



NATIONAL CRIME RESEARCH CENTRE
Fighting Crime through Research



**PUBLIC PERCEPTIONS AND EXPERIENCES ON THE ACCESS TO
CRIMINAL JUSTICE IN KENYA**

SUMMARY OF FINDINGS AND RECOMMENDATIONS

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1.0 Introduction

Access to criminal justice is critical in the promotion and protection of the rule of law and an essential element in the enjoyment of the fundamental human rights and freedoms. It entails the degree to which the parties involved are accorded fairness; justness of results delivered; speed with which cases are processed; and responsiveness of the system to those who need it – the accused and victims of crime. Indeed, Article 48 of the Constitution of Kenya obliges the Government to ensure that there is access to criminal justice by all persons.

This study sought to establish the perceptions and experiences of the members of the public on the access to criminal justice in Kenya. The specific objectives of the study were to: assess the knowledge levels of members of the public on access to criminal justice in Kenya; establish public perceptions and experiences on the effectiveness of the criminal justice actors in facilitating access to justice in Kenya; identify challenges experienced by members of the public in accessing criminal justice in Kenya; and identify factors that enhance access to criminal justice in Kenya.

A mixed research design was employed in this study. The design was appropriate because it presented an opportunity to fuse both quantitative and qualitative approaches. This allowed data triangulation to take place hence improving the internal validity of the study. Field data collection was conducted in 20 counties in Kenya. The selection of the twenty counties was based on the high incidence of crimes as indicated by the Kenya National Bureau of Statistics Economic Survey, 2021; thus an assumption that those counties had the highest number of people seeking for criminal justice. The target sample size for this study was 2402, but only 2372 sample respondents were interviewed translating to a response rate of 98.8%. Probability proposal to size (PPS) sampling was used to distribute the 2372 respondents to the selected study sites. The sampling unit for the sample respondents was the household. Three (3) key informants were targeted in each of the sampled counties and they were drawn from both the State and non-State actors across the country. Quantitative data was analyzed descriptively using the Statistical Package for Social Sciences while content analysis was used to analyze qualitative data.

1.1 Key Findings

1.1.1 Knowledge levels of members of the public on access to criminal justice

The study established that most of the respondents (51.2%) had contact with the criminal justice system in the past three years out of which majority were victims of crime (62.5%). The key criminal justice actors/players identified by most respondents were NPS (93.7%), NGAO (77.7%) and the Judiciary (51.5%). On what constitutes access to criminal justice, most respondents mentioned arrest of the accused (72.0%), fair hearing (56.4%), compensation of the victim (47.1%), conviction of the accused (46.2%), effective investigation (39.2%) and quick completion of the criminal cases (18.2%).

1.1.2 Respondents' perceptions and experiences on the effectiveness of the criminal justice actors in facilitating access to justice

Most members of the public said that they were satisfied with NGAO (64.7%), DCS (60.2%), KPS (55.4%) and the Judiciary (49.2%). Conversely, they were not satisfied with NPS (64.2%) and the EACC (46.8%). Equally, most of the members of the public said that they were not sure on their satisfaction level on VPB (66.5%), Government Chemist (60.9%), WPA (60.7%), OAG (56.6%) and ODPP (45.5%).

1.1.3 Challenges experienced by members of the public in accessing criminal justice

The main challenges faced by the members of the public in accessing criminal justice in Kenya is corruption (79.3%) and delay in processing criminal matters by the responsible agencies including unreasonable adjournment of cases in court (47.6%). Other significant challenges included investigation gaps (35.9%), high cost of legal representation services (20.8%), illiteracy and lack of legal know-how among the general public, witnesses, or the accused (20.1%), limited financial resources among witnesses, victims/complainants, or the accused (17.5%), inadequate funding for legal aid services (15.7%), witness and victim interference (15.5%), and bureaucracy in criminal justice agencies (15.2%).

1.1.4 Factors that enhance access to criminal justice in Kenya

Towards enhancing access to criminal justice in Kenya, the respondents made a raft of suggestions. The most prominent suggestion made was fostering integrity and accountability among the criminal justice actors/players (68.4%). Other key suggestions made were adequate financial resources to both victims, witnesses, and the accused/suspects/offenders to meet the costs involved in access to criminal justice (34.1%) and adequate personnel within agencies involved in the access to criminal justice (22.0%). Also, they proposed adequate financial resources to agencies involved in the access to criminal justice (21.0%), adequate physical facilities/structures within agencies involved in the access to criminal justice (17.7%), effective legal and policy frameworks (15.2%).

