

ALTERNATIVE APPROACHES TO ACCESS TO JUSTICE IN KENYA:

A COST-BENEFIT ANALYSIS

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EXECUTIVE SUMMARY

Studies have shown that the vast majority of Kenyans are ‘unreached’ by the official or formal justice systems. The extent of the ‘unreached’ is a consequence of a number of factors, including: the expense of privately funded legal services, poverty, illiteracy, the uneven distribution of lawyers, the geographical distances to be covered – especially in the arid and semi-arid less densely populated areas – and cultural gaps between people’s understanding of what law and justice involve and the actual institutions and procedures of the common law.

The continued existence of alternative dispute resolution institutions – especially the traditional ones in many communities – tends to offer possibilities that people are happy to use, making them less dependent on the formal judicial system. In addition, there is a considerable number of initiatives, both formal/official and informal/ unofficial that seek to bridge this gap by providing access to justice through means other than the private lawyer – court route. However, despite their effectiveness in enhancing access to justice, many of them have not been given sufficient attention by the government. Similarly, there has not been adequate scholarly work that documents these initiatives.

The current study sought to enhance understanding of the full range of access to justice initiatives in Kenya, both formal and informal, and carry out an in-depth analysis of a number of specific initiatives that seek to bridge the access to justice gap especially among the marginalized or vulnerable groups in the society.

Its specific objectives are: (1) to understand the obstacles to access to justice; (2) to identify specific alternative access to justice initiatives that are relevant especially to the marginalized and vulnerable groups; (3) to analyse the costs and benefits of the specific identified access to justice initiatives and

provide an in-depth analysis of their potential for sustainability and scaling up; and (4) make a contribution to policy on access to justice in Kenya.

The methodology used was both qualitative and quantitative. This mixed approach enabled gathering information on people’s experiences in access to justice as well as data on costs involved in the course of resolving disputes.

Our study corroborates the literature in so far as the obstacles to access justice are concerned. Our results show that costs of pursuing justice are a major deterrent to accessing justice in Kenya. This applied to both the courts and alternative dispute resolution mechanisms. About 41% of all user-respondents indicated that pursuing justice was expensive and only 24% thought it was cheap. Further it was revealed that there were many hidden costs, formal and informal, which made access to justice expensive. Access to justice difficulties were further exacerbated by information asymmetry, poverty, corruption, and lack of justice institutions in remote areas. Service provider respondents also mentioned lack of resources as one of the deterrents to accessing justice. They also mentioned low awareness levels, uncooperative clients and insecurity. Additionally, there were the psycho-social effects of pursuing justice, gender discrimination, cultural factors and the time consumed in pursuing a dispute. These factors appear to affect disproportionately female as compared to male respondents, those with low education levels compared to the educated population, the vulnerable, the marginalized, and the rural compared to the urban populations.

We were first interested in knowing the nature of disputes that Kenyan citizens faced and the mechanisms they used to pursue justice. Out of the total 212 disputes, 30% were land related, 23% were spouse

or partner related, and 13% were child related. Other reported disputes included commercial, employment, physical assault, and theft at 4% each; and community dispute, sexual assault, disagreements with public bodies, police brutality, and resource conflict at 2% each.

The dominance of these three broad types of issues: (i) land related (ii) spousal and close family related and (iii) child custody and support has an important bearing on family and community co-existence. There was broad consensus (87% of the respondents) that the kind of disputes they were facing or they had resolved were common in their location/community. From a cost/benefit analysis perspective these are enormously important – land is a major source of violent crime and family union is an important structure in the society. Understanding the financial costs – including that for women costs loom greater than for men – suggests the need for local solutions in addressing disputes. Our study further finds that most of the respondents whom we interviewed were the aggrieved parties (complainants) and that they were responsible for selecting the initiatives to seek justice from.

In terms of the initiatives used, our study found that community based and religious organizations were the most commonly used initiatives in accessing justice in Kenya (34%). This was closely followed by state based initiatives (police, chiefs and *nyumba kumi* elders ¹) at 28%. In terms of first contacts that citizens made when faced by the dispute, chiefs came first followed by elders, police, community based organizations and faith based organisations. Civil society organisations and courts ranked low at 8.6% and 4.5%, respectively. One of the factors that determined the first point of contact when resolving dispute was the distance to be covered. Respondents indicated that they used proximity to their homes in determining where to seek justice from, hence the use of

¹ *Nyumba kumi* means literally ten households. The idea is that, led by the officers of the national government system at local levels, households should be watched and watch out for each other. Security is the dominant government concern.

chiefs.²

The main objective of this study was to analyse costs and benefits associated with different initiatives that citizens use to have their disputes resolved. The initiatives assessed in our study included court based initiatives (Court Annexed Mediation); state based initiatives; community based initiatives (traditional); civil society based initiatives and religious and community based initiatives. Obtaining access to justice is a rather complex matter. Many participants are involved in the supply chain granting access to justice, a process in which each of the participants will incur costs. There are costs borne by the parties seeking justice and also costs borne by the providers of justice. Costs classification involves separation of a group of expenses into different categories. For decision making, costs are classified as sunk costs, opportunity costs or incremental costs.³ Computation of benefits related to access to justice was even more complicated. Moreover, there were monetary and non-monetary costs which made it rather difficult to assess the cost benefit analysis (CBA) of access to justice. In this study, we used the replacement principle in using the benefit foregone as a proxy for benefit from access to justice process.

Among the many costs that users of justice initiatives mentioned included transport, airtime, elders' allowance, meals, compensation for aggrieved party, child care, photocopy and printing, and legal fees. There were few mentions of medical expenses, arrest warrant and P3 forms.⁴

Cost benefit analysis (CBA) is used to compare the total costs of an initiative with its benefits using a common metric (most commonly monetary units). Decisions are therefore made on whether there is a net benefit or cost to the approach. As a technique, CBA is used to evaluate the overall impact of a programme in quantifiable and monetized terms. In this study, the average total monetary costs incurred by each user in getting access to justice were summarized and classified for each alternative justice mechanism. The

average total monetary benefits foregone reported by each user were also identified and classified for each alternative justice mechanism. The study mainly focussed on access to justice from the users' experiences in line with people-centred justice. However, the focus on costs of accessing justice from a service providers' perspective was equally critical, for it enabled us to have a glimpse into the intricacies of what it takes to enable access to justice to the public. Understanding the cost of providing justice from both the demand side and supply side is critical for informed policy decision making on scaling up services to the public especially at the community level. Failure to do so risks transferring the costs to the user, which translates into a further barrier to accessing justice. Costs borne by service providers are costs saved from consumers of justice service, who would otherwise incur those costs.

The study presents the cost benefit analysis in the form of how much in money terms was on average required to generate one Kenya shilling worth of benefit, for each type of initiative. On this basis the lower the number the more cost effective. The civil society justice system initiatives had a score of 0.04 implying that on average, a benefit of Shs. 1 is likely achieved on spending 4 cents. The community or religious based justice initiatives had a CBA ratio of 0.22 implying that on average, a benefit of Kshs. 1 is likely achieved on spending 22 cents. The state based justice initiatives had a CBA ratio of 0.58 implying that on average, a benefit of Shs. 1 is likely achieved on spending 58 cents. The community based, traditional initiatives had a CBA ratio of 0.66 implying that on average, a benefit of Shs. 1 is likely achieved on spending 66 cents. And the court based initiatives had a CBA ratio of 4.2 implying that on average, a benefit of Shs. 1 likely requires spending Shs. 4.2. The CBA ratio of 4.2 reported by the court-based initiatives is a pointer that the costs outweigh the benefits as evidenced by a negative average net benefit amount of Kshs. 7,085.71 (US \$64). Incidentally, the average monthly earning in 2019 Ksh 66,803 (Kenya National Bureau of

Statistics, para. 3.13).

The project also developed an access to justice index. Religious/CBO initiatives topped the list followed by tradition based, then state based, court based and lastly CSO based initiatives. It is therefore evident that given the high CBA index and access index, religious based initiatives, traditional based initiatives and CSO- based initiatives have high potential for enhancing access to justice in Kenya. These are the initiatives that should be scaled up in the process of enhancing access to justice.

On the basis of the study findings and conclusions drawn, we make the following recommendations (for the full version of these see main text):-

- Recognition of informal initiatives as viable pathways for dispute resolution. Mapping and documentation of these initiatives should be done to create greater awareness about their existence and to factor them into policy decision making including in allocation of resources.
- From the analysis on scalability, it is recommended that priority be given to enabling the traditional community-based mechanisms, chiefs and elders under state based mechanisms and CBOs.
- Costing provision of services under the different initiatives to inform government policies and programmes including allocations for provision of services, commitment of personnel and infrastructural needs.
 - Institutional strengthening:
 - Assist institutions to document their cases, processes of handling a case and outcomes of their intervention.
 - Develop systems for documenting costs of handling a case from the time of reporting to its resolution
 - Continuous education for institutions on the law, and different aspects of handling a case.
 - Recognition and enforcement of

² Chiefs are national government civil servants. They are part of a system with its apex in the Ministry of Interior & Coordination of National Government. There is an officer at the level of every region (former province), county, sub-county, location (chiefs) and sub-location (sub-chiefs). There are over 6000 sub-locations.

³ Sunk costs: already spent and cannot be recovered; opportunity costs: what one has had to give up to acquire something else; incremental costs: the difference in total costs as the result of a change in some activity.

⁴ P3 form are provided to victims of criminal activities that cause physical injury. The police provide it, and it is taken to a medical practitioner for details to be completed. It is supposed to be free, but media reports suggest people may be charged a few hundred shillings (c100 shillings=1\$US) for it.

decisions from the ADR mechanisms.

- Financing of informal initiatives for accessing justice.
- Linkage between formal and informal initiatives.
- Community support: Awareness on the existing pathways for resolving disputes outside the formal system should be enhanced to enable communities to utilize systems that support them more effectively.

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Accessibility is a critical component in the delivery of justice. In the absence of easy and equal access, justice remains the preserve of a few (ILAC, 2010: 52-53). Cognisant of this, and informed by an aspiration for justice for all, Article 48 of the Constitution of Kenya expressly recognises the right to access to justice and obligates the state to ensure the realisation of this right. The language of that article – speaking of fees – suggests that it is envisaged that access to justice is via official justice mechanisms, most prominently the courts. Indeed, the word ‘justice’ has some ambiguity about it. It may refer to making use of the law and its institutions, but it may also mean attaining fairness not necessarily by invoking official justice institutions. The Constitution uses the word nineteen times (other than when referring to the Chief Justice and in the contents page and headings), and the usage is evenly split between the two meanings. In this study, the word is used to mean justice that accords with the law but is not necessarily achieved by the use of formal mechanisms (Kinama 2015: 25-26; Okalo 2020:20).

Access to justice is a nuanced concept which extends beyond the physical reach of justice institutions (Muhanda 2015: 10; Australia Access to Justice Taskforce 2009:4). In addition to physical accessibility of justice service providers, it comprises diverse facets relating not only to entry into the justice system, whether formal or informal, but also to those impacting on the outcomes (UNDP 2006: 6).⁵ In this regard, awareness of legal rights and remedies available is necessary for individuals to access justice (UNDP 2005: 6; Danish Institute for Human Rights 2011:42). Moreover, justice related processes must be grounded in equality for justice to be accessed by all on the same footing. This

resonates with Article 27 of the Constitution of Kenya which requires equal protection and benefit of the law for all individuals.

While a constitutional right, access to justice is yet to be fully realised, and many individuals in Kenya remain marginalised by the formal justice system (Kariuki 2015: 127; Muhanda 2015: 12). Indeed, even for those able to access and mobilise the formal system, the full mechanism of a trial may not be appropriate. Trials tend to be time consuming, expensive, and nerve-racking for the non-lawyer, and sometimes exacerbate rather than resolve disputes (Oyombe 2020: 7). As a result, many prefer to resort to informal justice mechanisms ranging from community based platforms to initiatives run by non-governmental organisations (Njiiri 2020: 2). With the formal recognition of alternative dispute resolution mechanisms by Article 159 of the Constitution, these informal mechanisms are gaining legitimacy and given their modalities of operation have the potential of a far wider reach (Okalo 2020:3). Moreover, many of these informal systems embrace negotiated justice hence are seen as delivering outcomes that are well received by all parties to a dispute (Kariuki 2015: 133). There is therefore an increasing strategic focus on these informal justice mechanisms in a bid to enhance access to justice.

1.2 PROBLEM STATEMENT

Against this background and resonating with Article 159 of the Constitution⁶, not only have informal justice mechanisms and other forms of alternative justice initiatives drawn interest but are organically being annexed to the formal justice system (Okalo 2020:3). The judiciary, for instance, has operationalised court annexed mediation which diverts litigants, with their consent, to independent mediators (Oyombe 2020: 2). It also developed the Alternative Justice Systems Framework Policy which seeks to streamline

the judiciary's engagement with alternative justice institutions. Similarly, the Office of the Director of Public Prosecutions recognises alternative justice actors as stakeholders when diverting offenders from the formal justice processes (ODDP 2019).

In addition, with the promulgation of the 2010 Constitution, new forms of approachable justice mechanisms other than court processes have come into being. Pursuant to Article 59 of the Constitution, the Ombudsman (Commission on Administrative Justice), the Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC) were established.⁷ Growing recognition of the KNCHR as a justice mechanism, for example, is evident. In the year 2015-16 it received and processed 3,335 complaints (KNCHR 2015-16: 24).⁸ The Commission noted that its responses included ‘providing legal advice, referral to partners with better mandate to deal [sic], employing alternative dispute resolution methods (low level), conducting field investigations on admitted complaints, holding strategic meetings with state and non-state actors, offering psycho-social support services to petitioners’ (p. 28).

Further, the Legal Aid Act of 2016 defines legal aid in broad terms, institutionalising assistance in alternative dispute resolution processes and anticipating making use of NGOs that work in this area (Part VIII). In 2017 the Legal Aid Action Plan was published (Attorney General's Office 2017). Strategic Objective No. 2 of the Plan is to ‘provide quality, effective and timely legal assistance, advice and representation for the poor, marginalized and vulnerable’. Further, the expected outcome of another objective is ‘Government responsibility for legal aid provisions including paralegal, ADR formalised through legislation and institutionalized’. If the government is

⁵ *Dry Associates v. Capital Markets and Another* 2012 eKLR <http://kenyalaw.org/caselaw/cases/view/78916>.

⁶ (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles— ...

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, ...

⁷ The websites of these bodies are respectively: <https://www.ombudsman.go.ke/>, <https://www.knchr.org/> and <https://www.ngeckkenya.org/>,

⁸ KNCHR 2015-16: 24

committed to this enterprise, and funding is to be made available, this official project might become a major avenue for scaling up of initiatives considered in the current study. A pilot project has in fact been in existence for some years. So the future of the official and the NGO sector are likely to be very much tied up together. Further, the outcome of the current project might well be particularly relevant to the fulfilment of the government scheme.

With increasing levels of education, growing awareness (at least in urban areas) of rights among a population unusually familiar with the Constitution and widespread use of forms of communication that enhance that awareness, it is highly unlikely that an official system of justice will ever meet the need. Indeed, it is not necessarily desirable that every issue that might have a resolution in law should go to such an official system, or at least a formal system.

Beyond these official justice mechanisms that play an important part, or will play an important part, in ensuring access to the official justice system, there is a plethora of other ways that work to assist people in getting access to justice that accords with the law but does not necessarily use formal legal structures. Who initiates and sustains them, and how they work is almost infinitely variable. There are, for instance, public bodies with other primary functions, like chiefs, elders (with traditional status or not), religious bodies, educational bodies, and secular non-governmental bodies, widespread or local. These may operate mainly through civic education, or through alternative dispute resolution techniques (mediation, conciliation, or even arbitration – whether they use these terms or not), or by assisting people to go to the formal court/tribunal system. Many use a variety of techniques, though few can provide lawyers to appear for others in court.

In light of all these diverse out-of-court justice initiatives in place, a key issue in focus is sustainability. There is therefore need for data speaking to the viability, effectiveness and sustainability of the initiatives and informing decisions on scaling

up of initiatives. Moreover, it is pertinent to ask whether these initiatives perpetuate or address the inequalities, such as those based on gender, status, age, literacy, among others, that bedevil the formal justice system. It is against this background that the IDRC commissioned Katiba Institute in conjunction with the University of Nairobi's School of Law and Institute of Development Studies to engage in a cost benefit analysis of access to justice initiatives in Kenya.

1.3 OBJECTIVES OF THE PROJECT STUDY

Kenya's official development blueprint, Vision 2030, includes under its political pillar the rule of law towards which one strategy is 'increasing access and quality of services available to the public and reducing barriers to justice' (Government of Kenya 2012: vii). While the strategy is couched within the context of the official system, informal justice initiatives play a role in enhancing access to justice. To contribute to this strategy, therefore, the project seeks to provide data that would inform potential scaling up of appropriate justice initiatives. In this regard, the project engages in a cost benefit analysis of diverse justice initiatives.

The specific objectives of the project are to:

1. understand the obstacles to access to justice, especially for the marginalised or vulnerable groups;
2. identify specific access to justice initiatives that are relevant to sections of the population that are unable to access the formal justice systems or mechanisms, or face issues that are not best resolved through that system;
3. Analyse costs and benefits of the specifically identified access to justice initiatives and undertake an in-depth analysis of their potential for sustainability and scaling up;
4. Make a contribution to policy on access to justice in Kenya for the sustainability of initiatives that target groups or sections of the society that are unable to access the formal justice system

1.4 DEFINITIONS OF ACCESS TO JUSTICE INITIATIVES

In this report, access to justice initiatives have been broadly categorised into civil society based initiatives, community based initiatives, court-based initiatives and state based initiatives. The first two categories would in fact both fit into the traditional definition of civil society – for example the World Bank: 'a wide array of organizations: community groups, non-governmental organizations [NGOs], labour unions, indigenous groups, charitable organizations, faith based organizations, professional associations, and foundations.' However, in Kenya that phrase is commonly used to refer to formal organisations, usually registered under the Societies Act or the Companies Act, and is so used here.

1.4.1 CIVIL SOCIETY BASED INITIATIVES

These are initiatives run by civil society institutions, which are in the private sphere, with most of them being run on a non-profit basis. They offer different services such as legal aid services and civic education that enable disadvantaged individuals to access justice. They may be linked to international organisations – like FIDA Kenya and Amnesty International, or local like Kituo cha Sheria, Uraia Trust, and the Kenya Human Rights Commission.⁹ Most receive most of their funding from overseas.

1.4.2 COMMUNITY-BASED INITIATIVES

For purposes of analysis in this report, we have split this category into two – faith based organizations and traditional based organizations.

Faith based include dispute resolution mechanisms that are guided by religion. Examples of this category include – Maslaha,¹⁰ church councils, pastors, etc. Tradition based are initiatives run by different communities that make use of traditional dispute resolution mechanisms as a means of delivering justice. Examples include the Njuri Ncheke of the Ameru, Kiama of the Kikuyu, Kaya elders of the Mijikenda and Maslaha Courts in North Eastern Kenya.¹¹

⁹ Kituo cha Sheria (Legal Advice Centre, <http://kituochasheria.or.ke>), Uraia Trust (civic education and civic engagement, <https://uraia.or.ke>), FIDA Kenya (Women lawyers, <https://www.fidakenya.org/>), Amnesty International (<https://www.amnestykenya.org/>) and the Kenya Human Rights Commission (non-governmental, <https://www.khrc.or.ke/>).

¹⁰ See fn 17 on p. 50

¹¹ See on the Njuri-Ncheke Muthamia 2021, on the Kiama Joseph 2017, on the Kaya elders Diane Wanyoni 2018, and on the Maslaha Mohamed and Muriithi 2020.

1.4.3 COURT ANNEXED INITIATIVES

These refer to out-of-court initiatives that are endorsed by the judiciary and to which courts refer cases. For instance, courts formally refer cases for mediation. Reference is to accredited mediators, and it takes place once a case has been formally instituted. Any resultant agreed resolution to the dispute will be recorded formally by the court.

1.4.4 STATE BASED INITIATIVES

Various government institutions/officers have mandates and/or are strategically placed to provide mechanisms for dispute resolution. These include human rights as well as administrative agencies. Examples include police officers, chiefs (part of a nationwide hierarchy¹²), Ombudsman (Commission on Administrative Justice), Kenya National Commission on Human Rights and the National Gender and Equality Commission.

1.5 ORGANIZATION OF THE REPORT

Following this introduction chapter, Chapter Two analyses relevant literature and sets out the conceptual framework informing the paper. The research methodology adopted is articulated in Chapter Three. Chapter Four discusses the obstacles that impede access to justice, which were identified during the research. Chapter Five maps out the nature of disputes and existing dispute resolution initiatives. A cost and benefit analysis of the existing access to justice initiatives is undertaken in Chapter Six. In Chapter Seven, the paper concludes with a summary of the key findings and makes recommendations towards enhancing access to justice. In particular, it makes policy recommendations relating to scaling of existing access to justice initiatives.

¹² See fn 2 on p, xi

CHAPTER 2

LITERATURE REVIEW

2.1 INTRODUCTION

This chapter provides an overview of the existing literature on access to justice. Considering the project's central objectives, four key thematic areas were surveyed, namely: conceptualising access to justice, obstacles to access to justice, specific access to justice initiatives, cost and benefit analysis and lastly, the laws and policies governing access to justice. The section relies on books, journal articles, reports, and working papers to provide various views and perspectives on access to justice. Relying on descriptive and detailed analysis of books, journal articles, reports, and working papers, the section identifies the literature gaps on the subject and determines the areas of convergence and areas of divergence based on the assertions that various authors have made on access to justice. The section relies on library searches and online searches to identify the literature on access to justice. Some of the online platforms that were used included: JSTOR, Emerald, World Digital Library, Google Scholar, and Questia Online Library, Universal Digital Library and Project Gutenberg.

