutors and 403 other staff) or 75 per cent of optimal establishment of 1,297.31

According to their Strategic Plan, a marked improvement in the overall performance trend of ODPP in case handling was partly attributed to improved capacity through increased staffing and staff training, and decentralization of ODPP services.

However, findings from interviews and the review of various reports show that ODPP lacks sufficient internal systems, people (including paralegal staff) and processes. Specific challenges in undertaking its mandate include:

a. Lack of training on emerging crimes and fundamental issues pertaining to prosecution;
b. Inadequate facilities/equipment and relevant reference materials;
c. An inefficient case management system;
d. Limited pre-trial facilities leading to the collapse of (arguably) meritorious cases;
e. Limitations in coordination with other criminal justice institutions, especially the police (i.e. Directorate of Criminal Investigation).

Such challenges prevent ODPP from effectively playing its role in facilitating the administration of justice and in pursuing alternatives to imprisonment.

4.1.1 Organisational and professional capacity

ODPP currently has 573 prosecutors and 393 central facilitation unit staff, totalling 966 staff.32 This is about 25 per cent below the optimal staffing level of 1,297 staff (comprising 927 legal counsel and 370 administrative staff).33 The Office has decentralized its services to the counties and sub-counties. Their Strategic Plan 2016-2021 envisages decentralization of services in order to align with the objective of devolution as per the Constitution 2010. Decentralization of services would require more staff to effectively cover the 47 counties. In this regard, the Strategic Plan envisages expanding the number of staff to 3,051 comprising 1,861 legal staff and 1,190 administrative/support services staff.

32 Figures obtained from ODPP staff registry as of July 2018.
33 Office of the Director of Public Prosecutions, Strategic Plan 2016-2021, points out that optimal staffing is 1,297 people.
ODPP is in the process of establishing a Prosecutors’ Training Institute (PTI), an activity envisaged in their Strategic Plan to develop highly capable, specialized staff at all levels. The PTI will offer a standardized prosecutorial curriculum, seen as a means to improve the quality of prosecution services and enhance delivery of the ODPP mandate. To be based in Nairobi, the institute will deliver continuous training for staff across the country, including upskilling mid-career and senior prosecutors, and provide in-depth induction training for incoming prosecutors.

At present, all new prosecutors undergo induction, but this is not followed up with adequate training to enhance their competencies and skills on the job. This has been partly addressed through training provided by other actors, such as international development partners. However, this training has tended to be guided by the priorities of the partner providing support. Thus, most trainings have been on counter-terrorism, anti-corruption and wildlife protection. Some of those interviewed in the counties acknowledged that ODPP does not yet have its own structured and comprehensive training programme for staff.

How to measure performance of prosecution remains a challenge. Indeed, by July 2018 at the time of collecting data, ODPP had not signed a performance contract with the government. The prosecutors’ performance evaluation remains unstructured and ad hoc. There is no framework to track efficiency (timeliness and responsiveness to victims), transparency, impartiality and the extent to which prosecutors earn public confidence and trust.

ODPP has inadequate equipment for use in improving quality of prosecution. The equipment needs for the focal counties as identified by the respondents interviewed in the field includes printers, computers, lockable cabinets, office furniture, law reports and stationery.34

ODPP proposes to establish model county offices with all the required equipment and staff and has outlined the requirements for a functional ideal/model county office.35 It is proposed that ODPP be supported to establish and equip model county offices in four focal counties – Mombasa, Uasin Gishu, Isiolo and Garissa. Mombasa and Uasin Gishu (Eldoret) are major urban areas with a high ratio of courts to the population and high number of cases. Isiolo and Garissa are marginalized counties and have a relatively higher number of cases compared to other marginalized counties. It is also proposed that key equipment be procured for other ODPP county offices (i.e. computers, printers and lockable cabinets).

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34 Indicative equipment needs are based on observations by those interviewed and are not exhaustive; poor record keeping in many offices constrained development of a comprehensive list in all cases.