1.2 Key Policy Recommendations

Lead Agency - National Council on the Administration of Justice

1. Prioritize and enhance public awareness on the roles of various actors/agencies in facilitating access to criminal justice

This study established that most members of the public do not know Victim Protection Board, Government Chemist, Witness Protection Agency, Office of the Attorney General, and Office of the Director of Public Prosecution including their roles in facilitating access to criminal justice. This calls for enhanced public sensitization about the mandates and/ or roles of these key players.

2. Enhance the capacity of Court Users Committees

It was established in this study that delays in case processing hampers access to the criminal justice. To address this challenge, it is imperative to enhance the CUC as a way of promoting synergy among the criminal justice actors/stakeholders. This will significantly reduce the cumbersome bureaucratic processes.

3. Strengthen the role of the National Government Administrative Officers in the Criminal Justice System

The findings of this study showed that most members of the public perceive the National Government Administration Officers (NGAO) as key players in the criminal justice system. Furthermore, majority of the members of the public (6 out of 10) are satisfied with the performance of the NGAO in facilitating access to criminal justice in Kenya. Therefore, there is need to have their role enhanced and integrated in the criminal justice framework.

4. All criminal justice agencies/ actors to make corruption prevention a standing agenda in their operations

This study identified corruption as the foremost challenge facing members of the public in the access to criminal justice. Consequently, addressing corruption in the Criminal Justice System should not be a preserve of one actor/ agency but a standing agenda by all stakeholders.

Lead Agency - Judiciary

5. Institutionalize compensation orders in their sentencing regime

On what constitutes access to criminal justice, compensation to the victim was reported by 5 out of 10 sample respondents. There is need, therefore, for the Judiciary to institutionalize compensation orders in their sentencing regimes. The convicts or their kin should compensate the victims for the damages caused and legal fees spent.

6. Increase the number of petty crimes courts and the application of Alternative Dispute resolution mechanism for petty crimes across the country

Delay in processing criminal matters by the responsible agencies including unreasonable adjournment of cases in court was cited by 47.6% of the sample respondents. It is recommended that the Judiciary increases the number of petty crime courts and enhance the adoption of the application of Alternative Dispute resolution mechanism for petty crimes across the country. This will help in reducing the case backlog challenge in the Judiciary.

Lead Agencies – Judiciary and Office of the Attorney General

7. Enhance free legal representation services to the vulnerable members of the society

The findings of this study showed that one of the challenges faced by the members of the public entailed high cost of legal representation. Consequently, there is need to strengthen the pro-bono legal representation services especially to the vulnerable groups such as the poor, women and people living with disabilities. In particular, the National Legal Aid Services (NLAS) need to be strengthened.

Lead Agency - Office of the Attorney General

8. Strengthen the Witness Protection Agency and the Victim Protection Board

The study revealed that witness and victim interference is among the key challenges faced in the access to criminal justice in Kenya. This therefore calls for the 31 strengthening the duty bearer agencies responsible for the witness and victim protection services.

Lead Agencies – Law Society of Kenya (LSK)

9. Introduce a graduated/phased payment of legal fees over some reasonable time depending on the assessed economic ability of the represented victim or accused

The high cost of legal representation was prominently mentioned as one of the key challenges faced in the access of criminal justice in Kenya. To mitigate this challenge, the study recommends a graduated/phased payment of legal fees over some reasonable time depending on the assessed economic ability of the victim or accused.

Lead agencies - National Police Service Commission and National Police Service

10. Fortify the implementation of the ongoing police reforms

Based on the study findings, it is clear that majority of the members of the public (9 out of 10), recognize the role of the police in facilitating access to criminal justice. Nonetheless, most of them (6 out of 10) are not satisfied with the performance of this institution in facilitating access to criminal justice in Kenya. This calls for the strengthening of the ongoing police reforms so as to transform this institution to the expectations of the public.

11. Heighten the capacity building of officers in the criminal investigation

This study pointed out that majority of the respondents (64.2%) were not satisfied with the performance of NPS. For instance, a significant number of the sampled respondents (3 out of 10) mentioned investigation gaps as a challenge faced in accessing criminal justice. There is need, therefore, to enhance the capacity of the investigation officers.

Lead Agency- Ethics and Anti-Corruption Commission (EACC)

12. Enhanced fight against corruption

It was established in the study that the key challenge in the access to criminal justice in Kenya was corruption. The study also indicated that most members of the public (5 out of 10) were not satisfied with the performance of the EACC in the fight against corruption. This indicates the need to enhance performance of this institution in fighting corruption.

Lead Agency - National Assembly

13. Allot enhanced financial resources to the criminal justice agencies and players

Delays in the processing of criminal matters and inadequate funding for legal aid services were identified by the respondents as some of the key challenges members of public face while accessing criminal justice. Therefore, enhanced funding will be critical in putting in place appropriate systems and structures for improving service delivery.