2.2 CONCEPTUALISING ACCESS TO JUSTICE

Access to Justice is a concept that has been defined and redefined throughout history. Some scholars argue that access entails procedural access to courts while others have argued that access must be understood more expansively to include access to procedural, linguistic and even substantive justice. Valesca Lima and Miriam Gomez define access to justice as a fundamental principle of the rule of law that allows individuals in a society to use legal tools and mechanisms at their disposal to protect their rights. Lima and Gomez (2020). These authors believe that no democratic, participatory, and egalitarian society may exist without access to justice. In a broad sense, access to justice is the basis on which society members can approach the courts and demand enforcement of their rights. Lima and Gomez argue that access to justice is only real if it does not discriminate

against anyone based on skin colour, political affiliation, age or economic status. The United Nations Development Programme, in its 2004 access to justice report, documents the fact that access to justice is not easily defined, but it entails improving a person's access to court, guaranteeing legal representation, and ensuring that legal judicial outcomes are fair, just, and equitable (UNDP 2004). Muhanda (2015) explains that access to justice entails 'the provision of dispute resolution mechanisms which are affordable, proximate, ensure speedy justice and whose process and users understand procedure.'

William Lucy, on the other hand, asserts that access to justice has three components. The first is the production and promulgation of legal knowledge; the second component is access to legal expertise and the last access to the bodies and institutions that act as justice fora. The author argues that when defining access to justice, one must not focus on the justice part of the phrase but address the access part of the phrase to determine the 'extent' that it alludes to (Lucy 2020). Trevor C. W. Farrow explains that while access to justice has been the subject of many legal discussions in the past and still is today, very few scholars have adequately defined what access to justice amounts to from the common people's perspective. He argues that access to justice from the public's point of view refers to 'access to the kind of life—and the kinds of communities in which—people would like to live' (Farrow 2013). Therefore, to the common person, access to justice entails accessing equality, education, security, housing, and happiness, among many. The author also questions why most legal practitioners do not include the cost factor when talking about access to justice. He concludes that access to justice is about having a good life (Farrow 2013). Writing about Kenya, James Ngotho Njung'e defines access to justice as follows: 'a system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. It is also a situation where people in need of help find effective solutions from justice systems that

are accessible, affordable, comprehensible to ordinary people and which dispense justice fairly, speedily and without discrimination, fear or favour' (Njung'e 2018). Essentially access to justice entails ensuring that everyone has an opportunity to be heard and have their case determined expeditiously.

2.3 OBSTACLES TO ACCESS TO JUSTICE

The literature documents different kinds of obstacles to access to justice. Kerry-Ann Barry argues that the leading obstacle is low levels of education among the members of society (Barry 2020). According to that author, people with a low level of education have difficulties unbundling their problems to lawyers and understanding the quality of legal aid that they receive. A low level of education reduces access to effective access to justice. On the other hand, Andrii Lapkin asserts that rural members face a different challenge when trying to access justice compared to the people living in the urban centres (Lapkin 2019). Using rural Ukraine as the point of reference, he explains that most rural areas are geographically located far away from courts or any justice institution, making it hard for residents to access them. Further, the fact that most people have poor financial well-being in many rural areas also means that only a few people can afford the expensive court costs. Poor infrastructure in many rural areas also inhibits the chances of the people to access justice. Lapkin asserts that many rural areas lack internet connection which has become an important tool during the Covid-19 pandemic, thereby denying many rural dwellers access to justice. He also concludes that poor transport infrastructure is another obstacle to access to justice in many rural areas.

Martín Abregú asserts that obstacles to access to justice may be divided into the operational and the structural (Abregú 2001). The operational obstacles relate to the internal efficiency problems of the justice system, while the structural are related not only to the working of the judicial system but also to the organisation of society

itself. He lists the operational obstacles to include: 'lack of legal aid services; lack of pre-trial counselling; and the expense of bringing a case to court'. He enumerates the structural obstacles to access to justice as including: 'The elitism of the justice system, with courts located in urban areas and legal process steeped in specialist language; the vulnerability of the poor, who fear that much-needed social programmes will be cut if they "dare" to claim their rights; and the lack of awareness among the poor of their right'. He asserts that even though the structural obstacles are not necessarily inherent in the justice system, they inhibit equitable administration of justice.

Muhanda (2015) classifies the barriers to access to justice into the following:

1. Social and Cultural Barriers
 - a. The stigma that is deeply entrenched in the discriminatory stereotype nature of our society. There is a belief that some members of society are generally underserving.
 - b. Illiteracy
2. Geographical Barrier (physical courts being inaccessible)
3. Financial Barriers
 - a. Lack of quality legal assistance
 - b. Fees and costs
4. Institutional Barriers
 - a. Inadequate capacity and resources
 - b. Excessive delay
 - c. Corruption
5. Procedural Barriers
 - a. Formalism
 - b. Complexity of procedure (UN 2017).

While focusing on access to justice through arbitration, James Ngotho Njunge asserts that some of the obstacles to access to justice include: 'poverty, corruption, backlog of cases, few judges and magistrates, social and political backwardness, ignorance, procedural formalities, the politicization of disputes, lack of professional interaction, lack of diversity, proliferation of regional arbitration centers, language and territorial barriers, the African cultural context, experience (the law of diminishing returns), professional training and mentorship of

arbitrators, open bias, arbitrability' (Njunge 2018).

The United Nations Division for Social Policy and Development, focusing on persons with disabilities, categorises the obstacles to access to justice into the following: (1) Legal barriers; (2) Attitudinal barriers; (3) Information and communication barriers; (4) Physical barriers; and (5) Economic barriers. (United Nations, Division for Social Policy and Development 2017).

The legal barriers include situations where rights of a particular group are not enshrined in the law; the attitudinal barriers include negative attitudes and false beliefs or assumptions that may make stakeholders in the justice system treat a particular group less favourable; while information and communication barriers include inadequate information on access to justice formats; physical barriers include inaccessible courthouses and police stations; while economic barriers include the inability to pay for quality counsel. Julinda Beqiraj and Lawrence McNamara explain that distrust of justice systems, poverty and corruption are the leading barriers to access to justice (Beqiraj and McNamara 2014). Finally, Jürg Helbling, Walter Kälin and Prosper Nobirabo list '(c)reeping dysfunctionality, unprofessionalism and corruption' as the obstacles to access to justice (Helbling, Kälin and Nobirabo 2015). All in all, different scholars and institutions have classified access to justice in varied ways with a view to ensuring that all kinds of formal, substantive and procedural barriers are overcome.

2.2.1 SOLUTIONS TO THE OBSTACLES

The literature also discusses and documents different kinds of solutions to the obstacles and barriers to access to justice. Abregú (2001) suggests the following as solutions to the obstacles to access to justice: 'Decentralising the courts to make them more accessible; making court buildings more welcoming to ordinary people; making legal language more accessible to the public; shaping the administration of justice to fit the client, rather than the other way round, like, for example, the informal system of justices of the peace in rural areas [the author was writing of Peru]; involving all actors in reforms of the justice sector, including the users and NGOs and public interest lawyers representing them; allowing class actions

and granting NGOs the right to represent individuals and unorganised collectives in the legal process, in order to give the poor more confidence in claiming their rights; training judges to handle collective claims; in areas where lawyers are scarce, training lay lawyers/paralegals to help the poor bring cases to court; and supporting NGOs and other civil associations, such as bar associations, in working to provide legal services for the poor'.

On the other hand, Helbling, Kälin and Nobirabo (2015) assert that the obstacles may be removed through '(1) the establishment of new courts in hitherto under-served areas and mobile courts in remote locations; (2) the introduction of simplified procedures to reduce costs; (3) the reduction of backlogs and the acceleration of case management; (4) the expansion of legal aid schemes; as well as (5) the promotion and facilitation of alternative forms of dispute resolution'.

2.4 SPECIFIC ACCESS TO JUSTICE INITIATIVES

Throughout history, different kinds of access to justice initiatives have emerged. For the purposes of this review, we have typologized them under the following heads: community based initiatives, traditional dispute resolution, court annexed mediation, civil society/faith based and alternative dispute resolution.

2.4.1 COMMUNITY-BASED INITIATIVES

Community based initiatives gained popularity with the rise of the human rights movements in the 1990s. H. Abigail Moy asserts that the formal justice system is an 'inhospitable place for resolving conflicts or seeking remedies' as the 'police force is understaffed and ill-equipped; lawyers are scarce and costly; the courts are backlogged and often geographically inaccessible; procedures are inefficient and complicated, and corruption famously plagues the judiciary' (Moy 2018). The author asserts that most Kenyans rely on local access to justice initiatives to maintain order. According to her, community initiatives are preferred to formal initiatives because they are accessible, affordable and attuned to cultural expectations of what fairness constitutes. The community paralegal, who is defined as a 'community-based individual, who is not a lawyer but who has basic

legal knowledge and skills', bridges the gap between formal access to justice initiatives and informal access to justice initiatives. Moy goes on to assert that the community based organisations train the local people and act as points of contact whenever the locals have a problem. Whenever the locals are faced with complex legal problems, the community based organisations refer them to more established organisations. Kristin Kalla and Jonathan Cohen argue that there is 'a perception within the community that formal legal services are too complicated and commercially driven,' and as such, many Kenyans prefer to go to community based institutions that they can trust (Cohen and Kalla 2007). The same sentiment is shared by Sofia Gruskin and others (including Patricia Kameri-Mbote), who assert that organisations such as the Christian Health Association of Kenya (CHAK) that have a presence in the local community are more capable of finding lasting solutions as locals trust them (Gruskin and others 2013).

Kariuki asserts that community based initiatives are not necessarily based on the traditional African customary law. He goes on to assert that while the terms 'customary', 'traditional', and 'community' in relation to dispute resolution mechanisms are used interchangeably, an in-depth examination of the terms shows that they do not mean the same thing. According to Kariuki, community based access to justice initiatives have been for a very time described as informal and non-state centred mechanisms of accessing justice (Kariuki 2007). He explains that the legal system in Kenya recognizes the informal mechanisms of accessing justice and encourages members of the public to use such mechanisms as long as such practices are not repugnant to justice and morality (Constitution 2010, Article 159(3)). According to Kariuki, there is hardly any clear line that distinguishes the community based initiatives and the formal initiatives as there is limited penetration of the formal systems in many rural areas. In areas where there is a presence of formal initiatives, the community based organisations work together with the formal systems. Even though the Constitution recognises the community based justice mechanism, it does not define what community based justice initiatives entails. The Open Government Partnership asserts that community based initiatives are mainly steered by community leaders

(Open Government Partnership 2021). Finally, Kimberly R. Kras asserts that the community based justice initiatives appreciate the community members' role in access justice (Kras 2017).

2.4.2 TRADITIONAL DISPUTE RESOLUTION MECHANISMS

Different forms of traditional dispute resolution mechanisms continue to exist the world over and Kenya is no exception. Kariuki Muigua argues that traditional dispute resolution is not only a Kenyan concept but is practiced worldwide (Muigua 2014). He observes that the use of traditional dispute resolution mechanism (TDRM) is anchored in the Constitution at Article 159 (2) (c). The author believes that TDRM has been very effective in the process of resolving resource-based conflicts. He asserts that TDRM mechanism are 'flexible, cost-effective, expeditious, foster relationships, are non-coercive and result in mutually satisfying outcomes'. TDRM is most effective in bringing justice closer to the people. The only limitation to the application is that the practice should not violate the bill of rights and must not be repugnant to justice and morality. Justice and morality are not defined in the Constitution. TDRM solves disputes based on mutual problem-sharing principles. Muigua concludes that TDRM includes methods such as negotiation, mediation, reconciliation, and consensus. Councils of elders play an important role in TDRM.

Francis Kariuki, on the other hand, asserts that TDRM employs the use of customary law to resolve disputes (Kariuki 2020). The divergent approaches that many stakeholders have taken towards TDRM creates doubt over its future. In another publication, 'Applicability of traditional dispute resolution mechanisms in criminal cases in Kenya', the same author argues that TDRM promotes restorative justice that has a win-win situation as the end game (Kariuki 2013). Sarah Wairimu Njuguna asserts that the goal of TDRM 'is not to punish, but to promote unity, peace and reconciliation within the community' (Njuguna 2018). She explains that TDRM has the advantage of being inexpensive, flexible and being legitimate. She concludes that TDRM preserves customary law. Ghebretsele explains that TDRM operates both formally and informally in Kenya. The TDRM is most appealing to the members of the public who do not trust the colonial imposed formal

system (Ghebretsele, 2017).

Mohamed & Muriithi (2020) assert that 'the longevity in the application of TDRMs by various communities in Kenya is a manifestation of the vital role they play in the resolution of disputes'. Genevieve Sabala explains that TDRM is based on 'respect and sincerity; reconciliation and forgiveness; restitution and atonement; and restoration of peace' (Sabala 2020).

2.4.3 COURT ANNEXED MEDIATION

Justus Otiso explains that court annexed mediation is widely accepted among many Kenyans because the formal court system does not impose a decision on the people during the process (Otiso 2017). He explains that there is a need to sensitise public members to ensure that court annexed mediation (CAM) is widely accepted and understood (also Ater 2020). Kariuki Muigua argues that if CAM is well actualised, it has the ability to enhance access to justice. He suggests that the following attributes of CAM make it attractive: 'voluntariness, confidentiality, informality, flexibility, speed, cost-effectiveness, efficiency, autonomy and fostering of relationships' (Muigua 2007). According to him, court annexed mediation takes place when the court, upon scrutinising a case, decides that the case is suitable for mediation, refers the parties to mediation and thereafter records a consent judgement. The courts play a major role in the takeoff of CAM. Oyombe (2020) asserts that the achievements of court annexed mediation include: ease of doing business, increased level of satisfaction, and restoration of broken relationships. This author lists the following as the challenges facing CAM: inadequate funding, poor infrastructure, inadequate training, inadequate personnel and inadequate sensitisation. Shako (2017) asserts that CAM leads to a speedy resolution of disputes and therefore aids in the process of reducing the backlog. The World Bank (2017) also notes that CAM will do away with delays in the process of delivering justice.

2.4.5 CIVIL SOCIETY, FAITH BASED

Faith based and civil society initiatives are wide and varied and include international, regional and local networks. Christine Bjork & Juanita Goebertus argue that the civil society organisations in Kenya complement the formal judicial system when it comes to access to justice (Bjork and Goebertus 2011). Kariuki Muigua, on the other hand, explains

that, apart from the legal aid provided by the faith based organisations and civil society organisations, there is no organised framework that details the role played by the two in access to justice (Muigua 2018). The author argues that the lack of national policies on the work done by civil society and faith based organisations in the process of ensuring that there is access to justice limit the ability of the said organisations. Laibuta (2010) says that civil society organisations offer free legal aid, legal education and carry out public interest litigation. According to him, the term 'civil society' is comprehensive and covers religious, women and refugee organisations, among others. He believes that the work of civil society organisations is geared towards creating awareness and providing legal aid to a given section of society. While the civil society based approach to justice may have its successes, the area remains highly unstructured, unregulated, and uncoordinated. According to this author, the lack of standardisation, supervision and statutory regulation compromises the quality of the services that civil society offers.

2.4.6 ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute resolution (ADR) has gained popularity over the years. Kariuki Muigua defines the phrase alternative dispute resolution as 'all those decision-making processes other than litigation including but not limited to negotiation, enquiry, mediation, conciliation, expert determination, arbitration and others' Muigua 2012). According to the author, the assertion that ADR is second to litigation is a misnomer. He concludes by asserting that Article 159 of the Constitution recognizes the value of ADR and seeks to ensure that ADR is properly utilised. Muigua & Kariuki (2014) argue that ADR promotes access to justice among the poor members of the society and strengthens the rule of law. Rachel Ngetich explains that despite the entrenchment of ADR in Kenya's constitution, its ability to reduce case backlog is yet to be seen Ngetich (2019). Muigua in another paper (2015a), argues that ADR is a tool of empowering Kenyans by ensuring that they participate in conflict management. Contrary to Ngetich's assertion, Peter Kivunzi Mutui, Judy Wacuka Mumbi, and Weldon Ng'eno believe that ADR can

reduce the backlog of cases in Kenyan courts (Mutui, Mumbi and Ng'eno 2018). Henry K Murigi opines that 'ADR should not be viewed merely as alternative to judicial process instead it should be regarded as an alternative to violence and useful within any democratic culture' (Murigi 2020). Geoffrey Nyamasege, Muhammad Swazuri and Tom Chavangi assert that ADR is vital in resolving land conflicts (Nyamasege, Swazuri and Chavangi 2017).

2.5 COST AND BENEFIT OF ACCESS TO JUSTICE INITIATIVES

This review of the literature indicates that not much has been done to conduct CBA analysis of access to justice initiatives from an economic perspective. However, several studies and pieces of scholarly work have been done to document the benefits of different initiatives and their 'costs' in the sense that they may be disadvantageous to the realisation of justice in one way or another.

2.5.1 COST AND BENEFITS OF LITIGATION

On the costs and benefits of litigation, Marc Galanter argues that litigation has the benefits of: being a public record, having a precedential value, having evidential rules, room for appeal, and the results being assured (Galanter 1976). Lawrence M. Friedman, on the other hand, believes that litigation has the advantage of certainty that is missing in other forms of access to justice (Friedman 1989). Ravneet Arora of Hakemi argues that litigation has the disadvantage of burning bridges, being impersonal, being costly and taking a lot of time (Arora 2019).

2.5.2 COSTS AND BENEFITS OF ADR

Bello (2019) explains that ADR has the benefit of being personal. Miriam Arfin asserts that ADR benefits include it 'can enable the parties to (1) resolve their case quickly and efficiently, (2) save money, (3) reach creative business-driven results, (4) maintain control over the process and results, (5) make better-informed decisions, (6) maintain, preserve, or create new business relationships, and (7) avoid negative publicity' (Arfin 1995). On the other hand, Allison Ballard and Patricia Easteal, writing about ADR arising from workplace bullying, explains that some of

its disadvantages may include: uncertainty on whether the dispute will be resolved; except for arbitration, most are non-binding; arbitration is relatively expensive; and from the public perspective no precedents are established. Some of their respondents felt pressurised by the process, and unhappy that they were barred from future legal process (Ballard and Easteal 2016).

2.6 EXISTING LAWS AND POLICIES FOR ACCESS TO JUSTICE IN KENYA

Several policies and laws speak to the question of access to justice. The Constitution of Kenya 2010 being the law that primarily sets out the parameters for access to justice. Muhanda (2015) notes that the laws on access to justice in Kenya include: The Constitution of Kenya 2010; County Government Act, 2012; The Civil Procedure Act; The Marriage Act 2014, Labour Relations Act 2007, the Employment Act 2007, the Labour Institutions Act and the Legal Aid Act, 2016. She also explains that by virtue of Articles 2(5) and 2(6), international treaties and conventions apply to Kenya. The author mentions the following as some of the international laws on access to justice: African Charter on Human and People's Rights ratified on 23rd January 1992; Hague Convention on International Access to Justice ratified in 1997, the International Convention on Civil and Political Rights (ICCPR) signed by Kenya on 1st May 1972; Universal Declaration on Human Rights; Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Elimination of All Forms of Racial Discrimination on the 9th of March, 1984. Ngetich (2019) enumerates the laws and policies to include: the Statute Law (Miscellaneous Amendments) Act of 2012 amending the Civil Procedure Act to provide a framework for the court annexed mediation system, The Banking (Credit Reference Bureau) Regulations 2008, The Arbitration Act 1995, Commission on Administrative Justice Act, 2011, Income Tax Act Cap 470, and Kenya Vision 2030.¹³

2.7 LITERATURE GAPS ON ACCESS TO JUSTICE

The literature reveals that a major gap is the absence of a cost and benefit analysis of access to justice initiatives from an economic perspective and assessing which initiatives

¹³For the last see Government of Kenya, 2012

and strategies work in realising access to justice. In addition, while many authors have addressed the plight of women and the poor in the process of accessing justice, hardly has any author discussed the impact of court fees in the process of accessing justice. Mostly the authors discuss the economic limitation in the context of being able to afford an advocate. Second, hardly has any author discussed the concept of gender and judging and how it affects access to justice. Finally, if the women in society have been able to have some equality in employment in the recent past, especially in the judiciary and other institutions for access to justice, why are they still second citizens?

Finally, what is the role of technology in the process of accessing justice? Is technology disruptive? If some of the questions above can be answered, then some of the literature gaps will be filled.

2.8 CONCLUSION

The literature review has demonstrated that, despite the effort made by the government, its agencies and non-state actors to ensure equal, equitable and quality access to justice, there are several obstacles that still prevent society members from having access to justice. Lack of access to justice is more severe for the marginalized, the poor and people living in marginalized areas.

Literature has further shown that people use a remarkable variety of alternative ways to seek justice. The court systems have been encouraging ADR by court annexed mediation. Traditional, or quasi-traditional mechanisms, involving elders and others, are important in some areas. Various types of civil society groups, local and national, and faith based organisations offer mediation or advice services, or sometimes representation in court. In addition, government bodies, such as ombudsmanic/human rights institutions, and also local administrative officers of the national government confusingly called 'chiefs' (not traditional) are a resort for many.

Unclear from the literature are the factors which make some ADR techniques more common among the vulnerable members of the society. In other words, there is lack of literature that measures costs and benefits of various access to justice initiatives. This study is therefore designed to fill this literature gap.

CHAPTER 3

METHODOLOGY

3.1 INTRODUCTION

This chapter describes the approach, research design, areas of study, the target population and tools used to collect and analyse data in this study, as well as their benefits and limitations. Moreover, information on how the sampling size was arrived at and the data analysis methods used will be discussed here. It is concluded with a discussion on the ethical considerations the study took into account to ensure that the study protected the dignity of the respondents.

3.2 RESEARCH DESIGN

The study used both qualitative and quantitative approaches, with the qualitative strategy being the main one.