35 Interviews with ODPP officers at their head office, August 2018. This is also contained in an ODPP internal use document entitled ‘ODPP ideal/model county office’.
4.1.2 Diversion policy

A draft diversion policy is in place. It seeks to promote diversion programmes as alternatives to prosecution. It provides guidance on what prosecutors should consider to commit to diversion.\(^{36}\) In addition, the Children’s Bill 2017 provides for diversion for children; it seeks to protect children in conflict with the law.\(^{37}\)

Although these efforts are made to systematise its use, diversion is practised on ad hoc basis. Furthermore, there are no records of the number of offenders benefiting from diversion. The limited knowledge among prosecutors and other actors of how to use diversion; and lack of guidelines that provide legitimate direction on implementation of the policy contribute to this challenge.

These challenges may be addressed through review of existing practices; developing a sector-wide policy; adopting guidelines; and training of prosecutors on use of these instruments. It will also require creating public awareness of the importance of diversion.

4.1.3 Plea bargaining

Plea bargaining is envisaged under the Criminal Procedure Code following amendments made to section 137 in 2008 and 2012. Such plea agreements can result in a lesser charge or withdrawal of a charge against an accused person. A plea bargain can be initiated by either the prosecution or the accused. The Criminal Procedure Code requires, \textit{inter alia}, that a plea agreement should only be entered into after consultation with the victim of the offence or their legal representative. Despite being in the statute books, plea bargaining has been uncommon in Kenya. This has necessitated the adoption of Plea Bargaining Rules as envisaged under section 137.\(^{38}\)

However, implementation of the Plea Bargaining Rules remains ad hoc and haphazard. ODPP is yet to issue guidelines for prosecutors on how to implement the rules. This implies that trials that would benefit from plea bargaining are continuing to consume time and resources. As of 31 August 2018, many of the focal counties had no plea agreements. The few cases where plea agreements were made concerned murder and robbery with violence cases in Marsabit and Mombasa. Poor implementation of plea bargaining provisions of the Criminal Procedure Code and the non-implementation of the Plea Bargaining Rules contribute to the current high number of remandees and thereby to congestion in prisons.

Those interviewed pointed out that one factor contributing to limited use of plea bargaining was lack of clear direction from ODPP head office to the prosecutors in the field. This is in addition to lack of training. This on its own raises a need to intensify

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36 Draft Diversion Guidelines developed by ODDP have not yet been subjected to stakeholder consultations or put forward for approval.

37 Children’s Bill of 2017, Section 250-254, details the purpose of diversion amongst children. Moreover, children involved in petty offences are the category of children targeted.

training of prosecutors. There is also limited awareness on the importance of plea bargaining in the criminal justice system. Many people thus have limited knowledge and understanding on plea bargaining and some fear that plea-bargaining is ‘deal making’ between ODPP and an accused person.

To address these challenges, ODPP proposes to support the development of a sector wide Plea Bargaining Policy and to sensitize the public and suspects on the significance of plea bargaining. Prosecutors and other actors will have to be effectively trained on plea bargaining to ensure that the Plea Bargaining Rules are fully implemented. Such awareness should extend to judges and magistrates and members of the Law Society of Kenya since success of plea bargaining depends on both the prosecution and defence counsel.

4.1.4 Case management system

In November 2014, ODPP engaged a consultancy firm to review its business processes. The review recommended developing an automated case management system. The estimated cost of rolling out the automated system was KES 200 million.\(^{39}\) A lack of funds prevented ODPP from adopting an automated system. Therefore, case management remains manual.

Without an automated case management system, it is difficult to accurately monitor the outputs of most prosecutors. During interviews, many prosecutors were of the opinion it was difficult to objectively measure the performance of a prosecutor. While there is merit in the view that the number of prosecutions is not a suitable indicator for the effectiveness of a prosecutor, it is nevertheless possible to develop such performance indicators. The experience of the Judiciary with its performance management provides a benchmark in this respect. Once completed, automation will be a great aid in tracking cases and with it the performance of prosecutors.\(^{40}\) Automation will also impact on the efficiency of ODPP and improve transparency as well as public confidence and trust in prosecution as citizens will be able to receive information about their cases faster and more accurately since this will be captured by the case management system. Possible interventions will include review of the report on case management prepared in 2015, development of the system and piloting in several counties.