Qualitative research is used to understand people's perspectives of the world (Bhandari 2020). In this case, two types of qualitative research were used. Phenomenological research was used where the researchers asked the respondents to describe their experiences in accessing and providing justice and then interpreted their encounters. At the same time, narrative research was used by the researchers to examine how the respondents shared their stories, with the aim of understanding and making sense of their experiences. From this, the research team produced a case study relaying the experience of accessing and providing justice from both the user and service provider point of view respectively.

Since the goal of the study was to measure the costs and benefits of accessing justice in Kenya, quantitative research was used to collect and analyse the numerical data. It can also be used to find patterns and make averages (Bhandari 2020). Here, a survey was used where the respondents were asked to rate their experiences with alternative access to justice initiatives. Additionally, to give sufficient information on initiatives that might merit being scaled up, correlational research

was used to compare the performance of the five different initiatives in providing services. However, while the data correlation is mostly used as a representative of larger populations, the sample size of the study was limited as it only had 361 respondents. Consequently, the researchers used the cross-tabulation method to draw conclusions from the information gathered.

3.3 GEOGRAPHICAL COVERAGE

The study was conducted in nine counties in Kenya namely: Bungoma, Garissa, Kiambu Kilifi, Meru, Migori, Nairobi, Nakuru and Turkana.

Selection of these areas was informed by existing information and studies and with an intention of ensuring representation of the geographical diversity of the major regions in the country. Other determining factors included accessibility and availability of literature on the study areas; population distributions in terms of density, ethnic diversity, socio-economic backgrounds, and opportunities to engage with marginalized communities, representation of urban and rural settings, presence and range of (alternative) dispute resolution mechanisms and prevalence and types of disputes in particular areas.



COUNTY	POPULATION	ECONOMY	POVERTY ¹⁴	ETHNICITY	OTHER CHARACTERISTIC/S
Bungoma	1.66m	Farming maize, sugarcane	35.7%	Luhya - Bukusu	
Garissa	480,146	Livestock	65.5%	Somali	Marginalised county CRA ¹⁵ Arid
Kiambu	2.4 m	Farming: tea, coffee, pineapples; cash crops. 40% urban. Some industry. 40% urban. Some industry.	23.3%	Kikuyu	Neighbours Nairobi
Kilifi	1.44 m	Fishing, services	46.4%	80% Mijikenda +mixed	Marginalised county CRA Coastal
Meru	1.54 m	Coffee, tea, French-beans and dairy products.	51.9%	Meru	
Migori	1.11 m	Agriculture	41.2%	Suba + mixed	
Nairobi	4.34 m	Urban; administration, commerce, industry	16.8%	Mixed	
Nakuru	2.14 m	Agriculture, manufacturing and tourism. Substantial urban areas.	19.6%	Kikuyu, Kalenjin + mixed.	
Turkana	926,976	Pastoralism and Fishing	86%	Turkana dominant	Marginalised county CRA Arid.

3.4 TARGET POPULATION

The study targeted providers of justice and beneficiaries of their services. The service providers were pre-identified and categorised into the following five types of initiative:

- Civil society based initiatives: services offered by non-state actors, mainly not-for-profit bodies.
- Community based initiatives: targeting those initiatives at the community level that mainly apply traditional dispute resolution mechanisms and others facilitated by recognised community elders.
- Court based initiatives: the study narrowed on those initiatives that focus on use of alternative dispute resolution facilitated by the courts and tribunals such as court annexed mediation
- State based initiatives offered by governmental institutions which have different mandates depending on nature of institutions and included commissions, chiefs, police service, and other state agencies at the national and county level.
- Community Based Organisations and religious based initiatives: which included community level organisations that are either community led in advocating for certain issues which can include dispute resolution; and the various religious organisations that help to resolve

disputes.

Based on a mapping of service providers under the above categories of the access to justice initiatives, the study targeted 135 service providers in total, 15 in each county - 3 under each of the five initiative types. Consumers of justice services were reached through their respective service providers with a target of 270 users representing at least two users from each service provider. In the end, a total of 360 respondents were reached, representing 162 service providers and 199 users.

3.5 DATA COLLECTION TECHNIQUES AND TOOLS

Comprehensive literature review preceded the commencement of the study with a view to setting out the context of provision of justice services in Kenya. The literature looked at existing studies on access to justice in Kenya, with an appreciation of recent developments particularly towards bridging gaps in access justice for the marginalized and vulnerable groups.

From the literature review, three papers were developed: (a) 'Bridging the Justice Gap in Kenya: An examination of formal and informal access to justice initiatives from past to present' by Katiba Institute; (b) 'Access to justice for the marginalized and excluded members of society in Kenya' the School of Law, University of Nairobi and (c) 'Cost Benefit Analysis for Access to Justice in Kenya: Methodology paper by the Institute

for Development Studies.'

The research adopted a mixed method approach based on the costs and benefits analysis approach. Both qualitative and quantitative data collection techniques were used. Two sets of questionnaires, for users and for service providers, were used as guides to the researcher in conducting the interview to allow the respondents give as much information as possible, to meet the research objectives. The interviews sought both qualitative and quantitative information from respondents on a range of issues including: nature and type of disputes, initiatives used to resolve disputes, nature of services provided and processes applied in dispute resolution; beneficiaries of services with considerations of gender, urban-rural setting, specific marginalized groups; direct and indirect costs and benefits from the process and outcome of dispute resolution; challenges in accessing and providing services, and caseload and case turnaround (Questionnaires attached in Appendix A).

The study used a one-on-one personalized interview process for data collection. This gave the respondents room to share their experiences at their own pace. The interviewers aimed to create a rapport with the respondents which allowed room for in-depth interviews, ultimately enriching the data collected. Administering paper-based questionnaires was beneficial to the respondents who were not as technologically savvy. Furthermore, making

¹⁴ Figures for 'absolute poverty' in 2015-16 taken from KNBS (2020), Annex Table 3A.

¹⁵ I.e. so categorised by the Commission on Revenue Allocation

them comfortable was key as they relayed information in the language they were most conversant with while the research assistants translated. Additionally, the team avoided the extra cost of investing in e-questionnaires which would have been relatively expensive compared to paper questionnaires. Even with the Covid-19 pandemic, our research tools accorded us the flexibility to conduct interviews virtually helping to cover a wider geographical area. This happened in instances where the respondents (service providers) were physically unavailable as they were working from home.

However, the use of paper questionnaires came with its short-comings. More labour and time was required for data entry and analysis which could have been avoided if we had used e-questionnaires. Due to the assurance of anonymity, it was difficult to trace back the respondents, especially users, to clarify some of the information they had provided.

3.6 DATA ANALYSIS

Several methods were used to interpret the raw data collected. Given that the study had several themes, the method of analysis depended on what each theme sought to find out. Descriptive analysis was used to provide the basic information about the respondents and the answers they gave during the interview. Exploratory analysis was used to show the relationship or connection between the responses given and the type of demographic. For instance, it was discovered that while 72% of the respondents found the costs of accessing justice reasonable, many female respondents still felt they were unreasonable. Diagnostic analysis answered the question, 'why did this happen?' A good example would be a delay in completion or solving of disputes in good time. While it was one of the challenges the service providers faced, there was a need to establish why this was the case. When they were asked to give their reasons, it was found out that 40.8% found the cases to be complex which forced them to take more time than expected. Cost benefit analysis was applied to measure the costs and benefits of accessing justice through the five initiatives under study. This is elaborated further in Chapter 6. Finally, the study also uses prescriptive analysis to propose policies that will make it easier for citizens to access justice as well as improve the quality of service dispensed by justice

institutions.

3.7 BASIC KEY DEMOGRAPHIC FEATURES OF RESPONDENTS

The study targeted justice institutions that provide access to justice and consumers of their services in nine counties. The choice of counties was to ensure that the selected counties broadly represented the spread of the country. However, it is important to mention that sampled population was still not fully representative of the Kenyan population and therefore results cannot be generalised for the entire country. A total of 162 service providers and 198 users were reached as tabulated below:

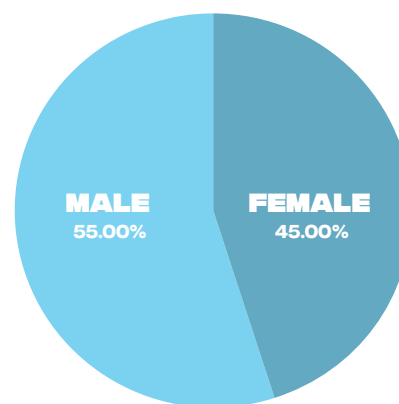
COUNTY	SERVICE PROVIDERS	USERS
Bungoma	22	26
Garissa	24	27
Kilifi	21	17
Kiambu	10	7
Meru	16	24
Migori	22	26
Nairobi	17	20
Nakuru	28	22
Turkana	20	15
Totals	162	198

7 Table 3.1 Distribution of respondents by county

The study targeted both state and non-state actors involved in facilitating dispute resolution. The state based initiatives was the largest category of respondents reached in terms of the service providers interviewed, comprising 46 out of the 162 institutions reached. Under this category were also the majority of institutions used in dispute resolution, most notably chiefs and police, county commissioners, and

other state agencies at national and county government levels, such as the children's department, labour offices, National Legal Aid Service, and commissions. At the community level, respondents were drawn from grassroots organisations and community leaders from churches, mosques and religious institutions. 25 of the civil society organisations reached were organisations with a national reach such as Kituo cha Sheria, FIDA [International

Federation of Women Advocates], and Legal Resources Foundation as well as community based CSOs operating in the localities.

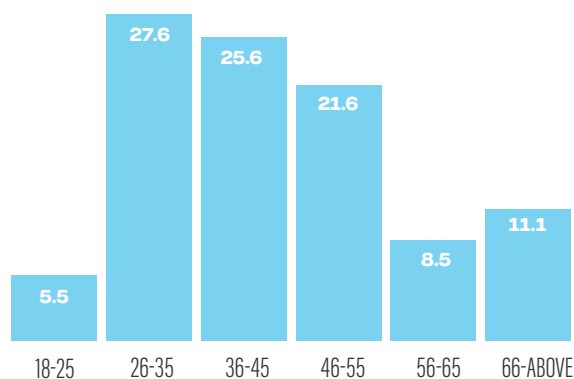


2 Figure 3.2 Gender of respondents (users)

Gender: The sample of users comprised more men (55%) than women at 45%. There were deliberate attempts to ensure a gender balance in the selection of respondents done through the service providers

Age: The majority of the users reached were in the age bracket of 26 to 55 years; with the largest category being those of 26 to 35 years at 28%, followed by those of 36 to 45 years at 26% and those of 46 to 55 years at 22%. Collectively, they represented the active population in Kenya.

These figures show that access to justice through alternative forms of dispute resolution is not dependent on one's level of education. ADR is a viable choice for a diverse population. Considered alongside



3 Figure 3.3 Age of respondents

the economic background of the population, the less-educated and lower income groups are the majority accessing the services at the community level due to factors such as costs and the desire for less technical processes of seeking redress.

Level of education: The majority of respondents had completed primary education (39%) and secondary education (28%). This was followed by those with tertiary level education at 23%. Only a small percent (7%) indicated they had no formal education.

Economic Status: Most of the respondents, 62%, indicated that they were self-employed in such engagements as running a business, farming, tailoring, transport, and *jua kali*¹⁶ artisan among others. About a third (29.1%) were employed, working in formal and informal employment. Those not engaged in an income-earning engagement comprised the unemployed at 3% and those who had retired comprising 1.5% of the respondents.

The majority were in the low-income category followed by middle income earners, with 62.3% earning below Ksh. 50,000 (US\$ 450) a month. About 32.7% were in the income bracket of 50,000-100,000 and only 5% of the respondents earned above Kshs. 100,000.

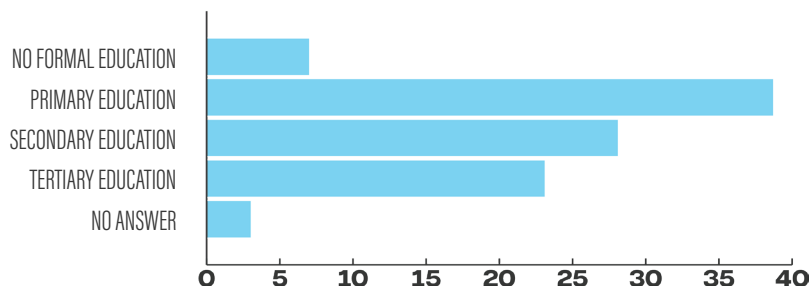
Religious Background: The majority of respondents, 78.4%, indicated that they were Christians, followed by Muslims at 20.1%. Religion was an important factor in the study considering that some of the active access to justice initiatives are conducted by religious bodies (faith based).

3.8 ETHICAL CONSIDERATIONS

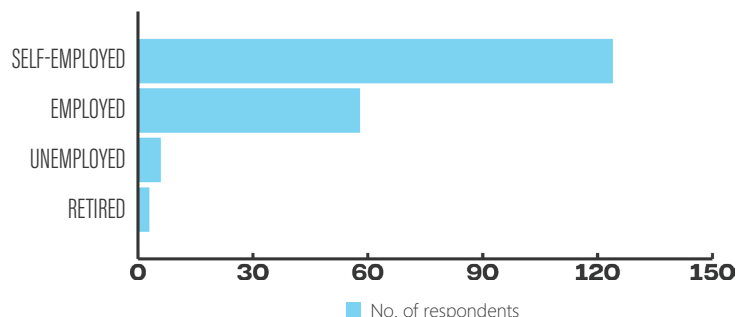
The study was subject to certain ethical standards. It was carried out pursuant to a permit issued by the National Commission for Science, Technology and Innovation (NACOSTI) under the Registration and Accreditation of Research Institutions Regulations, 2014 under the Science, Technology and Innovation Act.

Participants in this study were assured that their participation was voluntary, and their acceptance to take part in the research was sought prior to their participation in the study. Participants were also assured that the information given in the study would be treated as confidential and only applied to the purposes of the study.

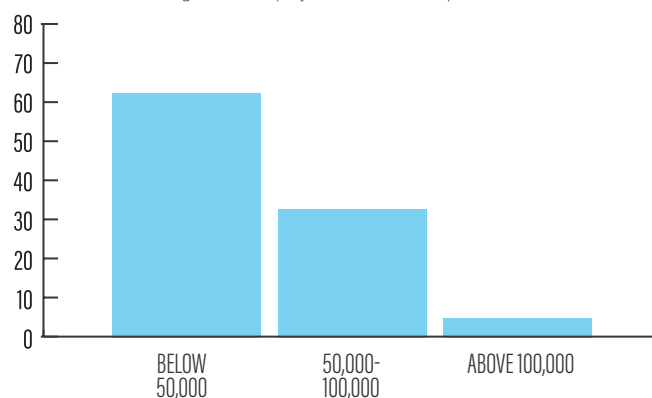
The study was conducted during the COVID-19 period; as such the team adhered to all protocols as directed by the Ministry of Health guidelines.



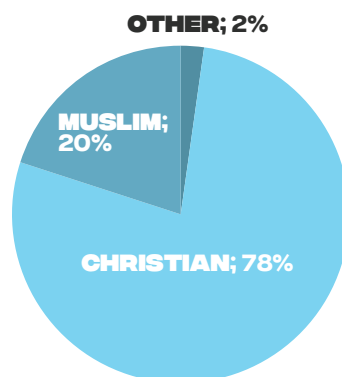
4 Figure 3.4 Respondents' levels of education



5 Figure 3.5 Employment status of respondents



6 Figure 3.6 Income of respondents



7 Figure 3.7 Respondents' religious background

¹⁶ *Jua kali* (in the hot sun) refers to the informal sector.

CHAPTER 4

OBSTACLES TO ACCESS TO JUSTICE IN KENYA

4.1 INTRODUCTION

In this chapter, we discuss the obstacles related to accessing justice in Kenya on the basis of collection of views from both 'service providers' and 'users' as discussed in Chapter 3.

Access to justice is considered as one of the fundamental human rights and a means of eradicating poverty in Kenya. It is for this reason that the Constitution of Kenya (2010) in Article 48 states that 'the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice'.

Access to justice is therefore a basic principle in the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable (Bridgman 2017). Literature suggests that access to justice means implies being treated fairly according to the law and if you are not treated fairly being able to get appropriate redress (Bridgman 2017). That does not necessarily mean access to lawyers and courts, but includes also access to ombudsmen, advice agencies and the police. It also means access to alternative dispute resolution mechanisms and being treated fairly by institutions thereof. It is the process of ensuring that legal and judicial outcomes in any country are just and equitable (Selita 2019).

Access to justice includes both substantive and procedural elements, and they are interdependent. A person or entity facing a legal issue, or if they could benefit from or be hurt by a legal action, needs timely and affordable access to: (a) the appropriate level of legal assistance, and (b) a fair and efficient court or other processes to resolve disputes (UNDP 2015). This is geared towards their understanding and making decisions about their legal issue; getting a fair and cost effective resolution on the facts and applicable law; and feel that they were heard, treated fairly, and

understood the outcome.

4.2 SPECIFIC OBSTACLES TO ACCESSING JUSTICE

4.2.1 COSTS OF PURSUING DISPUTES

Literature suggests that the cost of pursuing a dispute resolution process is one of the deterrents to accessing justice. Respondents were asked to give an indication of the costs they incurred in having their disputes resolved by the various alternative methods the study was exploring. As shown in Table 4.1 below, 41% of the respondents indicated that the total cost was expensive; 33% indicated that the service was generally cheap, while 24% reported that the cost was reasonable. It is therefore reasonable to argue that a significant number of respondents found costs of resolving disputes to be expensive. This finding corroborates the findings of Bridgman (2007), Selita (2019) and Lapkin (2019) who argue that costs relating to pursuit of justice are a major barrier to accessing justice.

Related to the costs of resolving disputes were the transport costs.

It is clear from the survey that users of different justice initiatives had to travel from one place to another in order to have their disputes resolved.

Approximately 72% of the respondents were of the view that the costs were reasonable while 28% indicated that the costs were not reasonable. The amount of transport costs paid by users in seeking resolution varied considerably with a mean of KES 317 (US\$ 3.17). This could be attributed to the fact that people sought services of the initiatives within their communities or where travel costs were minimal. A good number of

respondents also indicated that they walked to places where they sought justice in resolving disputes.

Perceptions on travel costs seem to have a gender angle with women being more disadvantaged in meeting costs of transport as indicated in Table 4.2. While 76% of the male respondents indicated that the transport costs were reasonable, for female respondents the figure was 67%. It therefore means that women

PERCEPTION ON TOTAL COSTS	FREQUENCY	PERCENTAGE
Very expensive	48	29.1
Expensive	20	12.1
Reasonable	40	24.2
Cheap	16	9.7
Very cheap	41	24.9
Grand Total	165	100.0

8 Table 4.1 Perception on total costs

faced greater obstacles in accessing justice compared to male respondents in this respect.

BASED ON YOUR INCOME, DID THE COSTS SEEM REASONABLE?	FEMALE	MALE	TOTAL
No	32.9%	23.7%	27.7%
Yes	67.1%	76.3%	72.3%
Total	100.0%	100.0%	100.0%

9 Table 4.2: Perception on transport costs to access justice

The research team asked selected justice service providers to indicate challenges that people in the community where they served were facing in accessing justice. Of the 162 respondents, 59% mentioned lack of information on what actions to take when faced by a dispute (see Table 4.3). Lack of resources or poverty came second, being mentioned by 57% of the 162 respondents.

	PERCENT
Lack of information on what action to take	59.00%
Lack of resources/poverty	56.50%
Corruption in institutions	50.30%
Lack of good transport and infrastructure	42.90%
Lack of a justice institution in the neighbourhood	22.40%
Cultural barriers	9.90%
Bureaucracy	9.90%
Others	5.60%

Corruption among institutions expected to offer services came third: mentioned by 50% of the respondents. Lack of good transportation and infrastructure was mentioned by 43% of them; while lack of justice institution in the neighbourhood was mentioned by 22% of the respondents. From this analysis, it is clear that lack of economic empowerment, poverty and costs associated with resolving disputes constrained access to justice. Further, service providers were asked to assess if the charges they were asking their clients to pay for justice services were reasonable given the average income in the community. An overwhelming majority of the respondents in this category (84%) affirmed that the costs to their clients were reasonable, while only 16% reported that the costs charged by the institutions were not reasonable.

4.4.2 INSTITUTIONAL BARRIERS

Institutions that offer justice services to communities were asked to indicate some of the challenges that they were facing in providing dispute resolution services. The most mentioned challenge related to lack of adequate resources (See Figure 4.1).

These resources include financial and human resources, a factor mentioned by 94% of the 162 respondents in this category. Lack of awareness among the community members was mentioned by 24% of the respondents and ranked second.

The issue of clients being uncooperative was mentioned by 21% of the respondents, while cultural limitations were mentioned by 14% of all the respondents. Other challenges mentioned by service providers included professional malpractices, lack of support from the government, lack of evidence to resolve disputes and poor implementation plans.

Related to institutional challenges is the fact that the number of institutions where one could seek justice in some places were limited. About 22 percent of the respondents indicated that access to some of these institutions was a challenge. While in this section we discuss the element of physical or geographical access, it is evident that the issue of access to quality service is also fundamental in the quest for access to justice. However, the quality of service can only be determined from the users' point of view (this is discussed in Chapter Six of this report).

4.4.3 PSYCHO-SOCIAL IMPACTS OF PURSUING JUSTICE

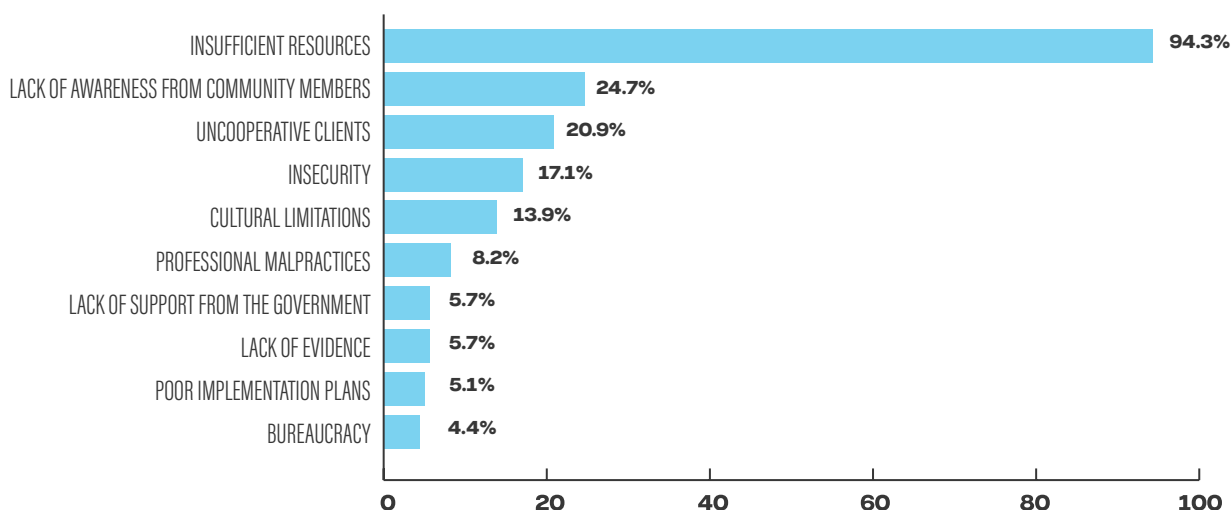
Negative psycho-social effects of pursuing a dispute have been identified in the literature

as among the deterrents to accessing justice. In our study, we asked respondents who had disputes to indicate how the initiatives affected them psycho-socially. As indicated in Figure 4.2 below, emotional stress was mentioned by 68% of the 199 respondents making this one of the leading obstacles to accessing justice. This was followed by psychological problems which was mentioned by 52% of the respondents, and relationship breakdown which was mentioned by 42% of the respondents. Other psycho-social effects that were mentioned included health problems, physical harm, financial constraints, and damage to property.

According to Kasyoka et al (2021), it is very difficult to estimate the actual incidence of gender based violence (GBV) in domestic settings because it is a hidden and invisible problem. Abused women rarely tell anyone about their victimization and most women /families often deny the existence of the problem out of fear that acknowledgement will jeopardise the integrity of the family. In most Kenyan families, GBV for instance is often tolerated as part of normal behaviour and is justified in the name of traditional culture.

As shown in Table 4.4, the intensity of these impacts varied considerably between individuals. Relationship breakdown was the most severe, followed by psychological problems, and emotional stress. Health problems and physical harm were ranked fourth and fifth, respectively.

Evidence shows that about 69% of the respondents indicated that their relations were affected by the dispute that they were

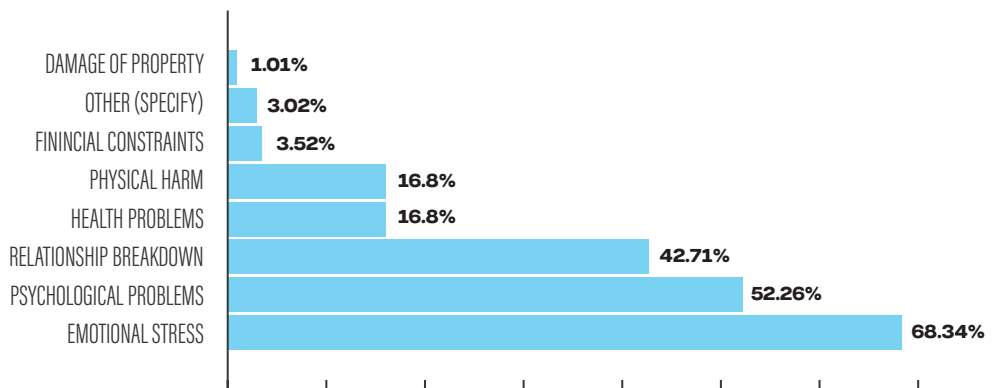


10 Figure 4.1: Challenges faced by institutions in provision of justice

pursing. This was found to be more in family related disputes.

The impact on relationships included parties not being on talking terms (32%), mutual distrust (19%), and isolation (18%). Other outcomes that respondents mentioned included stigmatization, desertion and divorce. There were also instances whereby one of the parties in a dispute was kicked out of the family house as indicated in Table 4.5.

C6. TELL US ABOUT THE IMPACT OF HAVING THIS DISPUTE



11 Figure 4.2: Impact of having this dispute

IMPACT OF DISPUTE

ATTRIBUTE	LITTLE EXTENT	SOME EXTENT	GREAT EXTENT	VERY GREAT EXTENT	TOTAL
Emotional Stress	0.31%	23.91%	31.37%	44.41%	100%
Health problems		15.89%	14.95%	69.16%	100%
Physical harm		22.77%	17.82%	59.41%	100%
Psychological problems		25.38%	33.33%	41.29%	100%
Relationship breakdown		26.73%	30.41%	42.86%	100%
Total	0.25%	25.94%	35.26%	46.85%	100%

12 Table 4.4: Intensity of the impact of having the dispute

4.4.5 SOCIAL AND CULTURAL FACTORS

Related to cost of resolving disputes and poverty, there were also some socio-cultural factors that acted as obstacles to accessing justice. Those mostly mentioned in our study included patriarchal attitudes and beliefs, gender biased attitudes, gender economic dependence or resource inequality and the general lack of access to information (Table 4.6). There were also mentions of stereotypes which meant parties aggrieved in a dispute were looked down upon in the community.

In Kenya, most communities, especially in marginalized areas, are patriarchal in nature. In these communities, men hold primary power and predominate in roles of political leadership, moral authority, social privilege and control of property. In these societies, properties are inherited by the male relatives. It is also a system of social structures and practices in which men dominate, oppress and exploit women. In such communities, when women are aggrieved their chances of seeking justice either in the formal or informal channels are very limited. Our data shows that nearly a quarter (24.6%) of our respondents identified this a barrier in accessing justice in Kenya.

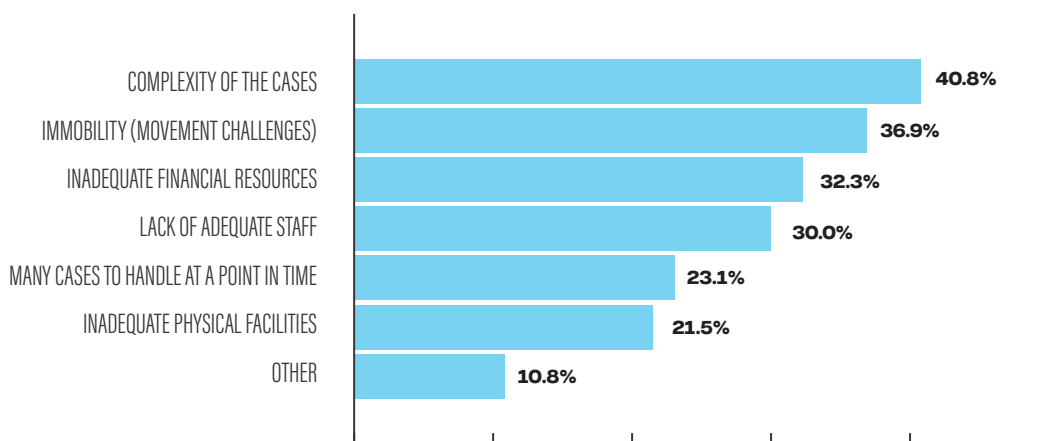
Kasyoka et al (2021: 32) argue that gender based violence in Africa is a complex issue with roots in structural inequalities between men and women that result in power

IMPACT OF DISPUTE ON RELATIONSHIP	FREQUENCY	PERCENTAGE
Not on speaking Terms	77	31.7
Mutual Distrust	45	18.5
Isolation	44	18.1
Stigmatization	33	13.6
Desertion	25	10.3
Divorce	10	4.1
Kicked out of premises/house	9	3.7
Total	243	100.0

13 Table 4.5: Impact of dispute on relationship breakdown

SOCIO-ECONOMIC AND CULTURAL FACTORS	PERCENT
Patriarchal (Matriarchal) attitudes and beliefs	24.6%
Gender biased attitudes	19.5%
Gender economic dependence/resource inequality	18.9%
Lack of access to information	18.0%
Stereotypes	15.6%
Other	3.5%

14 Table 4.6: Socio-economic and cultural factors as obstacles on access to justice



75 Figure 4.3: Reasons for not concluding cases within the SOP timelines

differences. Women's subordinate status to men in the society is coupled with the general acceptance of violence as a means of solving conflict in the family. Moreover, women are rendered vulnerable to violence at all levels of society as it is an acceptable social norm to discipline them and therefore survivors are discouraged from seeking legal redress.

Cultural factors tend to be closely related to gender based attitudes, which in our study come third among mentions. There was strong feeling among respondents that determination of disputes tended to favour men over women due to the structure and ideologies of the justice systems. This was mentioned by nearly 20 percent of the respondents. This according to the key informant interviews was complicated by the fact that in most of the alternative access to justice initiatives, men tended to dominate.

4.4.6 DELAYS IN CONCLUSION OF CASES

Failure to conclude disputes in time was also identified as a major deterrent to access to justice. From our analysis of service providers, it was clear that more than 60%

of the cases were not concluded within the timelines specified in the standard operating procedures (SOP). It is always said that justice delayed is justice denied. When cases drag within justice institutions, community members become pessimistic about the institutions and as a result they shy away from them.

As shown in Table 4.7 and Figure 4.3, there were a number of reasons for cases not being concluded in time. The most cited reason was the complexity of cases, which was mentioned by 41% of the respondents. The more complicated the case was, the more time it took to resolve irrespective of the initiative used. This may in itself make the litigants think that justice was being delayed intentionally although may not be the case. This was closely followed by immobility or movement challenges, mentioned by 37%. Inadequate financial resources for both institutions and community members came third with 32% of mentions by all the respondents. The next one was lack of adequate staff to handle the reported cases. This is also related to the large number of cases that institutions were

handling at any given time. Finally, inadequacy of physical infrastructure was mentioned by 22% of all the respondents. In order to compare how the reasons for not concluding the cases were distributed across the five categories of initiatives that we were assessing, we conducted cross-tabulation between the reasons and the initiatives.

The results indicate that complexity of the cases caused delays in community based initiatives state based initiatives and civil society based initiatives. Movement challenges was more severe among state based initiatives and community based initiatives (Table 4.8). Financial resource constraints seem to be adversely affecting CBOs and state based initiatives. Lack of adequate staffing was a challenge in court based, state based and community based initiatives. Community based initiatives appear to be affected adversely by the high caseload, while lack of adequate physical facilities was more severe among the civil society initiatives. Community members tended to contact community based initiatives in all matters even those that bordered on criminal justice. At times,

	CIVIL SOCIETY BASED	COMMUNITY BASED	COURT BASED	STATE BASED	CBO & RELIGIOUS BASED	TOTAL
Complexity of the cases	42.9%	87.5%	26.3%	46.3%	31.7%	46.9%
Immobility (movement challenges)	23.8%	25%	36.8%	43.9%	39%	33.7%
Inadequate financial resources	33.3%	25%	5.3%	36.6%	41.5%	28.3%
Lack of adequate staff	23.8%	0.0%	52.6%	29.3%	29.3%	27%
Many cases to handle at a point in time	19%	37.5%	5.3%	26.8%	26.8%	23.1%
Inadequate physical facilities	28.6%	0.0%	26.3%	22.0%	19.5%	19.3%
Other	14.3%	12.5%	5.3%	4.9%	17.1%	10.8%

76 Table 4.7. Reasons for not concluding cases within the SOP timelines by Initiative type

these traditional initiatives would struggle with cases only to realise later on that these matters were beyond their jurisprudence.

4.3 INTERPLAY BETWEEN OBSTACLES AND DEMOGRAPHIC FEATURES

Literature has demonstrated that dispute resolution mechanisms more often than not have a gender dimension. As a result of gender discrimination, women are particularly disadvantaged when it comes to pursuing disputes. As shown in Table 4.8, we asked respondents to give their views on issues of gender discrimination when accessing justice. Our findings do indicate that there was underreporting of gender based violence of which in most cases women were the victims. This constituted 30% of all mentions. Related to this was the fact that there was lack of resolution of gender based offences which further discriminated against women. In some communities and cultural settings, gender based offences were not viewed as crimes as they were seen as part of cultural practices. A good example was wife beating which was in some communities accepted as a way of 'instilling discipline' in the family. In some cases, women were obstructed from accessing justice due to cultural or religious practices and as a result they continued suffering in silence. It was also alleged that, especially when women were pregnant, their cases were unlawfully dismissed without being heard.

Further, users of different initiatives were asked if they felt disempowered vis-à-vis their opponents during the dispute resolution process. As expected, and in line with literature, most of the female respondents felt their opponents had more power over them (53%), compared to male respondents (47%).

When we compare the feelings of being disempowered between male and female and education level, the data are not conclusive as shown in Table 4.10. Overall, we find that most people (53%) did not feel disempowered with respect to their opponents.

However, education seems to be a determining factor in this as those without formal education and those with primary education were more likely to feel disempowered as against their opponent at 50% and 56%, respectively. This is higher

GENDER FACTORS CITED	PERCENT
Severe under reporting of gender based offences	30.40%
Scarce resolution of gender based offences	19.60%
Non-criminalisation of all forms of gender based offences	15.90%
Harmful cultural and religious practices	10.00%
Unlawful dismissal of pregnant women	6.30%
Lack of protection of victims	5.90%
Others	5.90%
Restrictions on professions and types of work	3.70%
Limitations of father's access to parental leave	2.20%

17 Table 4.8: Gender discrimination factors that are obstacles of access to justice

FELT RELATIVELY DISEMPOWERED?	FEMALE	MALE	TOTAL (N=127)
No	46.90%	56.40%	52.80%
Yes	53.10%	43.60%	47.20%

18 Table 4.9: Cross-tabulation between disempowerment sense and gender

FELT RELATIVELY DISEMPOWERED?	NO FORMAL EDUCATION	PRIMARY	SECONDARY EDUCATION	TERTIARY EDUCATION	TOTAL
No	50.00%	44.00%	60.00%	60.00%	52.80%
Yes	50.00%	56.00%	40.00%	40.00%	47.20%

19 Table 4.10: Cross-tabulation between disempowerment sense and education level

compared to 40% among those with secondary and tertiary education. We can therefore conclude that a lower level of education is associated with higher levels of disempowerment when pursuing justice in Kenya. Just as the literature has also shown that increase in education increases justice awareness and therefore empowerment when faced with a justice issue (Selita 2019; Barry 2020).

4.4 SUMMARY

In line with the literature reviewed in Chapter 2, our findings do show that access to justice by Kenyans is restricted by a number of factors. The most critical one is the costs related to pursuit of justice. This is closely followed by lack of institutions to seek justice from. In most cases, institutions are established in urban areas, yet most people in Kenya live in rural areas, which means that people must travel long distances to reach these institutions.

There were also psycho-social impacts that make people reluctant to pursue justice. These include emotional stress, psychological problems, relationship breakdown and health problems. Another factor that hinders

access to justice in Kenya relates to the time it takes for cases to be concluded. This resonates with the popular narrative that '*justice delayed is justice denied*'. As a result, many people when faced by disputes in Kenya sometimes preferred not to pursue them on account of these delays.

Other factors that have emerge from our data analysis which act as barriers to accessing justice in Kenya include gender discrimination and cultural factors.

CHAPTER 5

NATURE OF DISPUTES AND INITIATIVES FOR RESOLUTION

5.1 INTRODUCTION

As stated in Chapter Three on Methodology, a total of 199 people who had resolved or attempted to resolve disputes with the help of various access to justice service providers, were interviewed. The users interviewed included individuals had used the services within the last three years prior to the survey. In addition, 162 service providers were interviewed during the fieldwork.

This chapter primarily analyses the type of disputes experienced by the respondents and the service providers which they depended on to resolve their disputes. The chapter also established observable patterns in the preferred service providers for various disputes and their effectiveness. The analysis further extended to areas where certain disputes are more prominent, and sectors of the population that tend to experience certain forms of disputes. We also identified characteristics that are unique to various initiatives. The disputes reported are grouped into thirteen broad categories, while the service providers are grouped into five initiatives.

5.2 TYPES OF DISPUTES IDENTIFIED

A total of 212 cases of disputes were reported. Out of these, 30% were land related, 23% were spouse or partner related, 13% were child dispute related, and at 8% were various other types of disputes. Other reported disputes included commercial, employment, physical assault, and theft at 4% each; and community dispute, sexual assault, disagreement with public bodies, police brutality, and resource conflict at 2% each.

Land disputes included complaints over

title deeds, unfair rent, and delays with handing over purchased land. The spouse/partner disputes included physical violence, desertion, lack of financial support, and forced sexual intercourse. Further, child disputes included trying to get support for a child from the other parent or trying to get custody. Employment disputes, on the other hand, included unfair dismissal, unfair treatment, and salary-related issues; while disagreement with a public body included refusal to admit a child to school, excess fee demanded, licence refusal, and disrespect.

Out of 192 respondents who responded to the question whether the disputes that they experienced were common in their community, 87% of them said that they were common, while 13% said that they were not common. Further, in terms of whether the issue that they were seeking a resolution to was resolved, 80% of 199 respondents said that it was indeed resolved while 20% said that it was not resolved.

Furthermore, out of 193 who responded to the question, 52% got a solution where they first sought help while 48% did not. Out of 195 respondents, 76% said that they were the complainants, 18% said that it was the other party while 5% said that both parties complained against each other. Further, on the question of who took the dispute to the initiative, 77% of 193 respondents said that they took it themselves, 32% said that it was the other party, while 6% said that the parties did it together. Lastly, on why they reported the disputes to the alternative institutions and not to the courts, out of 604 reasons given by way of response, 47% said closeness of the institutions, 36% that the initiatives were skilled at resolving disputes; 28% that their services were free, 26% that they were fast to

deliver, while a similar percentage said that their procedures were fair and impartial, and another similar percentage indicated that the initiatives could enhance community peace and cohesion. Further, 23% reported that they were cheap.

The data present interesting observations relating to disputes that people, particularly the marginalized, tend to experience, and the various characteristics of the cases. Sixty-eight percent (68%) of the cases, for example, are land, spouse/partner, or child related. Each of the other types of disputes do not exceed 4%. The data also shows that nearly 90% of the respondents said that the examples of type of disputes that they gave for this study were common in their community which enhances confidence that the conclusions from the study can be relied on in making policy decisions. In addition, up to 80% of the respondents said that their disputes were resolved by the various alternative initiatives that they relied on. Based on the findings, it can be argued that, partly, the people could be preferring the alternative (to formal court options) initiatives because of the high rate of resolution of disputes. Indeed, most of them (53%) said that their dispute was resolved by the alternative institution that they approached in the first instance which means that they did not need to look for another initiative. However, a substantial percentage (47%) said that their disputes were not resolved with their first instance service provider, hence they opted for other alternative justice mechanisms. One possibility would be that the institution that was first approached only offers advisory support which may have directed them to other alternative initiatives that helped address their disputes.

Additionally, some service providers found some cases to be outside their mandate or ability to resolve. For example, cases that had an element of criminal offence would be referred to the police.

Other observations include that the respondents were mostly (76%) the complainants in the cases that were cited in the study and that the complainants were mostly (77%) responsible for both seeking solution to the dispute and the choice of the initiative for resolving the dispute. This observation means that the majority of the cases relied on in the study relate to decisions made by the complainants hence they were responsible for the decisions on the choice of the initiatives and their justification for choosing the initiatives can be relied on. Indeed, the respondents were asked why they chose the initiatives that they chose and not the courts. A majority of the responses related to what can be described as advantages of the initiatives over the courts. The reasons include physical closeness, which ranked highest at 47%; skill at resolving disputes (36%); free services (28%); fast to deliver (26%); fair and impartial (26%); enhance community peace and cohesion (26%); and cheap (23%). Indeed, if cheap and free were to be combined, then cost would form the most common reason that informs the choice of an initiative. In a few of the cases, but worth highlighting, the respondents indicated that there was no alternative service provider or they did not have information about any other available mechanism.

5.2.1 INITIATIVES USED IN RESOLUTION OF DISPUTES

The service providers were identified based on four pre-identified categories of access to justice services initiatives. The categories were court based initiatives, state based initiatives, community based initiatives (comprising both tradition- and faith based), and civil society based initiatives.¹⁷ Most of the respondents were reached through referrals by the service providers. While the initial plan was to interview three service providers from each type of initiative in each county, in the end, the number varied because some of the initiatives could not be found in some areas and other initiatives had many specific types of service providers hence more than three were provided.

The analysis on the initiatives used in the resolution of disputes is, therefore, not entirely about the most preferred, but also about the initiatives that were interviewed in this study through a targeted process. The breakdown of the initiatives that were interviewed is as shown below:

INITIATIVE TYPE	FREQUENCY	PERCENT
Civil society based	25	15.4
Court based	20	12.3
State based	46	28.4
Community based: tradition based	16	9.9
Community based: CBOs and religious based	55	34.0
Total	162	100.0

20 Table 5.1: Distribution of initiatives of service providers

5.3 SERVICE PROVIDERS' PERSPECTIVE

The service providers were asked if there is a court of law in the areas where they provide their services. About 77.6% of the respondents said YES while 22.4% said NO. When asked about the types of courts available in the areas where they provide their services, the Magistrate Court received 77% of the mentions, the High Court 57.4%, Kadhis Courts 14.8%, while the Environment and Land Court got 4.1% of the mentions. Others such as children's court and mobile court got less than 4% mentions. Further, when asked if people in their community use courts to resolve their disputes, 83.3% said YES while 16.7% said NO. When asked if they knew other justice initiatives working in the community, 95% said they did. Furthermore, when asked the names of the justice institutions working in the community, the highest number, 76.7% of the respondents said community tradition based initiatives, 76.1% state based initiatives (comprising 69.2% national and 6.9% county government units), 56.0% religious based institutions, 45.3% civil society organisations and law firms 13.2%.