4.2 Support to the Witness Protection Agency

WPA accords witnesses, victims and related persons protection and an enabling environment to safely testify in court. Protection is undertaken amid high level of confidentiality and strictness in order to protect the security of witnesses. In the period between 2009 and 2017, the Agency admitted 429 witnesses into its protection
programme. Coast and North eastern regions had the highest numbers (135), followed by Nairobi (108).\(^{41}\) Data from the field shows that by August 2018, WPA admitted 72 individuals (41 witnesses and 1 victim in Kisumu; and 30 witnesses in Mombasa).\(^{42}\) Protection takes an average of two years, and the discharge of a witness is done after carrying out a comprehensive risk assessment.

A review of records and interviews show that WPA has an optimal staffing capacity of 296 but is operating with only 65 staff or 23 per cent of the required staff.\(^{43}\) Furthermore, the Agency does not have offices in all counties; it has three regional centres of Nairobi, Kisumu and Mombasa that serve adjacent counties.

For purposes of improving performance, WPA provides training through workshops and seminars as well as external trainings with international partners. Some of the trainings, however, are not adequately structured to enhance professional development. This study concludes that there is no comprehensive and structured training programme in place at WPA leading to staff development.\(^{44}\)

41 Witness Protection Agency Kenya, Annual Report 2016-17, shows the numbers protected from 2009 to 2017. These include Nairobi - 108, Coast and North Eastern-135, Nyanza and Western - 81, Rift valley - 56, Central and Eastern 69.
42 Data collected during field interviews.
44 Those outside Nairobi often argued that they did not get training opportunities and that staff in Nairobi usually benefited more than others in accessing training opportunities.
Interviews with officers in the field and a review of documents show that WPA does not have sufficient capacity to effectively protect witnesses in and outside courts. For instance, WPA does not have the capacity to employ advanced modern witness protection measures. The Agency does not have adequate and/or appropriate facilities to use in courts (witness protection boxes, screens, voice distortion devices, special entrances for witnesses).

There is low public awareness of the existence and operations of WPA. Its activities are also not widely decentralized to the counties. Limited budget and attendant costs of supporting witnesses and poor investigation of cases continue to constrain the Agency’s effectiveness.

There is need to decentralise the services of WPA to other regions of the country by opening offices in the focal counties of Nakuru and Garissa. These two additional centres would reduce the high numbers of witnesses under protection by the current offices.

WPA has developed a 2018-2023 Strategic Plan. The plan underlines the necessity of training of staff to enhance their competence. This will require developing and implementing a structured and comprehensively organized training programme for all protection officers.

Developing Standard Operating Procedures (SOPs) and reviewing the guidelines, manuals and organisational policies of WPA will improve its performance. This will also require that the procedures are aligned with international standards as well as domestic laws. It will in addition require review of the 2011 Human Resource Manual and the Agency’s Training Policy.

Finally, enhancing the institutional infrastructure to effectively protect witnesses without compromising their identities remains an important challenge.

### 4.3 Support to Kenya Probation and Aftercare Service

KPAS is responsible for implementing community-based sanctions through supervision of offenders. As part of its mandate, and in support of the criminal justice system, KPAS also prepares various reports, including:

1. Pre-sentence reports for Probation Orders and CSOs;
2. Sentence review reports;
3. Power of mercy pre-release reports;
4. Reports on offenders’ families;
5. Bail information reports for bail decision making;
6. Victim impact statements; and
7. Environmental adjustment reports.

---

4.3.1 Technical capacity: staff and training

KPAS is well represented in the 12 focal counties. Interviews with field officers and a review of records show that there are 102 POs in the focal counties.\textsuperscript{46} There are only 27 VPOs in the 12 focal counties and in some counties, such as Marsabit and Isiolo, the VPOs are not actively engaged. For effectiveness and efficiency, there is need for at least 80 VPOs, or one for every constituency/sub-county in the PLEAD focal counties. This would help ensure that KPAS is able to cover the entire counties and ease the burden of travel to far-flung areas so as to collect required information and to supervise offenders.

Table 4: Number of Probation Officers and Voluntary Probation Officers in focal counties

<table>
<thead>
<tr>
<th>County/country</th>
<th>No of POs</th>
<th>No of VPOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kisumu</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Nakuru</td>
<td>15</td>
<td>2</td>
</tr>
<tr>
<td>Mombasa</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Lamu</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Tana River</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Garissa</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Mandera</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Uasin Gishu</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>Marsabit\textsuperscript{47}</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Isiolo</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Wajir</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Nairobi</td>
<td>24</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>102</strong></td>
<td><strong>27</strong></td>
</tr>
</tbody>
</table>

Source: Field data, July 2018 (Approximate figures only. No official data available).

The inadequate number of POs and VPOs is worsened by lack of adequate training for them. There is also no comprehensive curriculum in place or training manual. All the same, KPAS organizes various trainings but without a specific focus on efficiency in administration of justice and promotion of alternatives to imprisonment.

There is also no focused training on plea bargaining, bail and bond supervision, report writing, AJS, treatment or guidance and counselling for POs. Some POs in the focal counties have nevertheless received training focusing on, among other things, sexual

\textsuperscript{46} The numbers of active VPOs varies from one county to another.

\textsuperscript{47} These VPOs were not actively engaged; they are known by the officers in the county but are no longer carrying out activities.
offences, guidance and counselling, case management, rehabilitation and reintegration, and mediation. KPAS is developing a Probation Diploma course in collaboration with Egerton University which is expected to address some of these gaps.

VPOs are not trained in a structured manner and some have pulled out of the programme owing to lack of incentives. Across the country, about 37 per cent of POs (305 out of 832) received induction training without any further training.

KPAS is currently working on developing a bail and bond supervision policy and an intensive supervision policy in conjunction with UNODC. These will require that POs and VPOs be effectively trained to provide necessary support for such measures.

### 4.3.2 Operational capacity

The department lacks adequate capacity to enable POs and VPOs to carry out their responsibilities of enforcing non-custodial sentences. Many do not have the required communication equipment or vehicles to carry out their duties effectively. Some officers cover expansive areas and difficult terrain that requires use of cars or motorbikes. In many instances, the department’s county offices lack computers/laptops, printers and stationery, thereby making it difficult to effectively deliver on their mandate.

Across all the focal counties, the VPOs did not have any equipment to assist in supervision and reintegration of offenders. The few VPOs who are active lack incentives to carry out their work; they face many difficulties in providing this support. They lack any allowance, receive no support to travel to collect data, have no means of communication, and do not even receive recognition in the form of certificates. There is no structured volunteerism scheme which enables the VPOs to develop a sense of recognition under KPAS.

Altogether there are nine functional cars and three functional motorbikes serving KPAS officers in the focal counties. In some counties PO and VPOs are required to travel long distances to carry out their responsibilities. In some cases, motorcycles provide viable means of transport. Therefore, it is proposed that motorcycles be provided to improve mobility. The programme should procure vehicles for office operations and to improve interactions with remote communities.

### 4.3.3 Visibility and public awareness of the department

Awareness of any institution and its services is a critical contributor to its performance. When citizens are aware of an institution they will be able to seek its services. Yet, it emerged from interviews that KPAS suffers from low public awareness of its role and the importance of non-custodial sentences. Furthermore, those interviewed were emphatic that local communities prefer imprisonment of offenders whereby offenders are put away from society.

A lack of public awareness of the importance of alternatives to imprisonment is deepened by the absence of IEC materials that would profile the role of KPAS and
improve citizen's knowledge and understanding of its place in the administration of justice. There were hardly any IEC materials on KPAS available in any office in the focal counties. In addition, there is no sustained approach to enhancing visibility of the institution and its services. These and other challenges have continued to impact on the practice of referrals. The numbers of referrals have been on decline as shown below.