When asked which of the justice facilities working in the community most people report their cases to, most people said, community tradition based initiatives at 59.1% of the responses, followed by state based initiatives at 57.9 %, religious based centres at 37.1%, civil society organisations,

others at 13.8% and law firms at 3.8%.

The finding on how various initiatives responded to questions on who resolves disputes in their community may not be one hundred percent accurate because the number of entities interviewed from various initiatives varied and it is likely that entities

may speak better of their own institutions than others. The findings, however, can be taken as broadly indicative of the situation in the community. Most respondents, 78%, said that they were aware of a court of law in the areas where they provide their services and 95% knew of other initiatives. Then 83% of the respondents said that people use courts to resolve disputes. However, when asked to name other justice initiatives in the community, most of them, about 77%, mentioned community (traditional) followed by national government administrative units, religious, then civil society organisations. In other words, while only 9.9% of the respondents were themselves from the community based institutions (traditional), most of the respondents, 77%, recognize the community (traditional) initiatives as the main alternative to courts, followed by national government administrative units, religious based, and civil society bodies. And, despite 83% of the respondents saying that people use courts to resolve disputes, when asked which initiatives rank highest in resolving disputes, they ranked community (traditional) first, followed by national government administrative units, community (religious based), and civil society; courts were mentioned by less than 1%.

Based on the perspective of the service providers, therefore, the traditional institutions are both the most available in the community and the most used and in both cases followed by the national government

¹⁷ See section 1.4 in this paper.

institutions, religious, and civil society.

	1. WHERE DID YOU FIRST GO FOR RESOLUTION? %	2. IF THIS FAILED WHERE DID YOU GO? %	3. WHAT OTHERS ARE YOU AWARE OF? %	4. WHERE DO OTHER PEOPLE GO? %
State based ¹⁸	37.3	25.9	78.9	78.6
Community tradition based	15.2	11.9	29.7	28.9
Community based organisations	12.6	9.7	4.9	5.7
Faith based organisations	10.1	2.2 (religious leaders 5.4)	13	8.8
Civil society	8.6	4.3	3.3	3.1
Courts including kadhis and CAM.	6.5	8.6	21.6	17.6
Others	3.5			8.8
Community policing including Nyumba kumi	2.5		7.1	5.0
Relatives	1.5 or less		1.1	1.9
Lawyer	1.5 or less		<0.5	1.9
Maslaha		2.2	4.3	5.0

1 Table 5.2 Types of initiatives known about and used

5.3.2 USERS

On the part of the users, when asked whom they went to first, to get their dispute resolved, 37.3% responded that they approached state based institutions, the majority of which were chiefs followed by police; 15.2% said community tradition based initiatives, 12.6% said community based organisations, 10.1% community faith based organisations, while civil society organisations were at 8.6%, courts at 6.5%, others at 3.5%, and community policing including *nyumba kumi initiative* at 2.5%.¹⁹ Relatives, and lawyers had 1.5% and below.

Table 5.2 gives the responses to this first question, and to the three that follow. When asked about any other ways of resolving disputes in their community/ area, other than where they sought for a solution of their problems, 78% said state based institutions with majority mentioning chiefs followed by police; 29.7% said community tradition based initiatives, 21.1% court, community faith based organisations including *maslaha*²⁰ at 17.3%, community policing including *nyumba kumi* initiative at 7.1% and community based organisations at 4.9%, CSO at 3.3%, relatives at 1.1%, and others such as

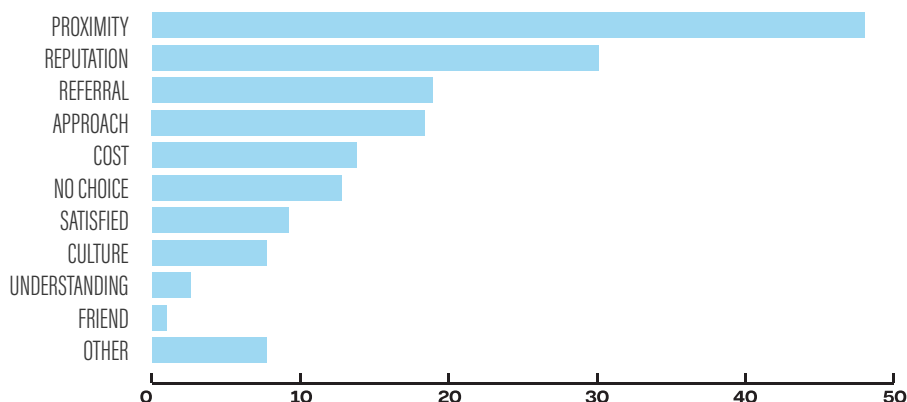
lawyer and mediators got less than 0.5% of mentions (Table 5.2 column 3).

In relation to issues on which the respondents said that disputes are common, they were asked if they have an idea where other people in the community with similar disputes go to have their disputes addressed. About sixty percent (78.6%) said state based institutions, 28.9% community tradition-based initiatives, 17.4% courts, 13.8% community faith based institutions, 5.7% community based organisations, 5% community policing initiatives, civil society organizations at 3.1%, and lawyers and family members at 1.9% each (Table 5.2 column 4).

Further, in cases where the users did not get a solution at the first instance institution, 16.1% said that their disputes are still unresolved, 25.9% said that they then resolved it through state based institutions with most of them going to chiefs, 11.9% community tradition based mechanisms, 9.8% for faith based organisations and 9.7% community based organisations. Further, 8.6% resorted to courts (including court annexed mediation) and 4.3 % went to civil society organisations. (Table 5.2 column 2).

Respondents were asked why they chose the particular service provider.

As Figure 5.1 shows, 48% of the respondents



0-1 Figure 5.1 Reason for choice of initiative

¹⁸ This combines: chiefs, police, Children's Department, county commissioner & deputy commissioner (part of the national government system), county government units and Lands Office.

¹⁹ *Nyumba kumi* means literally ten households. The idea is that, led by the officers of the national government system at local levels, households should be watched and watch out for each other. Security is the dominant government concern.

²⁰ The Maslaha system is an informal Traditional Dispute Resolution Mechanism practiced by the Somali Community in settling their feuds and disputes through elders' Mohamed and Muriithi (2020).

said their choices were informed by proximity to their homes; another 30.1% indicated that it was due to the reputation of the organisation’ previous services; while 18.9% were on the basis of referral by other service providers. Another reason for their choice of initiative was the type of resolution methods and punishment, (18.4%), overall cost of resolving cases (13.8%), and because they had used it before with satisfaction (9.2%).

There was another category who indicated that they had no choice – this was the only option available (12.8%), while others indicated that it was the cultural norm (7.7%), and a small proportion (2.6%) indicated that those initiatives that they went to had a better understanding of the community dynamics.

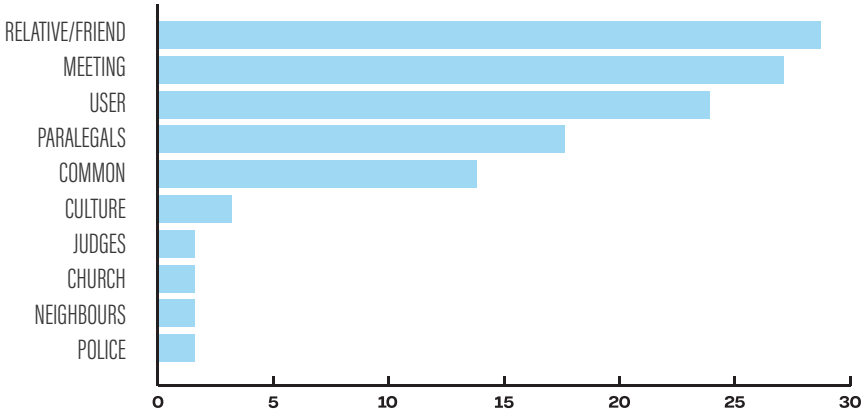
Figure 5.2 shows responses to the question on how they knew about the justice institutions that they sought assistance from in addressing the dispute. Most respondents (28.7%) said that it was through relatives and friends, 27.1% said that it was in a community meeting, while 23.9% said it was through another user. Nearly a fifth of the respondents (17.6%) said that it was through sensitization/mobile clinics by paralegals, and 13.8% said that it is through common knowledge in the community. About three percent (3.2%) said that it is through cultural norms that they knew about the justice initiatives. Judges, church members, neighbours and the police were responsible for the choice of a justice initiative in 1.6% or less of the respondents.

Lastly, regarding the means of transport used by the users of justice initiatives, 41.3% walked, 29.3% used motorcycles and 12.0% cars. In a few cases (1.0%), the officers or representatives of institutions went to the community.

5.4 SUMMARY

Several conclusions can be drawn from the above findings. The majority of those interviewed approach state based institutions mainly chiefs and police to address their problems, followed by community tradition based mechanisms, community based organisations, faith based, civil society organisations and courts. State based followed by community-tradition based initiatives were still the most preferred second option.

Proximity to their homes is the top reason



0-2 Figure 5.2 How did respondents know about the initiative they chose?

given for choosing the initiatives to resolve their disputes; followed by reputation of their services, referral by others, resolution method and punishment, cost, and it being the only option. This means, therefore, that the state based institutions are the most available institutions and how they resolve the disputes is the most convenient to the users. The order of preference of initiatives to resolve disputes is, therefore, influenced by the said factors. Perhaps the reasons such as relatively good reputation of their services and their resolution methods are responsible for the referrals by friends and relatives, which were responsible, mainly, for how they knew about the justice institutions. The finding that more than 40% of the users walked to the various justice institutions, followed by use of motorcycles at about 30%, is also consistent with the finding that proximity to home is the top reason for choosing an initiative. The order of preferred initiatives was generally maintained in terms of the popularity of state based initiatives, mostly chiefs and community tradition based mechanisms when respondents were asked about initiatives that other people with similar disputes use, and how they eventually resolved the disputes in cases where they were not resolved by the first institutions approached.

CHAPTER 6

COSTS AND BENEFITS OF ACCESS TO JUSTICE INITIATIVES IN KENYA

6.1 INTRODUCTION

This chapter begins with a presentation of description of costs and benefits of accessing justice in Kenya. It then presents the methodology with justification on the cost and benefit ratio computation together with the associated challenges. The chapter develops and presents an access to justice score for each initiative and each county as it discusses the potential for sustainability and scaling up of the identified initiatives.

6.2 DESCRIPTION OF COSTS AND BENEFITS OF ACCESSING JUSTICE

6.2.1 CLASSIFICATION OF 'COST' AND 'BENEFIT' FOR THE PURPOSE OF THE STUDY

Obtaining access to justice is a rather complex matter. Many participants are involved in the supply chain granting access to justice, a process in which each of the participants will incur costs. There are costs borne by the parties seeking justice while there are also costs borne by the providers of justice. Cost classification involves separation of a group of expenses into different categories. For decision making, costs are classified as either sunk costs, opportunity costs or incremental costs. Sunk costs are not used for decision making considering that they cannot be recovered or changed and are independent of any future costs an entity may incur. Since a decision made today can only impact the future course of operations, sunk costs stemming from earlier decisions should be irrelevant to the decision making process. On expense traceability, the expenses are classified as direct costs and indirect costs. Monetary

and non-monetary costs were used in the study, monetary costs being items one which we must spend money, while non-monetary costs are measured in units other than money including time, convenience or even effort.

As documented by Sander and Rozdeiczner (2006), many studies show that dispute resolution services often receive very high satisfaction from users. Rule (2012) posits that the difficulty has been in demonstrating that this improved satisfaction generates concrete and replicable economic benefits. Taking cognizance of the literature on challenges in quantifying access to justice benefits, the study opted to apply the replacement principle in which case we used benefit foregone as a proxy for benefit from access to justice process. This is informed by the reality that in the absence of justice problem resolution, the benefits would be foregone in the long run.

6.2.2 CATEGORIES OF COSTS AND BENEFITS

As already stated, the study relied on a sample of 197 respondents who had used different justice access initiatives. Of these, 56.3% confirmed that, other than transport costs, they incurred other costs in resolving their disputes. Transport cost was the one mentioned by a majority of the respondents in this category. In fact, 42.7% of these respondents indicated that they had incurred no other costs besides transport. The monetary costs borne by the disputants are presented in the Figure 6.1 below.

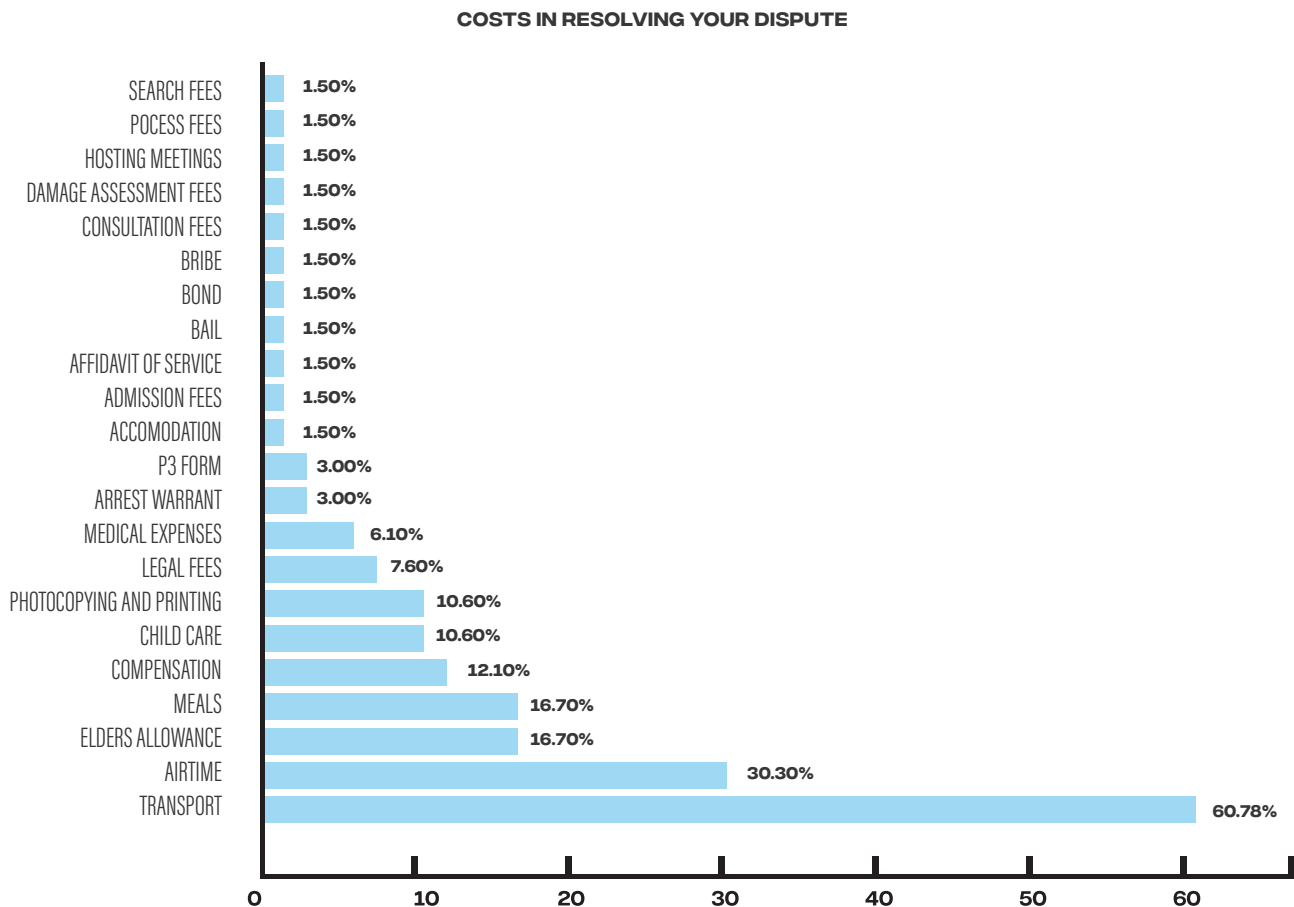
Figure 6.1 shows that the predominant cost, incurred by 60.78% of the respondents, is with respect to transport costs at an average

of Kshs. 316.73 (US\$3). Another cost borne by 30.3% of the respondents is for airtime (telephone communication, usually either phone calls or messages on one platform or other) at an average of Kshs. 606.60 (US\$5.5). Costs for elders' allowances and meals, which were cited by those who used the traditional community – based initiatives, were incurred by 16.7% of the respondents. The average elders' allowance was Kshs. 2,467.30 (US\$22) and the average cost of meals was Kshs. 2,881.80 (US\$26).

Compensation for aggrieved persons was paid by 12.1% of the respondents. The average cost incurred in compensation was Kshs. 49,500 (US\$ 447). Compensation is not really a cost of the process, but the outcome of the process, and is payable only by the defendant or equivalent while the plaintiff/claimant would hope to receive compensation or some other benefit. (It is relevant to remember that a minority of respondents were those complained against, thus liable to pay compensation is unsuccessful.) However, to the users in dispute resolution, they termed this as a cost that was incurred, just as those who receive compensation considered that a benefit.

Another 10.6% of the respondents incurred child care support costs as well as photocopying and printing costs. The average cost on child care was Kshs. 14,532.30 (US\$ 131) and the average photocopying and printing expenses was about Kshs. 2,101.11 (US\$19).

Legal fees were incurred by 7.6% of the respondents. The average legal fees were about Kshs. 21,666.70 (US\$ 196). Medical expense costs were mentioned by 6.1%



27 Figure 6.1: Monetary costs borne by users in accessing justice

of the respondents. The average medical expenses were about Kshs. 29,120. About 3% of the respondents incurred arrest warrant and P3 form costs. The average arrest warrant costs were about Kshs. 14,500 (US\$ 131), while the average P3 forms costs were about Kshs. 1,533.3 (US\$ 14).²¹ Approximately 1.5% of the respondents incurred costs such as; accommodation, admission fees, affidavit of service, bail, bond, bribe, consultation fees, damage assessment fees, hosting meetings, search fees and processing fees.

6.3 COSTS AND BENEFITS ANALYSIS OF ACCESS TO JUSTICE

Cost benefit analysis is used to compare the

total costs of an initiative with its benefits using a common metric (most commonly monetary units). Decisions are therefore made on whether there is a net benefit or cost to the approach. As a technique, CBA is used to evaluate the overall impact of a programme in quantifiable and monetized terms. The formula applied in computing the CBA ratio in this study for each type of initiative is:

$$\text{CBA} = \frac{\text{Mean Costs Incurred}}{\text{Mean Benefits}}$$

$$\text{Net Benefit} = \text{Mean Benefits} - \text{Mean Costs}$$

A more familiar way to present a ratio would

be to divide the benefit by the cost, but this would not work well when the cost exceeds the benefit.

6.3.1 USERS' MONETARY COSTS AND BENEFITS OF ACCESSING JUSTICE

The average total monetary costs incurred by each user in access to justice were then summarized and classified for each alternative justice mechanism. The average total monetary benefits foregone reported by each user were also identified and classified for each alternative justice mechanism. The costs were related to the benefits to derive the benefit cost ratio presented in the Table 6.1.

²¹ See fn 4 on p. x for P3 forms for which there is supposed to be no charge. The same is undoubtedly true of arrest warrant charges at least in a criminal case.

	CIVIL SOCIETY BASED (N=13)	COMMUNITY FAITH BASED (N=31)	STATE BASED (N=47)	COMMUNITY TRADITION BASED (N=18)	COURT BASED (N=7)
Cost	348.5	1,476.10	3,911.50	15,475.00	9,300.00
Benefit	8,023.10	6,806.50	6,769.20	23,480.60	2,214.30
Net benefit	7,674.60	5,330.30	2,857.70	8,005.60	-7,085.70
Cost Benefit ratio	0.04	0.22	0.58	0.66	4.2

22 Table 6.1: Cost benefit analysis by initiative type.

As shown in Table 6.1, the cost benefit ratio for Civil Society Organization based initiatives was 1:25 (0.04); community faith based was 1:4.6 (0.22); State based initiatives 1:1.73 (0.58); while community-traditional based was 1:1.5 (0.66).²²

For the first four types of initiative, the average benefit exceeded the average cost to the user. For the court-based however, the reverse was the case whereby the cost exceeded the benefit to a considerable extent.

To aid comparison, these figures were obtained by dividing the cost by the benefit. In other words, the ratio is presented in a different form. And the lower the number, the greater the benefit derived from a unit of cost. This is presented in Table 6.1 above, on ranking the initiatives on the basis of the CBA ratio. The civil society (CSO) justice system initiatives CBA ratio is 0.04 meaning that every four cents of costs incurred would yield Kshs 1 in benefits within the civil society justice system. For the community faith based (CFBOs) justice initiatives CBA ratio is 0.22 meaning that every 22 cents of costs incurred would yield Kshs 1.0 in benefits within the community faith based justice initiatives. Listing them beginning with the least cost required to gain the same benefit: the state based justice initiatives CBA ratio of 0.58 means that every 58 cents of costs incurred would yield Kshs 1 of benefits; while in the community tradition-based initiatives

CBA ratio of 0.66 means that every 66 cents of costs incurred would yield Kshs 1 in benefits. For the Court based initiatives, a CBA ratio of 4.2 means that every four shillings and twenty cents of costs incurred would be required to yield Kshs 1 in benefits. This is evidenced by a negative average net benefit (or loss) amounting to Kshs. 7,085.7.

6.3.2 COSTS OF PROVIDING JUSTICE (SERVICE PROVIDERS)

The study mainly focussed on access to justice from the users' perspective in line with people-centred justice. However, the focus on costs of accessing justice from a service provider's perspective is equally critical for it enabled us to have a glimpse into the intricacies of what it takes to provide access to justice to the public.