Table 5: Review of Community Service Orders Programme Report 2017-18

<table>
<thead>
<tr>
<th>Number of referrals</th>
<th>2015-16</th>
<th>2016-17</th>
<th>2017-18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>12,638</td>
<td>11,011</td>
<td>16,947</td>
</tr>
<tr>
<td>CSOs</td>
<td>43,280</td>
<td>34,665</td>
<td>33,808</td>
</tr>
<tr>
<td>Total</td>
<td>55,918</td>
<td>45,676</td>
<td>50,755</td>
</tr>
</tbody>
</table>

Source: Interviews; review of CSO programme report FY 2017-18; KPAS reports

In the 2016-2017 financial year, there were a total of 45,676 referrals, including both probation orders and CSOs. This represents a decline of 18 per cent from 2015-16 figures. The 2017-2018 period witnessed an improvement on probation orders but a decline in CSO referrals. The total number of referrals (CSO and probation), improved by 11.2 per cent. In the 2017-2018 financial year, there were 33,808 CSO referrals representing a decrease of 2.5 per cent from the previous financial year. This figure represents a 20 per cent drop in CSO referrals from 43,280 in 2015-16 to 34,665 in 2016-17 financial year.

Some respondents pointed out that judicial officers do not commit to referrals because some of the reports by POs are generic and not helpful to guide the courts. Further, there is inadequate supervision of the offenders on referrals. This limits efforts to widen the use of alternatives to imprisonment. The proposed interventions combined seek to strengthen KPAS and increase the number of referrals to about 30 per cent per annum in the next four years.

4.3.4 Reintegration of offenders

KPAS focuses on reintegration of offenders exiting borstal institutions and rehabilitation schools. POs also are involved in preparing convicted offenders at the time of release through the presidential prerogative of mercy. They investigate and prepare the offenders and their families with guidance on how to reintegrate.

48 A common challenge in obtaining accurate data was discrepancies in records from different sources.
50 Report from the CSO committee to NCAJ for the State of the Judiciary and the Administration of Justice report (2017-18).
51 This figure is realistic given the trend of referrals thus far, and also given that proposed interventions would be implemented in a systematic manner. It is expected that all agencies would synergize their efforts to achieve this number.
KPAS is also involved in rehabilitation of offenders serving non-custodial sentences. The department implements empowerment programmes focusing on training offenders in skills that they can use outside the prison to earn income.

In the 2017-2018 financial year, KPAS trained about 197 ex-offenders under empowerment programmes. However, one challenge is absence of equipment to give to offenders to enable them to start their income activities. Many offenders lack capital to start their own enterprises. This is significant because according to interviews with POs, offenders’ communities generally ostracize them as they are seen as criminals. This hampers their employment prospects. In addition, community members tend to shun the business premises of ex-offenders. This contributes to recidivism.

There is no national reintegration policy to establish the basis of reintegration and identify roles for various actors, including KPAS and the Kenya Prisons Service. A draft National Aftercare Policy was developed by a special task force in 2008 but is yet to be reviewed to align with the Constitution 2010.

Another notable gap is lack of training on psychosocial support. POs require training to cope with the trauma associated with certain cases they handle. They also need enhanced skills to counsel offenders so that the offenders can lead a crime-free life. Both interventions have the potential to facilitate effective rehabilitation and reintegration of released offenders.

4.4 Coherence and coordination within the justice sector

NCAJ is a statutory body responsible for high-level policy making, implementation and oversight within the justice sector. In particular, it is mandated to:

- Formulate policies relating to the administration of justice;
- Implement, monitor, evaluate and review strategies for the administration of justice;
- Facilitate the establishment of CUCs at the county level; and
- Mobilize resources for purposes of efficient administration of justice.52

NCAJ has facilitated development of CUC guidelines and the establishment of inter-agency technical committees and working groups. The council has also led compilation and dissemination of the annual SOJAR.

Despite the efforts that NCAJ has made, and continues to make, the level of coordination within the sector remains weak. Justice sector institutions operate in silos and have limited experience with sharing information. The situation is not much different from that documented in a UNODC report in 2012. The report noted that the sector was marred by confusion, delays, unproductive inter-agency competition and unexpected obstacles.53

4.4.1 Capacity of NCAJ

NCAJ is at an early stage of development into a permanent institution and the secretariat is thus yet not fully established. There are two seconded clerical officers from the Judiciary and seven embedded consultants from the International Development Law Organization (IDLO). This lean secretariat is supporting activities of seven active technical working groups and committees on various thematic areas in the justice sector.

NCAJ has a membership of over 30 partner agencies, including those provided under the CUC guidelines and those co-opted as ad hoc members. The council meetings are convened and chaired by the Chief Justice. The Chief Registrar of the Judiciary is its Secretary. The Judicial Service Act 2011 requires the council to meet at least quarterly. However, in the 2017-2018 financial year, there was only one full council meeting.

By August 2018, NCAJ did not have regulations or guidelines to govern its operations. There are no protocols and tools for inter-agency coordination and cooperation at the national level. A Strategic Plan for the council lapsed in 2016 and has not yet been evaluated updated. Interviews revealed that coordination by NCAJ remains weak and ad hoc. This has created new challenges, including increased time for taking decisions and slow uptake of CUCs recommendations. Furthermore, NCAJ is largely viewed as a department of the Judiciary as it is yet to shape its own image and identity.

Providing NCAJ with support to foster integrity in the criminal justice system is an imperative. There is also a need to establish a fully functional secretariat, provide technical assistance to the activities of the council to help it institutionalize and providing it with equipment.

4.4.2 Sector-wide approach to reduce prison overcrowding

There is no sector-wide National Strategy and Action Plan on reducing prison overcrowding in place. Consequently, the current approach to reducing the number of prisoners is ad hoc, unstructured and at times dependent on the discretion of judicial officers. NCAJ can lead the process of developing a sector-wide strategy to help coordinate measures to reduce prison overcrowding.

4.4.3 Status of NCAJ task forces/committees

NCAJ has seven active technical working groups and committees constituted to address issues in the criminal justice system. These working groups and committees are:

1. Bail and Bond Implementation Committee;
2. Special Task Force on Children Matters;
3. Committee on Sexual Offenses;
4. Court Users Task Force;
5. Special Working Group on Traffic Cases;
6. Criminal Justice Reform Committee;
7. Special Working Group on Illicit Trade.
The objectives of most of the NCAJ working groups/committees relate directly to the objectives of PLEAD. These working groups/committees face different challenges in achieving their objectives and are at various stages of finalizing their tasks.

It may be necessary to revisit the idea of NCAJ operating through task forces and committees. For example, there is need to clarify the linkages between the committees for Criminal Justice Reform, Bail and Bond, and Sexual Offences. Another issue is that when the Sentencing Committee completed its work no committee was given the responsibility of monitoring the implementation of its recommendations. Its recommendations included adoption of non-custodial sentences which would help to reduce prison overcrowding if fully implemented.

There are ongoing discussions within the Judiciary as to whether to include follow up on the implementation of the Sentencing Guidelines as part of the mandate of the Bail and Bond Implementation Committee. This committee, with the expanded mandate, would be key to obtain the objectives of PLEAD, along with the Criminal Justice Reform Committee. Other useful committees to consider supporting are the Special Task Force on Children Matters and the Special Working Group on Traffic Cases.

4.4.4 Status of CUC coordination in the focal counties

There are 27 CUCs in the focal counties. Of these, the Baseline Study team has concluded 15 are functional while 12 need strengthening to improve their operations. Most CUCs do not engage in public awareness raising activities. Many also report that members have not been trained on their mandates. In the marginalized counties, many CUCs are yet to develop effective approaches to addressing the challenges that impede effective delivery of justice at the county-level. Furthermore, not all CUCs have developed linkages with their county governments, yet the county governments are well positioned to play a supportive role.