Understanding the cost of providing justice from both the demand side and supply side is critical for informed policy decision making on scaling up services to the public especially at the community level. Failure to do so risks transferring the costs to the user, which translates into a further barrier to accessing justice. Costs borne by service providers are costs saved from consumers of justice service, who would otherwise incur those costs.

The study thus set out to capture the costs of providing justice for service providers. However, various challenges were encountered including: lack of

documentation by institutions and unwillingness by institutions to share their administrative data. Some of the initiatives did not document their procedures and expenditures. Nevertheless, absence of such data did not mean that the costs did not exist. For instance, elders at the community indicated that they do not have a budget for operational expenses. However, the councils sometimes travel to the homes of parties or agreed meeting points with parties; thereby incurring a cost that is not documented. Furthermore, even where records existed, the costs were not apportioned to a particular case or ADR programme.

In other instances, the respondents indicated that they were not mandated to resolve disputes despite community members approaching them for solutions. For that reason, they helped the community members but they did not have a budget for it, making it challenging to account for resources used. For instance, the police, whose main function is maintenance of law and order, do handle disputes reported to them. The documentation at police stations is in the Occurrence Book (OB), which contain records of reports to the station, but does not record information that enables costing of the service. The police say that the OBs are gradually going online, which may enable more analysis of what the police do.²³

Despite these challenges, Table 6.2 illustrates the available data on specific initiatives

	CIVIL SOCIETY	COMMUNITY: FAITH BASED	STATE BASED	COMMUNITY: TRADITION BASED	COURT BASED
Cost of setting up	Ksh500,000	Ksh750,000	Set up by the government	Nil	Set up by the government
Annual operating costs	Ksh200,000	Ksh3,000,000	Difficult to estimate	Nil	Done by government
Marginal costs	Ksh100,000	Ksh36,000	Difficult to estimate	Nil	Done by government

23 Table 6.2 Costs of providing services per initiative type

²² The cost to benefit ratio of each initiative was 1:25 for civil society based; 1:4.6 for community faith based; 1:1.73 for state based; 1:1.5 for community tradition based; and 4.2:1 for court annex-based initiatives.

²³ E.g. Zadock Angira 'Police reforms on course as OB now goes online' *People's Daily* August 4th 2020 <https://www.pd.co.ke/news/police-reforms-on-course-as-ob-now-goes-online-46665/>

average costs as incurred by the service providers in three main categories namely; costs of setting up an initiative; annual operating costs which include salaries, maintenance and other overheads and marginal costs such as costs incurred in enforcement of decisions.

For state based and court based initiatives, there was no specific information about the costs dedicated towards provision of services through ADR. This is because access to justice through the alternative mechanisms was enabled within the existing government

framework, as opposed to setting up a dedicated infrastructure for specific services. Chiefs for instance, indicated that they get a quarterly allocation of Ksh. 30,000, for operations which are not specified to a particular service. Costs from the category of Community FBOs were mainly attributable to the FBOs, and drawn from the costs of running the religious based institutions. These did not entail an estimation of costs dedicated to dispute resolution. Some of the institutions gave an estimation of their annual budgets as indicated in Table 6.3 below.

As indicated in Table 6.4 below, most of the respondents indicated that they did not charge clients for services rendered. The main reason given is that most of the people being served could not afford to pay for services. This was a common response across the various initiatives. For the faith based initiatives, providing services at no cost was part of their pastoral duties. In a few other instances, some costs were borne by clients. However, these were considered affordable by providers since the costs were below Kshs. 1,000 and were not demanded from their clients.

A28. WHAT IS THE ESTIMATED ANNUAL BUDGET OF YOUR ORGANIZATION IN MATTERS RELATING TO DISPUTE RESOLUTION? * TYPE OF INITIATIVE CROSS-TABULATION							
AMOUNT (KSHS)		TYPE OF INITIATIVE					TOTAL
		CIVIL SOCIETY	TRADITIONAL COMMUNITY BASED	COURT BASED	STATE BASED	CBO & FAITH BASED	
A28. What is the estimated annual budget of your organization in matters relating to dispute resolution?	Above 1,000,000 ²⁴	5	1	6	6	11	29
	100,001 – 500,000	3	1	1	5	2	12
	50,000 – 100,000	4	2	2	2	4	14
	500,001 – 1,000,000	3	0	4	3	6	16
	Less than 50,000	10	12	7	30	32	91
Total		25	16	20	46	55	162

24 Table 6.3: annual budget of service providers per initiative type

		COMMUNITY- FBOs	CIVIL SOCIETY	COURT BASED	STATE BASED	COMMUNITY -TRADITIONAL	TOTAL
A12. What is the average total cost to a client for accessing justice from your department/ institution?	Above Ks 50,000 (US\$450)	0.00%	4.00%	15.00%	2.20%	0.00%	3.10%
	Below Kshs 1000 (US\$9)	7.30%	8.00%	25.00%	2.20%	12.50%	8.60%
	Free	85.50%	84.00%	25.00%	89.10%	56.30%	75.90%
	Ksh. 10,001 – 20,000(US\$90-180)	0.00%	0.00%	5.00%	2.20%	6.30%	1.90%
	Ksh 1000 – 5000(US\$9-45)	5.50%	0.00%	10.00%	4.30%	12.50%	5.60%
	Kshs 20,001 – 50,000 (US\$180-450)	0.00%	0.00%	5.00%	0.00%	6.30%	1.20%
	Kshs 5,001 – 10,000 (US\$45-90)	1.80%	4.00%	15.00%	0.00%	6.30%	3.70%
Total		100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

25 Table 6.4: Average service providers charges per initiative

²⁴ KShs 1 million is a bit less than US\$ 10,000.

'Most residents are relatively poor' – probation officer Naivasha

'It is part of our pastoral duty' – Pastor, Nakuru

'Kuitisha pesa kutoka kwa maskini ni kutafuta laana' [To call for money from the poor is to seek a curse] – Village elder, Nakuru

'Most of the people we help are young men and women who have no income' – Peace Coordinator, Bahati, Nakuru

'It makes it accessible to residents' – court-annexed mediation, Nakuru

While most initiatives indicated that their services were free of charge, the users still incurred certain costs. For instance, for a council of elders in Turkana County to resolve a dispute, they needed to arrange for a location where parties involved and other community members could attend. The offender, in this case, would look for a means to feed all those in attendance and it was said that one or two cows were sufficient. Therefore, while the parties were not asked to pay for any service, they ended up incurring costs. At the same time, the feeding gesture also served as a symbol of the offenders atoning for their sins. *'All members involved feast on the meal including the offender. This way, their sins are washed away and they get to go on without anger in their hearts.'* – Turkana Elder.

In the court annexed mediation initiative (CAM), the respondents indicated that no charges were imposed on the parties since the judiciary took care of the costs such as mediators' fees, personnel costs of the mediation registrar, supervising judicial officer and court clerks. However, cases under CAM were first filed in court before they were screened for suitability. This came with costs of filing, and the service was thus not entirely free. Even to get to this stage is a challenge for many, in terms of travel, filing fees, and comprehension, alternatively it involves hiring a lawyer – as discussed earlier. In some cases, users indicated that they incurred costs of accessing services such as allowances for elders, processing of the case, airtime, transportation, stationery and other payments not understood by the researchers at least. Another reason why the users incurred costs was because some of the initiatives lacked funding and as such, they

had to find a way to get work done.

6.4 CHALLENGES ENCOUNTERED IN COMPUTATION OF CBA FOR JUSTICE INITIATIVES

The first challenge in computation of cost benefit analysis for both the users and the service providers relates to the operationalization of benefit. Certain costs for the users may be a benefit for the service providers and vice versa. Cost benefit analysis is premised on the monetary value of both the costs and the benefits for the users and the service providers; certain costs and benefits are non-monetary and this criterion excludes them from the analysis. Some benefits for the service providers are economy wide and may not be specific to identified justice systems.

Akin to the foregoing, another challenge in cost benefit analysis is the amount of subjectivity involved in the process of identifying, quantifying, and estimating different benefits and costs. Considering that some costs and benefits are non-monetary in nature, such as increases in judicial staff satisfaction or even increasing in satisfaction among sparring parties, scenarios require one to subjectively assign a monetary value for purposes of weighing the total costs compared to overall financial benefits of a particular justice initiative. The estimation and forecasting is based on past experiences and expectations which are at times biased. These subjective measures therefore result in inaccurate and misleading cost benefit analysis.

When projects run over time, cost benefit analysis envisages that estimates of costs and benefits accrue over time and therefore it

may be necessary to calculate present values of the cash flows. This approach equalises all present and future benefits as well as costs by evaluating all items in terms of present-day values, which eliminates the need to account for inflation or speculative financial gains in the process. Unfortunately, this poses a significant disadvantage because, even if one can accurately calculate the present value, there is no guarantee that the discount rate used in the calculation is realistic. A cross sectional computation of CBA without considering costs and benefits over time is a challenge.

Cost benefit analysis also requires that all costs and benefits are identified and appropriately quantified. However, human error can translate into common cost benefit analysis errors including accidentally omitting certain benefits and costs due to the inability to forecast indirect causal relationships between them. Additionally, the uncertainty and ambiguity involved in quantifying and assigning monetary values to intangible items leads to inaccurate cost benefit analysis. The foregoing two tendencies can lead to inaccurate analyses, which can lead to increased risk and inefficient decision making about the justice initiatives.

6.5 ACCESS TO JUSTICE INDEX IN KENYA

The Access to Justice Index was constructed as a product of the Accessibility, Acceptability and Availability variables as adapted from Marchiori (2015). To compute the access to justice index, three measures of access were used: availability, accessibility, and acceptability using responses from the users of the justice initiatives. Availability was measured using the presence of an initiative to deal with the nature of cases brought to them by the community. Accessibility was measured using an assessment of distance of travel to the initiative used. Distances of less than 2km are reasonable travel distances and attract higher scoring compared to those with more than 5km, or distances with above 25km. Acceptability was then measured using the likelihood of the user re-using the service or recommend it to other users facing similar disputes based on their experience with the services provided. The product of the three variables was computed and each individual was awarded a score.

The researchers then used a three-point

PLACE ON INDEX	COMMUNITY- FAITH BASED	COMMUNITY-TRADITION BASED	STATE BASED	COURT BASED	CIVIL SOCIETY BASED	TOTAL
High	94.60%	93.90%	89.20%	80.00%	76.20%	89.40%
Medium	5.40%	6.10%	9.50%	6.70%	14.30%	8.00%
Low	0.00%	0.00%	1.40%	13.30%	9.50%	2.50%

26 Table 6.5: Access to Justice Index by initiative type

ACCESS TO JUSTICE LEVEL	EDUCATION LEVEL				
	PRIMARY	TERTIARY	NO FORMAL EDUCATION	SECONDARY	TOTAL
High Access to Justice	94.80%	91.30%	85.70%	80.40%	89.10%
Medium Access to Justice	3.90%	8.70%	7.10%	14.30%	8.30%
Low Access to Justice	1.3%	0.0%	7.1%	5.4%	2.6%

27 Table 6.6: Access to Justice Index by level of education

Likert scale²⁵ to group the initiatives on a scale based on the scores given to them by individual respondents. On a Likert scale of 1 to 3, a score of 1 implies highly accessible justice, the 2 implies medium accessible justice and 3 implies low accessibility to justice.

As presented in Table 6.5 above, overall 89.4% of the respondents reported a high level of access to justice through the initiatives, 8.0% of the respondents reported a medium level of access to justice through the initiatives and 2.5% of the respondents reported low level. Ranking the initiatives on this basis, the study places the initiatives as; community faith based (94.6%), community tradition based (93.9%), state based (89.2%), court based (80%) and civil society based (76.2%). Although the court based initiatives scored higher than CSO based initiatives in the high ranking under the access to justice index, it nevertheless scored more low rankings at 13.3% no other initiative scoring more than 9.5% low rankings.

In Table 6.6 below, the respondents' level of education is cross tabulated with the access to justice index. Ranking initiatives as offering a high access to justice is found amongst respondents holding primary level of

education (94.8%), tertiary level of education (91.3%), no formal education (85.7%) and secondary education (80.4%). 7.1% of the respondents with no formal education experience low and medium access to justice.

The respondents' gender was cross tabulated with the access to justice index as presented in Table 6.7 below. High level of access to

	MALE	FEMALE	TOTAL
High on Access to Justice Index	89.10%	89.90%	89.40%
Medium on Access to Justice Index	7.30%	9.00%	8.00%
Low on Access to Justice Index	3.60%	1.10%	2.50%

28 Table 6.7: Gender and Access to Justice Index

	18 - 25	26 -35	36 - 45	46 - 55	56 - 65	65 - ABOVE	TOTAL
High on Access to Justice Index	90.90%	85.50%	94.10%	88.40%	82.40%	95.50%	89.40%
Medium on Access to Justice Index	9.10%	9.10%	5.90%	7.00%	17.60%	4.50%	8.00%
Low on Access to Justice Index		5.50%		4.70%			2.50%

29 Table 6.8: Age and access to justice index

justice is reported by female (89.9%) and male (89.1%) users' respectively. 3.6% of the male users and 1.1% of the female users of

justice initiatives reported a low level of access to justice. In other words, there was no significant difference based on gender.

The respondents' age bracket was cross tabulated with the access to justice index as presented in Table 6.8 below. High access to justice is reported by the 65 years plus age bracket (95.5%), 35 -45 years age bracket (94.1%), 18 -25 years age bracket (90.9%), 46 -55 years age bracket (88.4%), 26 -35 years age bracket (85.5%) and 56 -65 years age bracket (82.4%). Low access to justice is reported by 5.5% of the 26 - 35 years age bracket and 4.7% of the 46 - 55 years age bracket. There is thus no clear correlation between age and assessment/

experience of level of access to justice.

Table 6.9 below shows that 100% of respondents from Nakuru

County, 96% from Meru County, 95.5% from Nairobi County, 93.1% from Garissa County, 92.3% from Bungoma County, 85.7% from

POSITION ON A2J INDEX	NAIROBI	BUNGOMA	MERU	GARISSA	NAKURU	KIAMBU	KILIFI
High (%)	95.5	92.3	96	93.1	100	85.7	85.7
Medium (%)	4.5	7.70%	4	6.9	0.00	14.3	9.5
Low (%)	0.00	0.00	0.00	0.00	0.00	0.00	4.8

30 Table 6.9: Access to Justice Index by county of study

²⁵ A three-point Likert scale 'a scale that offers agree and disagree as to the polar points along with a neutral option'. However, in this instance availability is a Yes/No issue while accessibility is an objective measure of the distance involved in getting access to justice.

'In the end, my dignity was restored and I got the emotional and psychological satisfaction I was looking for' – user in a boundary dispute resolved by a CBO in Kibera

'Culturally, women are expected to be subservient to their husbands. I did not receive the support of family, friends and community during this process.' a woman in Garissa in a case against her husband, in a case resolved through court-annexed mediation, initially reported to the *Maslaha*

'From the mediation process, I was made aware of my rights,' a user of court-annexed mediation in an employment dispute

'The courts were biased due to false testimonies but the Njuri Ncheke resolved the case efficiently. People respect the oaths during the dispute process,' a respondent against whom a complaint was made. He stated that he was treated with respect and empathy, although he felt that the system may not be favourable to women because **'women are treated differently by the Njuri Ncheke where the oaths administered are usually rough.'**

A women accused of witchcraft stated that she felt isolated but felt **'better afterwards after a resolution was found.'** However, she felt that she was treated differently because of her gender, the elders spoke to her harshly and **'refused to resolve my case because I was a woman.'**

Kiambu and Kilifi counties, 80.0% from Turkana County reported high access to justice. 13.3% of respondents from Turkana County, 7.4% of respondents from Migori County and 4.8% of respondents from Kilifi County reported low access to Justice.

These findings correspond with national data on the circumstances of the counties. Turkana and Kilifi are among the 14 counties that were listed as marginalised by the Commission on Revenue Allocation. Migori, together with these counties was also ranked among the 20 least developed counties using the County Development Index ranking those measures disparities in access to basic services.²⁶

6.5 NON – MONETARY COSTS AND BENEFITS OF ACCESS TO JUSTICE

The process of seeking resolution of a dispute is characterised by both negative and positive impacts that are not quantifiable. These are best discerned from narratives of people's experiences in the course of

seeking justice. They are described in terms of impacts on emotions, relationships with others, feelings about the process and outcome among others. As a result, these tend to be subjective since experiences of people may differ despite going through a similar process. In this study, the non-monetary costs and benefits were measured by seeking from users' information on impact of the dispute, impact on relationships, benefits of participation in the resolution of the dispute and satisfaction with the process.

Positive and negative experiences were shared across different initiatives employed by users. Among the benefits indicated by users were restoration of relationships, emotional satisfaction, restoration of dignity, resumption of peace, experience in resolving similar disputes and knowledge about one's rights. and how to prevent similar disputes in future.

6.6 IN-DEPTH ANALYSIS OF INITIATIVES' POTENTIAL FOR SUSTAINABILITY AND SCALING UP

In this study, the cost benefit analysis and access to Justice Index are used in selection of the alternative justice initiatives that should be scaled up. Table 6.11 brings together the CBA ratio and the high access to justice ranking.

As presented in Table 6.11 below, 94.6% of the respondents cited a high level of access to justice for the community faith based initiatives, which also have the second best

IMPACT	FREQUENCY	PERCENTAGE
Emotional stress	136	68.69
Psychological breakdown	104	52.53
Relationship breakdown	85	42.93
Health problems	32	16.16
Physical harm	32	16.16
Other	16	8.08

31 Table 6.10 Impact of dispute

	COMMUNITY- FAITH BASED	COMMUNITY-TRADITION BASED	STATE BASED	COURT BASED	CSO- BASED
High on Access to Justice Index	94.60%	93.90%	89.20%	80.00%	76.20%
CBA Ratio	0.22	0.66	0.58	4.20%	0.04

32 Table 6.11: Initiatives, Access to Justice Index and cost benefit ratio

²⁶ The identification of the 14 marginalized counties was informed by three approaches (a) historical injustices analysis; (b) county surveys (c) CDI ranking. See Commission on Revenue Allocation. (2013). Also map of marginalised areas in Commission on Revenue Allocation. (2013).

CBA ratio. This was largely attributed to their broad outreach and close proximity to the people. Consequently, this gave them greater accessibility.

Within the community tradition based initiatives, 93.9% of the respondents indicated a high degree of access to justice, and a CBA ratio of less than 1 at 0.66 which showed the significance of the initiative. Just like community based organisations and religious- based initiatives, the high level on the index was mainly attributed to their accessibility, since traditional mechanisms are found within the communities. Elders who served in the councils were members from the community, and thus were well-conversant with the people and the issues they grappled with.

The dispute resolution approach used by community leaders encouraged reconciliation

‘This is the best way to resolve such cases as there is no justice in court and no one would have come out as a witness and such cases need witnesses. If we went to court, it would take time for witnesses to leave their work and go be witnesses in the case, which most people would not agree to. Also, we would not have received justice. It also makes us have peace and both communities can go back to speaking terms. We are now friends and they even attended the burial and took part in the funeral ceremony,’ said the chairman. ‘If we would not have intervened in this case, you would have heard the media reporting ethnic clashes. The young men from the community had armed themselves and were ready to go avenge his death without thinking about the consequences’

‘Balozi [elders] lead a lot in the village. They know how we live. They are known.’ – user, Kuria West, Migori

‘People pay a certain price for services provided by the elders. The person decides what is enough. It’s normally in form of one or two cows. All members involved feast on the meal even the offender. This way, their sins are washed away and they get to go on without anger in their hearts.’ - Elder in Turkana

between sparring parties and communities as illustrated in a case of murder involving two communities in Bungoma County. It was resolved by community leaders in collaboration with a faith based organization. The proximity of community elders and the low turnaround for resolving disputes are an added advantage for users who incur less opportunity costs. On decision making, elders are respected within the community and so are their decisions. Other sentiments expressed by the respondents on their preference for community elders show the trust the people have in them.

The process of handling a dispute is also flexible including in determining the appropriate remedy. Unlike in courts where remedies and penalties are set by law, elders determine in consultation with the parties the appropriate remedy. Emphasis on reconciliation is a major benefit of using community elders.

The mechanism also favours disputes which are not necessarily a complaint by one party against another such as resource conflicts but manifesting as assault by neighbours.

Furthermore, there is opportunity in these mechanisms to explore the real problem, e.g. scarcity of resources, as opposed to symptoms manifested by conflicts. In the formal criminal process, these would have been treated as a case of assault, falling short of addressing the root problem.

The state based initiatives received 89.2% high access to justice ranking with a CBA ratio of less than 1 at 0.58 which also supports scaling. This category was the heaviest in terms of the different service providers categorised under the state based initiatives. As such, within this category are different service providers with diversity in the nature of services offered, the population served and geographical reach among others. Chiefs and police have stronger grassroots’ presence and are well-known to the public. Furthermore, they provide a link between the community and other initiatives including the formal justice mechanisms through multi-sectoral initiatives such as the Court Users Committees. Scaling up access to justice through this category does not require costs of setting up new structures, since they are already serving under an

established government framework. The function of resolving disputes comes into play in their roles of maintaining law and order. Elevating access to justice under this category thus calls for streamlining of functions, enhancing capacity of administrators, strengthening institutional operations and commitment of more resources.

The civil society initiative users’ responses indicated a high level of access to justice to the extent of 76.2% which, coupled with this type of initiative’s CBA ratio of 0.04, supports the upscaling of the initiatives, this is being the most cost effective type since every shilling of benefit derived cost only four cents. Civil society organisations (CSOs) have a wider reach than community tradition based organizations in terms of their areas of operation, the target population and range of services provided. They both are non-state actors providing services especially to those not reached by the existing formal mechanisms. When compared to other initiatives such as community tradition based organizations, police and chiefs, however, CSOs had a lesser grassroots’ presence.