4.4.5 Visibility of NCAJ and PLEAD

At present, there is no communication strategy for PLEAD covering planned activities and mandatory European Union visibility requirements. Moreover, there is no existing communication strategy for NCAJ. Communication and public relations for NCAJ are undertaken by the Directorate of Public Affairs and Communication of the Judiciary. Instead of having a standalone website, NCAJ content is housed within the Judiciary website. This limits the distinct communication of NCAJ activities especially when those activities relate to agencies outside of the Judiciary. The existing approach to NCAJ external and internal communications is therefore inadequate.

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54 See Annex 2 - functionality of CUCs. ‘Functionality’ refers to the extent to which the CUCs are meeting as required by law/guidelines. The Baseline Study team was informed by observations in the field and information from interviews in the field.
Annex 1: Prison Statistics

Table 6: Prison statistics in PLEAD focal counties

<table>
<thead>
<tr>
<th>County</th>
<th>Prison</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Convicted</td>
<td>Unconvicted</td>
<td>Convicted</td>
</tr>
<tr>
<td>Nairobi</td>
<td>Nairobi Rem. &amp; Allocation</td>
<td>143</td>
<td>2560</td>
<td>2703</td>
</tr>
<tr>
<td></td>
<td>Nairobi West</td>
<td>445</td>
<td>0</td>
<td>445</td>
</tr>
<tr>
<td></td>
<td>Langata Women</td>
<td>268</td>
<td>243</td>
<td>511</td>
</tr>
<tr>
<td></td>
<td>Kamiti Medium</td>
<td>856</td>
<td>0</td>
<td>856</td>
</tr>
<tr>
<td></td>
<td>Kamiti Main</td>
<td>1898</td>
<td>54</td>
<td>1952</td>
</tr>
<tr>
<td></td>
<td>Nairobi Medium</td>
<td>319</td>
<td>57</td>
<td>376</td>
</tr>
<tr>
<td></td>
<td>Kamiti YCTC</td>
<td>62</td>
<td>0</td>
<td>62</td>
</tr>
<tr>
<td></td>
<td>Kamae Girls B.I</td>
<td>42</td>
<td>0</td>
<td>42</td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td>3,723</td>
<td>2560</td>
<td>421</td>
</tr>
<tr>
<td>Mombasa</td>
<td>Mombasa Prison</td>
<td>1,027</td>
<td>563</td>
<td>1590</td>
</tr>
<tr>
<td>Nakuru</td>
<td>Naivasha Main</td>
<td>2986</td>
<td>0</td>
<td>2986</td>
</tr>
<tr>
<td></td>
<td>Naivasha Medium</td>
<td>324</td>
<td>287</td>
<td>611</td>
</tr>
<tr>
<td></td>
<td>Naivasha Women</td>
<td>99</td>
<td>77</td>
<td>176</td>
</tr>
<tr>
<td></td>
<td>Nakuru Main</td>
<td>639</td>
<td>970</td>
<td>1609</td>
</tr>
<tr>
<td></td>
<td>Nakuru Women</td>
<td>139</td>
<td>68</td>
<td>207</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>3949</td>
<td>1257</td>
<td>238</td>
</tr>
</tbody>
</table>
## County Summary