Moreover, their operations are pegged on constant sources of funding, which means that their sustainability could be affected. CSOs however, have the advantage of more experience, resources, established structures and expertise in their areas of operations, being more established than community tradition based organizations. A wide range of CSO based initiatives were reached, ranging from the nationally-based to those situated within limited localities and those dealing with specific types of cases. Therefore, the effectiveness of upscaling should consider these factors as well as the need for better linkages between CSOs and faith based as well as tradition based CBOs.

The court-based initiatives had the worst CBA ratio of 4.2 and scored lowest in the access to justice index. This high score is attributable to various factors. Firstly, the study focussed on the court annexed mediation initiative which was yet to be rolled out to all courts in the country. Furthermore, compared to the other initiatives such the community based initiatives, the court-based mechanism is limited in terms of the types of cases that can be handled. Since the programme is annexed to courts, its accessibility is conditioned on the physical accessibility of courts. One of the subsisting challenges in accessing justice through courts is their accessibility due to the vast geographical areas being served by the courts.

Important to the discussion on prospects of scalability of initiatives is the need to take into account the unique circumstances of the geographical areas that were studied. This helps to align the recommendations with the needs of the people and strengths of ADR mechanisms in those areas. Some mechanism are well-established and more accepted in some areas when compared to others e.g. the *Njuri Ncheke* among the Meru people; *Maslaha* among the Somali communities; *Balozi* (elders) in Bungoma

'There's a mobile court in Lokitar, but when there are no funds, we are forced to travel to Lodwar.' (Lodwar is hundreds of km away from Lokitar). [In Turkana County]

Kilifi County is vast and hence the available institution (court) is inaccessible. It's difficult to get witnesses. 'If the case doesn't take off that day, it's very difficult to get them to commit since where they come from is very far. The mobile court started at Marafa was stopped because of inadequate funds. 'Because of the area, some of the witnesses are located far from the court.'

among others. However, their promotion should not offend the Constitution, and the interests of groups of people affected by their decisions. Women have for instance, voiced concerns about use of *maslaha* to mediate in cases of sexual violence (Bashi 2020; Songok 2020).

Justice through the courts remains more expensive from both the service providers' and the users' perspectives. From the part of the judiciary, it entails designating particular judicial officers and staff: a mediation judge/magistrate, registry and other court officials and mediators. Currently, the judiciary is bearing the costs of paying mediators. Sustainability of the programme is dependent on availability of funding to the judiciary. Therefore, the scaling up of ADR through the courts needs to be made more viable by enhancing accessibility beyond the physical access to courts such as increased deployment of mobile courts and diversifying sources of funding.

An important factor to consider is the interdependence among institutions in resolving disputes. Some cases demand collaboration between the different initiatives e.g. religious leaders seeking intervention

'The individuals approach the Sheikh who many a time solves the disputes alone. In the event that he cannot solve it alone, the Sheikh involves the council of elders and other religious leaders.' - Religious leader Garissa.

'Cases that involve threats are reported to the police for security purposes and intervention. We refer to rescue centres/shelter for psychosocial support.' - CBO, Nakuru East

of the council of elders; police referring parties to a chief and vice versa; or when parties fail to reach a solution and the matter goes to court. Many of the service providers indicated that they refer cases to

A25. ARE THERE CASES REPORTED TO YOU THAT YOU CANNOT DEAL WITH? * TYPE OF INITIATIVE CROSS-TABULATION							
		TYPE OF INITIATIVE					TOTAL
		CIVIL SOCIETY	COMMUNITY- TRADITION BASED	COURT-BASED	STATE BASED	COMMUNITY- FAITH BASED	
A25. Are there cases reported to you that you cannot deal with?	No	0	7	7	6	4	24
	Yes	25	9	13	40	51	138
Total		25	16	20	46	55	162

33 Table 6.12: Cases referred to other service providers

other institutions. This finding relates to the finding that organizations did not handle all the cases that are reported to them. As presented in Table 6.12 below, only 22 out of 107 respondents (service providers) indicated that they never referred cases; closely in comparison with 24 out 162 respondents who stated that they did not encounter cases that they were unable to deal with.

The inability of service providers to handle all types of cases was mainly attributable to the nature of cases that organizations encounter. This may be on the one hand an aspect of incapacity of institutions to handle certain types of cases. On the other hand, it underpins the reality that the pathway to seeking redress cannot be a one-size-fits-all. Thus, the process of provision of support and assistance for justice needs involves interdependency among institutions. This reality further informs the later analysis on scaling up of initiatives.

Computing costs of providing services calls for an appreciation of the capacity of institutions to deliver justice. Availability of institutions is not, on its own, a guarantee of effective justice where those institutions lack capacity to meet the demand for services. Further, incapacity of institutions to meet such demand has an impact on costs of accessing justice such as the turnaround time to resolve a dispute, the need to navigate through the chain of getting redress across different institutions and other attendant costs. Examination of capacity of institutions to deliver also gives insight into appreciating what it takes in terms of costs, to operate a mechanism that is responsive to the community justice needs.

More than 60% of the service providers indicated that cases were not concluded within the timelines specified in the standard operating procedures. The study looked at the main reasons given by the service providers that prevent them from resolving disputes within prescribed organizational timelines as summarized in figure 6.13 above.

Another common challenge that had a direct bearing on costs of both accessing and providing services was inadequate financial resources controlled by both service providers and consumers of their services. For example, SCOPE, a CBO based in Kilifi, indicated that it did not have a specific programme to handle disputes, thus staff sometimes donated funds from their own

REASONS FOR NON-COMPLETION OF CASES	
Complexity of the cases	Many cases to handle at a point in time
Immobility (movement challenges)	Inadequate physical facilities
Inadequate financial resources	Other
Lack of adequate staff	

34 Figure 6.13: Reasons for not concluding cases within the SOP

‘People often think that the courts are not working because of how long it takes to solve their cases. There are too many cases and sometimes we have to look for witnesses.’ – Malindi Court

‘It’s a challenge for the judicial officers because people come late to court and when it’s raining they will not attend because the roads are impassable. They start their journeys to court at 4 am or 3 am since they live very far from the institution. This then delays the hearing of cases. If the case doesn’t take off that day, it’s very difficult to get them to commit since where they come from is very far.’ – Kilifi Court

pockets.

Another common reason given by respondents was uncooperative clients. This is attributable to the process of resolution of disputes. Most of the users interviewed indicated that their disputes were resolved through mediation and counselling. Successful resolution of disputes in this manner largely depends on mutual cooperation and voluntariness of the parties involved. As one of the service providers in Kilifi explained, *‘sometimes parties are bribed to drop the case, but later on reappear to seek a solution, thus the case remains open’*

Lack of evidence and witnesses also determines how quickly a case will be determined. Service providers depended on availability of witnesses to proceed with cases to conclusion. Unavailability of witnesses was attributable to the vastness of the geographical areas being covered, especially in areas such as Kilifi and Turkana counties. This overburdens the users, for whom it means that attending to a matter involves loss of a time and opportunity to earn their livelihoods.

6.9 SUMMARY

In this chapter, discussions revolve around decision making while applying costs benefit analysis to justice initiatives. Cost benefit analysis is used to compare the total costs of

an initiative with its benefits using a common metric (most commonly monetary units). Thus, decisions are made on whether there is a net benefit or cost to the approach.

The chapter highlights that many participants are involved in the justice supply chain wherein each of the participants incur costs. On one hand, there are costs borne by the parties seeking justice while on the other hand, there are also costs borne by the providers of justice. The costs and benefits in a judicial process can be direct or indirect and they can also be monetary and non-monetary costs.

On the demand side, the monetary costs incurred by justice initiative users in the process of accessing justice include: transport costs, elders’ allowances, meals, compensation for aggrieved persons, photocopying and printing costs, legal fees, medical expenses, arrest warrant expenses, P3 form costs, accommodation, admission fees, affidavit of service, bail, bond, bribe, consultation fees, damage assessment fees, hosting meetings, search fees and processing fees.

On the supply side, lack of documentation by institutions and unwillingness by institutions to share their administrative data was an evident challenge in costs quantification. Some of the initiatives did not document

their procedures and expenditures. Identifiable service providers average costs were classified in three main categories namely; costs of setting up an initiative; annual operating costs which include salaries, maintenance and other overheads and marginal costs such as costs incurred in enforcement of decisions.

On the demand side, while taking into consideration the challenges in quantifying access to justice benefits, this study opted to apply the replacement principle in using benefit foregone as a proxy for benefit from access to justice initiatives because in the absence of justice problem resolution, the benefits would be foregone in the long run anyway.

By ranking the initiatives on the basis of the CBA ratio, the unit of costs generates more units of benefits in the order of civil society, community faith based, state based, community tradition based and lastly court based initiatives. For the court based initiatives, the costs outweigh the benefits as evidenced by a negative average net benefit amount.

The chapter presents an access to justice index which was measured as a product of the Accessibility, Acceptability and Availability variables. The initiatives are then ranked on the premise of high access to justice index as; community faith based initiatives, community tradition based initiatives, state based initiatives, court based initiatives and civil society based initiatives. Court based initiatives score worse in terms of offering high access to justice than all except civil society initiatives, and most in terms of offering low access.

The cost benefit analysis and access to justice index are thereafter used in selection of the alternative justice initiatives might best be scaled up. The priority list comprises religious community based initiatives, tradition based initiatives, state based initiatives, and civil society organization initiatives in that order. Court based initiatives would seem to have little claim to priority at least for the sections of the community that this study has focussed on, and the types of disputes that concern them. Of course, for some purposes resort to court cannot be avoided, but this rare for civil (non-criminal) disputes. And then the court annexed mediation system may come into its own.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

7.1 INTRODUCTION

This study documents experiences of providing and accessing justice through the main pathways categorised under five types of initiative. It has identified obstacles to accessing justice from the point of view of service providers and beneficiaries of their services. This chapter captures the key highlights from the study, and the policy directions that should be taken up to enhance access to justice.

7.2 LIMITATIONS OF THE STUDY

This research has some limitations.

Unwillingness by some service providers to share administrative data, particularly on budgets, restricted the study's access to the full account of information needed for an effective analysis. Reliance on service providers to link to their clients posed some challenges. Some service providers declined to provide information about their clients on account of confidentiality.

Other service providers do not have records of users of their services, and could not therefore, reliably connect us with them. In other cases, the users provided were outside the study area and therefore, they could not be reached due to additional expense and time that would have been required. These challenges affected the study's ability to reach the targeted respondents.

To bridge these gaps, the project team incorporated a snowballing approach in data collection. This was useful in identifying users of different initiatives of access to justice.

Efforts were made to reach out to service providers that serve marginalised and vulnerable groups such women, children, persons with disabilities, and sexual minorities. However, in view of the limited period for data collection, and organisational difficulties, not all targeted institutions were reached. Additionally, a section in the user questionnaire was designed to collect information, perceptions and experiences on

access to justice for marginalised groups.

7.3 KEY FINDINGS (BASED ON OBJECTIVES)

Literature has shown that access to justice in many countries is constrained by a number of obstacles. These include, poverty, corruption, backlog of cases, few judges and magistrates, social and political backwardness, ignorance, procedural formalities, the politicization of disputes, lack of professional interaction, lack of diversity, proliferation of regional arbitration centres, language and territorial barriers, cultural context, experience (the law of diminishing returns), professional training and low mentorship of arbitrators. Access to justice is skewed against the vulnerable members of societies such as the poor, people living with disabilities, people in the informal settlements, communities in rural areas and in marginalized regions such as Kenya's arid and semi-arid lands. Similarly citizens who have lower levels of education tend to have low access to justice compared to educated citizens.

Our study corroborates the literature in so far as the obstacles of access justice are concerned. Our results show that costs of pursuing justice are a major deterrent to accessing justice in Kenya. This applied to both the court and alternative dispute resolution mechanisms. About 41% of all respondents (users) indicated that the costs of pursuing justice was expensive and only 24% who thought the costs were cheap. Further, it was revealed that there were many hidden formal and informal costs which made access to justice expensive. Lack of access to justice was further exacerbated by information asymmetry, poverty, corruption, and lack of justice institutions in remote areas.

Lack of resources (especially financial resources) was also mentioned by service providers as one of the deterrents to

accessing justice. There was also low awareness level, uncooperative clients and insecurity. There were also psycho-social effects of pursuing justice, gender discrimination, cultural factors and time consumed in pursuing a dispute. These factors appear to disproportionately affect female compared to male respondents; those with low education levels compared to better educated people; the vulnerable; the marginalized; and the rural compared to urban population.

In this study, we were interested in knowing the nature of disputes that Kenyan citizens faced and the mechanisms they used to pursue justice. Out of the total 212 disputes, 30% were land related, 23% were spouse or partner related, and 13% were child related. Other reported disputes included commercial, employment, physical assault, and theft at 4% each; and community dispute, sexual assault, disagreements with public bodies, police brutality, and resource conflict at 2% each.

The dominance of these three broad types of issues: (i) land related (ii) spousal and close family related and (iii) child custody and support has an important bearing on family and community co-existence. There was consensus among the respondents (at 87%) that the kind of disputes they were facing or they had resolved were common in their location/community. From a cost/benefit analysis perspective, these are enormously important – land is a major source of violent crime and family union is an important structure in the society. Understanding the financial costs - including that for women costs loom larger than for men – suggests the need for local solutions in addressing disputes. Our study further finds that most of the respondents we interviewed were the aggrieved parties (complainants) and that they were responsible for selecting the initiatives to seek justice from.

In terms of the initiatives used, our study found that community tradition based and community faith based organizations were the most commonly used initiatives in accessing justice in Kenya (34%). This was closely followed by state based initiatives (police, chiefs and nyumba kumi elders) at 28%. In terms of first contacts that citizens went to when faced by the dispute, chiefs came first followed by elders, police, community tradition based organizations and community faith based organisations. CSOs and courts ranked low at 8.6% and 4.5%, respectively. One of the factors that determined the first point of contact when resolving dispute was the distance to be covered. Respondents indicated that they used proximity to their homes in determining where to seek justice from, hence the use of chiefs.

The main objective of this study was to analyse costs and benefits associated with different initiatives that citizens used to have their disputes resolved. The initiatives assessed in our study included court based initiatives (Court Annex Mediation); state based initiatives; community based initiatives (traditional); civil society based initiatives and community faith based initiatives. Obtaining access to justice is a rather complex matter. Many participants are involved in the supply chain granting access to justice, a process in which each of the participants will incur costs. There are costs borne by the parties seeking justice and costs borne by the providers of justice. Costs classification involves separation of a group of expenses into different categories. For decision making, costs are classified as sunk costs, opportunity costs or incremental costs. Computation of benefits related to access to justice was even more complicated. Moreover, there were monetary and non-monetary costs which made it rather difficult to assess the CBA of access to justice. In this study, we used the replacement principle in using the benefit foregone as a proxy for benefit from access to justice process.

Among the many costs that users of justice initiatives mentioned included transport, airtime, elders allowance, meals, compensation for aggrieved party, child care, photocopy & printing, and legal fees. There were few mentions of medical expenses, and

supposed arrest warrant and P3 form fees.²⁷

Cost benefit analysis (CBA) is used to compare the total costs of an initiative with its benefits using a common metric (most commonly monetary units). Decisions are therefore made on whether there is a net benefit or cost to the approach. As a technique, CBA is used in this study to evaluate the overall impact of a programme in quantifiable and monetized terms. The average total monetary costs incurred by each user in access to justice were then summarized and classified for each alternative justice mechanism. The average total monetary benefits foregone reported by each user were also identified and classified for each alternative justice mechanism. The study mainly focussed on access to justice from the users' experiences in line with people-centred justice. However, the focus on costs of accessing justice from a service providers' perspective was equally critical for it enabled us to have a glimpse into the intricacies of what it takes to enable access to justice for the public. Understanding the cost of providing justice from both the demand side and supply side is critical for informed policy decision making on scaling up services to the public especially at the community level. Failure to do so risks transferring the costs to the user, which translates into a further barrier to accessing justice. Costs borne by service providers are costs saved from consumers of justice service, who would otherwise incur those costs.

The civil society justice system initiatives have a CBA ratio of 0.04, the community faith based justice initiatives have a CBA ratio of 0.22, the state based justice initiatives have a CBA ratio of 0.58, the community based, traditional initiatives have a CBA ratio of 0.66 and the court-based initiatives have a CBA ratio of 4.2. This means that the unit of costs generates more units of benefits in the order of civil society, community faith based, state based, and community tradition based. The CBA ratio of 4.2 reported for the court-based initiatives shows that on average the costs outweigh the benefits to a considerable extent, with a negative average net benefit amount of Kshs. 7,085.7 (US\$64).

In terms of the access to justice index, community faith based initiatives topped the list followed by community tradition based,

then state based, court based and lastly CSO based initiatives. It is therefore evident that given the high CBA index and access index, community faith based initiatives, community tradition based initiatives and civil society organisations (CSO) initiatives have high potential for enhancing access to justice in Kenya. These are the initiatives that should be up scaled in the process of enhancing access to justice.

The CSO initiative users to the extent of 76.2% reported high access to justice with CBA of 0.04 which supports the upscaling of the initiative. Unlike CBOs, CSOs have a wider reach in terms of their areas of operation, the target population and range of services provided. They are non-state actors in providing services especially to those not reached by the existing formal mechanisms. When compared to other initiatives such as CBOs, police and chiefs, however, the CSOs had a lesser grassroots' presence. Moreover, their operations are pegged on having constant sources of funding, which means that their sustainability could be affected. CSOs however, have the advantage of more experience, resources, established structures and expertise in their areas of operations, being more established than CBOs.

7.4 CONCLUSIONS

Access to justice is a human right in Kenya but access remains skewed against the poor, the marginalized and those living in marginalized areas of this country. While a constitutional right, access to justice is thus yet to be fully realised and many individuals in Kenya remain marginalised by the formal justice system in Kenya. Indeed, even for those able to access and mobilise the formal system, the full mechanism of a trial may not be appropriate. Trials tend to be time consuming, expensive, and nerve-wracking for the non-lawyer, and to exacerbate rather than resolve disputes. As a result, many people resort to informal justice mechanisms ranging from community based platforms to initiatives run by non-governmental organisations.

Beyond the official justice mechanisms that play an important part in ensuring access to formal law and procedure, there is a plethora of other ways that work to assist in people getting access to justice that accords with the law but does not necessarily use formal

²⁷ See fn 4 on p. x for P3 forms.

legal structures. Who initiates and sustains them, and how they work is almost infinitely variable. Public bodies with other primary functions (like chiefs), elders – with traditional status or not – religious bodies, educational bodies, secular non-governmental bodies widespread or local. And they may operate mainly through civic education, or through alternative dispute resolution techniques (mediation, conciliation, or even arbitration – whether they use these terms or not), or by assisting people to go to the formal court/tribunal system. This study was therefore designed to fill this gap by undertaking a costs benefit analysis of the alternative dispute resolution mechanism, and to document which initiatives have high potential for upscaling in Kenya.

The study finds that there is place for different kinds of mechanisms for resolving disputes. The prevalence of one initiative over another is influenced by community needs, availability of the mechanisms, gender, cultural and geographical needs among others. Some of the initiatives are unique to particular communities such as the *Njuri Ncheke* among the Ameru and the *Maslaha* practiced by some Muslim communities, particularly Somali. Generally, there is common use of state based initiatives such as chiefs due to their presence in the community and proximity to users' homes.

Promoting access to justice through the different initiatives should thus be community led, to enable the people to own processes that serve them appropriately. In regard to promoting access to justice, the CBA ratio shows that civil society based initiatives are perhaps one of the best placed to serve the poor and marginalized communities. This should be one of the initiatives that should be supported to offer access to justice for the majority of Kenyans. This is followed by the community faith based, then the state based, community tradition based and lastly court-based initiatives (court annexed mediation).

7.5 POLICY RECOMMENDATIONS

On the basis of the study findings and conclusions drawn, we make the following recommendations: -

- Recognition of informal initiatives as viable pathways for dispute resolution. Mapping and documentation of these initiatives should be done to create awareness on their existence and to

factor them in policy decision making including in allocation of resources. There is need for agreement on the types of disputes that can be handled under the informal initiatives. Even though in practice these institutions are handling both civil and criminal cases, there is no consensus on how far these initiatives can intervene particularly in criminal cases. The AJS Policy recommends that where parties voluntarily submit to a particular mechanism, and there is no prohibition by law, a dispute, whether civil or criminal be resolvable by the chosen mechanism.

- From the analysis above on scalability, it is recommended that priority be given to enabling the community based mechanisms (traditional), chiefs and elders under state based mechanisms and CBOs. These mechanisms have a wider presence within the community, making it easier to utilize an already existing network. The court-based mechanism is already taking root, through initiatives led by the judiciary.
- Costing provision of services under the different initiatives to inform government policies and programmes including allocations for provision of services, commitment of personnel and infrastructural needs.
- Institutional strengthening
 - Assist institutions to document their cases, processes of handling a case and outcomes of their intervention.
 - Develop systems for documenting costs of handling a case from the time of reporting to its resolution
 - Continuous education for institutions on the law, and different aspects of handling a case.
 - Recognition and enforcement of decisions from the ADR mechanisms. Recognition of procedures and decisions of service providers will also guide different institutions in the justice system in referral of cases to one another. To make access to justice more effective, consumers of services should not be required to start a case afresh whenever they are referred to or seek another service provider for solution of their dispute. Proper documentation of proceedings will facilitate institutions
- to adopt proceedings of each other.
- Financing of informal initiatives for accessing justice: This calls for new allocations to support such initiatives as traditional elders, and increased funding for other initiatives such as chiefs who are already providing justice services over and above their formally recognised functions. Having a clear understanding of costs of providing services under the different initiatives can give insight into the appropriate funding. This study has shed light into these aspects.
- Linkage between formal and informal initiatives. In practice, there is an interplay between formal and informal mechanisms. To reduce duplicity of processes, and thus costs of accessing justice, there should be formal processes for cross-referral of cases. This way, an initiative can adopt where circumstances allow the previous intervention in a case by the referring initiative. A great entry point is the Court Users Committee.
- Community support: Awareness on the existing pathways for resolving disputes outside the formal system should be enhanced to enable communities to utilize systems that support them more effectively. This should entail giving them information on the benefits and disadvantages associated with the particular initiatives as well as costs involved in the process of resolving a dispute. Additionally, support should be offered to communities to establish mechanisms where there are gaps without compromising their autonomy to inform decisions that benefit them.