<table>
<thead>
<tr>
<th>County</th>
<th>Prison</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Convicted</td>
<td>Unconvicted</td>
<td>Convicted</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Kisumu</strong></td>
<td></td>
<td>1,688</td>
<td>503</td>
<td>111</td>
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<tr>
<td></td>
<td>Kisumu Main</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kisumu Women</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kisumu Medium</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kisii Main</td>
<td>513</td>
<td>469</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
<td>2,645</td>
<td>972</td>
<td>111</td>
</tr>
<tr>
<td><strong>Uasin Gishu</strong></td>
<td></td>
<td>725</td>
<td>848</td>
<td>103</td>
</tr>
<tr>
<td></td>
<td>Eldoret Main</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Eldoret Women</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
<td>725</td>
<td>848</td>
<td>103</td>
</tr>
<tr>
<td><strong>Lamu</strong></td>
<td></td>
<td>100</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td><strong>Tana River</strong></td>
<td></td>
<td>510</td>
<td>257</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Malindi Prison</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Malindi Women</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
<td>510</td>
<td>257</td>
<td>6</td>
</tr>
<tr>
<td><strong>Wajir</strong></td>
<td></td>
<td>69</td>
<td>14</td>
<td>2</td>
</tr>
<tr>
<td><strong>Garissa</strong></td>
<td></td>
<td>185</td>
<td>181</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Garissa Main</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Garissa Medium</td>
<td>104</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
<td>289</td>
<td>181</td>
<td>7</td>
</tr>
<tr>
<td><strong>Isiolo</strong></td>
<td></td>
<td>111</td>
<td>88</td>
<td>6</td>
</tr>
<tr>
<td><strong>Marsabit</strong></td>
<td></td>
<td>34</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td><strong>Mandera</strong></td>
<td></td>
<td>90</td>
<td>25</td>
<td>1</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td>235</td>
<td>121</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>12,076</td>
<td>6,196</td>
<td>893</td>
</tr>
</tbody>
</table>

Source: Data from field interviews in the focal counties as of 30 September 2018

Total male population – 18,272
Total Female population – 1,415
Total = 19,687
## Annex 2: Status of Court Users’ Committees

### Table 7: Court Users’ Committees in target counties and status of functionality

<table>
<thead>
<tr>
<th>Name of County</th>
<th>Name of CUC</th>
<th>Status of functionality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi</td>
<td>City court</td>
<td>Not functional</td>
</tr>
<tr>
<td></td>
<td>Milimani Criminal</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Makadara</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Kibera Law Courts</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>JKIA</td>
<td>Functional</td>
</tr>
<tr>
<td>Mombasa</td>
<td>Mombasa</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Shanzu</td>
<td>Functional</td>
</tr>
<tr>
<td>Nakuru</td>
<td>Nakuru</td>
<td>Not functional</td>
</tr>
<tr>
<td></td>
<td>Molo</td>
<td>Not functional</td>
</tr>
<tr>
<td></td>
<td>Eldama Ravine</td>
<td>Not functional</td>
</tr>
<tr>
<td></td>
<td>Naivasha</td>
<td>Functional</td>
</tr>
<tr>
<td>Uasin Gishu</td>
<td>Eldoret</td>
<td>Functional</td>
</tr>
<tr>
<td>Kisumu</td>
<td>Kisumu</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Winam</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Maseno</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Nyando</td>
<td>Not functional</td>
</tr>
<tr>
<td></td>
<td>Tamu</td>
<td>Not Functional</td>
</tr>
<tr>
<td>Mandera</td>
<td>Mandera</td>
<td>Not functional</td>
</tr>
<tr>
<td>Wajir</td>
<td>Wajir</td>
<td>Not Functional</td>
</tr>
<tr>
<td>Marsabit</td>
<td>Marsabit</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Moyale</td>
<td>Not functional</td>
</tr>
<tr>
<td>Tana River</td>
<td>Garsen</td>
<td>Not functional</td>
</tr>
<tr>
<td></td>
<td>Hola</td>
<td>Not Functional</td>
</tr>
<tr>
<td>Garissa</td>
<td>Garissa</td>
<td>Functional</td>
</tr>
<tr>
<td>Lamu</td>
<td>Lamu</td>
<td>Functional</td>
</tr>
<tr>
<td></td>
<td>Mpeketoni</td>
<td>Not functional</td>
</tr>
<tr>
<td>Isiolo</td>
<td>Isiolo</td>
<td>Functional</td>
</tr>
</tbody>
</table>

**Total number of CUCs** 27

*Source: Field Visit Reports.*

The status is informed by ‘Functionality’ refers to the extent to which the CUCs are meeting as required by law/guidelines, observations and information from interviews in the field.
Annex 3: References