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ANNEXE: QUESTIONNAIRES²⁸

A2J USER/ SERVICE RECIPIENT SURVEY QUESTIONNAIRE

COSTS AND BENEFITS ANALYSIS OF ACCESS TO JUSTICE IN KENYA

INTRODUCTION

Good morning/afternoon. My name is _____. My colleague is _____. We are working with Katiba Institute, the Institute for Development Studies (IDS) - University of Nairobi and School of Law - University of Nairobi. We are currently conducting a study on access to justice in Kenya. We are talking to various stakeholders in the country, including participants like you. We wish to get your views, as someone who has received justice/legal services, on matters of access to justice specifically on costs and benefits of various mechanisms or initiatives available in your community. We believe that your knowledge, ideas and experiences on this issue will greatly help in designing and improving policies for access to justice.

We wish to assure you that the information you will provide will be treated with confidentiality and will be used only for the purpose of this research. Please note that your participation is voluntary. We hope that the outcome of this research will inform the government in addressing the challenges facing access to justice in this area and other parts of Kenya. I would be glad if you could agree to participate. Your participation in this interview will take about 30 minutes. Please confirm whether I can continue.

Do you agree to continue to participate?

- ☐ YES (Verbal consent given) – I thank you for your willingness to take part in this study.
- ☐ NO (Thank the unwilling participants and continue with those that will consent, and record the outcome on the call sheet)

Date of the Interview: _____

County: _____

Sub-County: _____

Location/ Place of residence: _____

Start time: _____

End time: _____

²⁸ For this purpose, to save space, most of the space allowed for open-ended responses has been removed.

SECTION A: DISPUTES, RESOLUTION MECHANISMS AND OBSTACLES

A1. Have you had any dispute or conflict that needed an external (outside your family) resolution in the last 2 Years?

1. No
2. Yes

A2. Can you tell us more about the dispute?

(Use the Codes below and if unclear ask for a little help from the respondent).

1. *Employment dispute: dismissal/unfair treatment/discrimination/salary too low/*
2. *Land: trying to get title/unfair rent/bought land but not handed over/*
3. *Spouse or partner: violence against me/desertion/no financial support/forced sexual intercourse/...*
4. *Child dispute: trying to get support for child from other parent/trying to get custody/...*
5. *Disagreement with a public body (child refused admission to school/excess fee demanded/ licence refused/ disrespect)*
6. *Others (please specify) _____*

A3. If Yes in A1, where did this dispute occur?

A4. Whom did you go to first to get your dispute resolved? *[Let the person respond and indicate below where (remember there might have been more than one)]*

(Tick below the most suitable category - you should already know what that is, because we are looking at pre-identified initiatives).

1. CBO
2. NGO
3. Faith based organisation
4. Chief
5. Police
6. Others (Specify): _____

(For each dispute for which a relevant initiative was approached use a separate form, but staple them together OR put them in one envelope AND ensure that each has the code number for the particular location and individual.)

A5. Other than where you sought for a solution of your problem, please can you tell us of any other ways of resolving such disputes in your community/area?

A6. Why did you choose to go this particular service provider in A4 Above?

1. *Proximity to/ distance from my locality*

2. *Referral by other service provider*
3. *Have used it before with satisfaction*
4. *Reputation of their previous services.*
5. *Overall cost of resolving cases/affordability*
6. *Type of resolution methods and punishment*
7. *There was no other option*
8. *Others (Specify):* _____

A7. How did you know about the justice institution(s)/ service provider that you sought assistance from in addressing the dispute (A4)? (indicate all that apply)

1. *Through a relative/friend*
2. *Through another user*
3. *In a community meeting*
4. *Through sensitization/mobile clinic by paralegals/community meeting*
5. *Through radio announcement*
6. *Through television*
7. *Through the newspaper*
8. *Through social media*
9. *Other (specify):* _____

A8. Is this kind of dispute common in your community?

1. *Yes*
2. *No*

Please explain

A9. If yes to above, do you have an idea where the other people in your community with similar disputes go to have their disputes addressed. Please elaborate

A10. As an individual, when you had the dispute, how long did it take you to first take action to solve the problem?

A11. Was the issue resolved?

1. *Yes*
2. *No*

After how long did you receive an outcome?

A12. Did you get a solution where you first sought help from?

1. Yes
 2. No
-

A13. If No, what mechanism did you finally use to resolve your justice problem?

A14. Where did you go to have your dispute problem solved?

A15. Approximately how many kilometres is the nearest office from your home? _____

A16. How long did it take to reach that nearest office? _____

A17. What means of transport did you use? _____

A18. How much (in KES.) did it cost you to reach there? _____

A19. Based on your income, did the cost seem reasonable? _____

A20. How many times did you have to go to that office? _____

A21. Were you the one who raised the issue against someone else, or was it someone else who raised it against you? *Circle one: Me/the other/we both complained against the other.*

A22. Who took the dispute to _____ *[name initiative]?*

Circle one or 2: I did / the other did / we did it together.

A23. Why did you report your dispute(s) to these alternative institutions and not to the courts?

(Select all that apply)

1. *Because they are closer to them*
2. *Because the services are free*
3. *Because they are cheap*
4. *Because the procedure is fair and impartial*
5. *Because they are respectful*
6. *Because they are skilled at resolving disputes*
7. *Because they can deliver justice to victims without fear or favour*
8. *Because they can restore what the victims lost*

9. *Because they can repair damaged relations*
10. *Because they can enhance community peace and cohesion*
11. *Because they are fast to deliver*
12. *Because their processes are flexible*
13. *Other (please specify)* _____
14. *Don't know*

SECTION B DIRECT AND INDIRECT COSTS OF DISPUTE MECHANISMS

We are interested in understanding the direct and indirect social and economic costs relating to disputes and their modes of resolution

B1. As far as you can remember, other than transport costs, did you spend any other costs in resolving your dispute?

1. *Yes*
2. *No*

Explain

(Airtime, Internet services, Photocopying and printing, Accommodation, Child care, providing cover for business, Other (specify))

B2. Approximately how much you did spend on each of the costs (in B1) as a result of your dispute?

Item	Cost in KES.
Airtime _____	
Internet services _____	
Photocopying and printing _____	
Accommodation _____	
Child care _____	
Providing cover for business _____	
Other (please specify) _____	

B3. If YES to B1 above, what was the source of the money used to resolve your dispute/justice problem?
(select all that apply)

1. *Self*
2. *Spouse*
3. *Family contribution*
4. *Friends*

5. *Politicians/elected leaders*

6. *Church contributions*

7. *Others (specify):* _____

B4. Did you lose/forego any income as you sought to have your dispute resolved?

1. *Yes*

2. *No*

Explain

B5. Throughout the process of trying to access the justice system or resolve your legal problem, were you asked to pay for any services?

1. *Yes*

2. *No*

B6. If YES, what were you asked to pay for? (Select all that apply)

1. *Transportation for the legal officer? [Clarify which legal officer is meant here? Could be for clerk/secretary etc.]*

2. *Air time for legal officer? [Could be for clerk/secretary etc.]*

3. *Money to pay for the elders' allowances*

4. *Processing of the case*

5. *Stationery*

6. *Non-understandable payments that seemed to be bribes*

7. *Others (specify):* _____

B7. And how much did you pay for each item mentioned above?

Item	Cost in KES.
1. <i>Transportation for the legal officer?</i>	_____
2. <i>Air time for legal officer?</i>	_____
3. <i>Money to pay for the elders' allowances</i>	_____
4. <i>Processing of the case</i>	_____
5. <i>Stationery</i>	_____
6. <i>Non-understandable payments that seemed to be bribes</i>	_____
7. <i>Others (specify)</i>	_____

B8. Generally, how much did it cost you in total (or has it costed you so far) to solve your dispute/justice problem? (Estimated sum) KES: _____

B9. In general, what would you say about the amount you spent in resolving your dispute?

1. *Very expensive*

2. *Expensive*

3. *Reasonable*
4. *Cheap*
5. *Very cheap*

B10. With these costs, would you seek justice in the future using the same mechanism?

B11. If NO, which other initiatives would you prefer or use in future due to the consideration of being less costly?

B12. If you were not engaged in resolving this dispute/justice problem, how would have spent that time?
(Select all that apply)

1. *Working on my farm*
2. *Attending to my business/ trade*
3. *Looking for job*
4. *Working for my employer*
5. *Helping family/friends*
6. *Attending to household chores*
7. *Others (specify):* _____

B13. If you were to use your time as indicated in B12 above, how much money would you have made?
(indicate where applicable)

SECTION C: IMPACT OF THE DISPUTE

C1. What could you not do because of the dispute?

C2. How much did you spend on providing cover/ taking care of for your home as a result of your justice problem?

C3. How much did you lose from spousal support as a result of your dispute/justice problem?

C4. How much did you lose from child support as a result of your dispute/justice problem?

C5. How much did you lose from your land as a result of your dispute/justice problem?

C6. Tell us about the impact of having this dispute? (Select all that apply)

1. *Psychological problems*
 2. *Emotional stress*
 3. *Health problems*
 4. *Physical harm*
 5. *Relationship breakdown*
 6. *Other (Specify) _____*
-

C7. Please indicate for each selected above, the extent of the impact suffered as a result of the dispute.

We would like to understand your experiences during the process of resolving your dispute.

C8. Please indicate to what extent the process had a negative impact on your important relationships and those relationships around you.

1. *Severely Affected*
2. *Great extent*
3. *Moderate*
4. *Less extent*
5. *Normal life*
6. *No impact at all*

C9. If YES, in what ways did your relationship breakdown??

1. *Isolation*
2. *Stigmatization*
3. *Not on speaking terms*
4. *Mutual distrust*
5. *Desertion*
6. *Divorced*
7. *Kicked out of premises/house.*

C10. Can you tell us how the whole process of dealing/resolving with this dispute made you feel?

SECTION D: GENDER DIMENSIONS OF ACCESS TO JUSTICE

D1. Do you think that you were treated differently because of your gender?

1. Yes
2. No
3. Somewhat
4. Other (please specify) _____

D2. What makes you think so?

(Possible responses from D2)

1. I was treated with respect and empathy
2. The service providers were sensitive to my emotions
3. The service providers explained my rights and protected me from being mishandled.
4. The service providers spoke to me harshly
5. They gave me less time
6. They gave me more junior officers to handle my case
7. Others (specify): _____

(Note: D3 – D6 apply to family disputes)

D3. How would you describe your spouse's (where applicable) and family's behaviour towards you during the process of resolution of your dispute? (Select all that apply)

1. Directly supporting
2. Cooperative
3. Remorseful
4. Compromising
5. Controlling
6. Adversarial
7. Uncooperative
8. Intimidating
9. Other (please specify) _____

D4. Did you feel your spouse had more power or influence than you in the resolution of your dispute?

1. Yes
2. No

D5. If YES, why did you feel powerless? (Select all that apply)

1. My spouse earned more than me financially
2. Culturally women are expected to be subservient to their husbands
3. I did not receive the support of family, friends and community

4. *I did not know where to go to resolve my justice problem*
5. *Community based justice services are dominated by men*
6. *The women have become more empowered*
7. *The organization specializes in helping women with their justice issues.*
8. *Other (Please specify) _____*

D6. In what way did the justice service providers try to maintain a balance of power between you and your spouse? (Select all that apply)

1. *Providing a disproportionately greater opportunity for my case to be heard*
2. *Preventing spouse from bullying me*
3. *Maintaining impartiality in the process*
4. *Helping me cover some of my costs*
5. *Providing me with costs of my case*
6. *Specifying to my spouse what they couldn't do in the process.*
7. *Others (please specify) _____*

(Note: D7 – D10 apply to non-family (non-spousal) disputes)

D7. How would you describe your offender's and family's behaviour towards you during the process of resolution of your dispute? (Select all that apply)

1. *Directly supporting*
2. *Cooperative*
3. *Remorseful*
4. *Compromising*
5. *Controlling*
6. *Adversarial*
7. *Uncooperative*
8. *Intimidating*
9. *Other (please specify) _____*

D8. Did you feel your offender had more power or influence than you in the resolution of your dispute?

1. *Yes*
2. *No*

D9. If YES, why did you feel powerless? (Select all that apply)

3. *My offender earned more than me financially*
4. *Culturally women are expected to be subservient to their husbands*
5. *I did not receive the support of family, friends and community*
6. *I did not know where to go to resolve my justice problem*
7. *Community based justice services are dominated by men*
8. *The women have become more empowered*
9. *The organization specializes in helping women with their justice issues.*
10. *Other (Please specify) _____*

D10. In what way did the justice service providers try to maintain a balance of power between you and your offender? (Select all that apply)

1. *Providing a disproportionately greater opportunity for my case to be heard*
2. *Preventing spouse from bullying me*
3. *Maintaining impartiality in the process*
4. *Helping me cover some of my costs*
5. *Providing me with costs of my case*
6. *Specifying to my spouse what they couldn't do in the process.*
7. *Others (please specify)* _____

SECTION E: ACCESS TO JUSTICE INITIATIVES THAT ARE RELEVANT TO THE MARGINALIZED AND VULNERABLE GROUPS

E1. Are there groups within your community that you feel are particularly marginalised or disadvantaged?

1. *Yes*
2. *No*

Please elaborate

E2. Do you know of any specific access to justice initiatives that serve these marginalized and vulnerable groups?

1. *Yes*
2. *No*

E3. Other than the judiciary, which alternative justice institutions do you know that such people seek assistance from?

1. *CSO based initiative: Civil Society Organizations(CSO)*
2. *State based initiatives e.g. Legal Aid Boards, county government, etc.*
3. *Community Based organization (CBO)/ religious based institutions.*
4. *National Government Administrative Based initiatives (Chief, County commissioner, police, etc.)*
5. *Others (specify)* _____

E4. How did you know about these justice institutions? (Select all that apply)

1. *Through a relative/friend*
2. *Through another user*
3. *In a community meeting*
4. *Through sensitization/mobile clinic by paralegals/lawyers*
5. *Through radio announcement*
6. *Through television*
7. *Through the Newspaper*
8. *Through Social Media*

9. Others (please specify): _____

E5. Where are these people most likely to take their cases? (Select all that apply)

1. Courts
2. Civil Society Organisations
3. State based initiatives e.g. Legal Aid Board, county government etc.
4. Community Based organizations (CBO)/ religious based institutions.
5. National Government Administrative Based initiatives (Chief, County commissioner, police, etc.)
6. Others (please specify) _____

E6. Why is it that people report their cases to this institution? (Select all that apply)

1. Because it is closer to community
2. Because the services are free
3. Because they are fast
4. Because they are cheaper
5. Because they are respectful
6. Because they are skilled at resolving disputes
7. Because they are fair
8. Others (specify) _____
9. Don't know

E7. What are the common types of cases that people in this community mostly report to this institution? (Question applies to respondents that identify themselves as marginalized)

E8. Why are these cases common among the cases that are reported? (Question applies to respondents that identify themselves as marginalized) (Select all that apply)

1. Poverty
2. Less employment opportunities
3. Traditional/cultural practices
4. Gender discrimination
5. Poor awareness about human rights
6. Inadequate enforcement of laws
7. Others (specify): _____
8. Don't know

SECTION F: PROCESS BENEFITS AND CONCLUSION

F1. How was your dispute resolved by the organization you went to?

1. Counselling
2. Mediation
3. Legal education/advice

4. *Community outreach and education*
5. *Litigation*
6. *Others (specify):* _____

F2. In your opinion, what did you gain from participating in the resolution of this case? (Select all that apply)

1. *Nothing*
2. *Compensation from other party*
3. *Dignity restored*
4. *Relationship restored*
5. *Agreement reached*
6. *Awareness about rights*
7. *Psychological satisfaction*
8. *Emotional satisfaction*
9. *Others (please specify)* _____

F3. How would you describe your satisfaction with the outcome of the process?

1. *Extremely satisfied*
2. *Very satisfied*
3. *Moderately satisfied*
4. *Satisfied*
5. *Extremely unsatisfied*
6. *Very unsatisfied*
7. *Moderately unsatisfied*
8. *Unsatisfied*

F4. How would you describe the process you went through to resolve your justice problem?

F5. Would you recommend this service to a friend?

1. *Yes*
2. *No*

Please explain

F6. How has COVID – 19 affected you in accessing justice or in the resolution of your dispute?

SECTION G: DEMOGRAPHIC INFORMATION**SERIAL NUMBER****G1. Name of the Respondent (Optional)** _____**G2. Sex of the Respondent:** _____**G3. Age of the Respondent:** _____

01= 18 to 25 years		04=46-55 years	
02= 26-35 years		05=56-65 years	
03=36-45 years		06 =65 and above	

G4. Highest Level of Education Completed _____**G5. Occupation of the Respondent:** _____**G6. Marital Status:** _____**G7. Religion:** _____**G8. Income:** _____**THANK YOU SO MUCH FOR YOUR TIME AND PARTICIPATION.**

SERVICE PROVIDERS' QUESTIONNAIRE

COSTS AND BENEFITS ANALYSIS OF ACCESS TO JUSTICE IN KENYA

Introduction and Informed Consent Statement

Good morning/afternoon. My name is _____. My colleague is _____. We are working with Katiba Institute, the Institute for Development Studies (IDS) –UoN and School of Law – UoN. We are currently conducting a study on access to justice in Kenya, more specifically on issues of costs and benefits of alternative access to justice. We are talking to various stakeholders who are involved in service of providing access to justice in Kenya. Your institution has been selected for this study because of its involvement in _____. As the representative of this institution, we believe that your knowledge, ideas and experiences in these matters will greatly help in designing and improving policies for access to justice.

We wish to assure you that the information you will provide will be treated with confidentiality and will be used only for the purpose of this research. Please note that your participation is voluntary. We hope that the outcome of this research will inform the government in upscaling access to justice in Kenya. We thank you for agreeing to participate in this study. Your participation will take about 45 minutes. Please confirm whether I can continue.

Do you agree to continue to participate?

- ☐ YES (Verbal consent given) – I thank you for your willingness to take part in this study.
- ☐ NO (Thank the unwilling participants and continue with those that will consent, and record the outcome on the call sheet)

Date of the Interview: _____

County: _____

Sub-County: _____

Location/ Place of Residence: _____

Start time: _____

End time: _____

SECTION A - OBSTACLES TO DELIVERING JUSTICE TO INDIVIDUALS AND COMMUNITIES

A1	Which type of conflicts or justice issues does your department/ institution/ organization deal with?		
A2	Is there a court of law in the community where you provide your services?		1 = Yes 2 = No 0 = Don't know
A3	What types of courts are there?		
A4	Do the people in your community use the courts to have their disputes resolved?		1 = Yes 2 = No 0 = Don't know
A5	Do you know of other justice institutions, traditional or modern working in this community?		1 = Yes 2 = No 0 = Don't know
A6	Please tell me the names of the justice institutions working in your community (Select all that apply)		0 = Don't Know 1 = NGO Based Justice Centres 2 = Religious Based Justice Centres 3 = Traditional Councils of Elders 4 = National Government Admin Units 5 = County Government Units 6 = Law Firms 7 = Other (please specify) _____
A7	In which of these justice institutions do people in this community report their cases to the most? (Select all the apply)	0 = Don't Know 1 = NGO Based Justice Centres 2 = Religious Based Justice Centres 3 = Traditional Councils of Elders 4 = National Government Admin Units 5 = County Government Units 6 = Law Firms 6 = Other (please specify) _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
GEOGRAPHICAL BARRIERS TO DELIVERING JUSTICE			
A8	Where is the nearest office of your justice institution located?		1 = Within the community 2 = Outside the community

A9	What challenges do people in the community you serve encounter in accessing justice (select all that apply)	1 = Lack of good infrastructure 2 = Lack of a means of transport 3 = Lack of transportation fee 4 = Lack of a justice institution in the neighbourhood 5 = Lack of community sensitization on what actions to take. 6 = corruption by the institutions that are to help them. 7 = Others (specify)_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
A10	What challenges does your institution face in provision of justice?		
ECONOMIC BARRIERS TO JUSTICE			
A11	How much averagely does it cost a client to open a case within your institution/ organization?	1 =Free 2= Below Kshs 1000 3 = Kshs 1001 - 5000 4= Kshs 5,001 – 7,500 5= Kshs 7,501 – 10,000 6= Above 10,000	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
A12	What is the average total cost to a client for accessing justice from your department/ institution?	1 = Below Kshs 1000 2 = Kshs 1001 - 5000 3 = Kshs 5,001 – 10,000 4 = Kshs 10,001 – 20,000 5 = Kshs 20,001 – 50,000 6 = Above Kshs50,000	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
A13	Based on the average income of the area, is it reasonable?	1 = Yes 2 = No Please explain: _____	<input type="checkbox"/> <input type="checkbox"/>
GENDER BARRIERS TO JUSTICE			
A14	On average how many gender based disputes do you handle per month	1 = None 2 = One - Five 3 = Six - Ten 4 = Eleven – Fifteen 5 = Sixteen – Twenty 6 = Twenty-one and Above	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

A15	What would you say are the gender discrimination factors that are obstacles of access to justice?	1 = Protective labour legislations 2 = Restrictions on professions and types of work 3 = Limitations of fathers' access to parental leave 4 = Unlawful dismissal of pregnant women 5 = Non-criminalisation of all forms of gender based offences 6 = Severe under reporting of gender based offences 7 = Scarce resolution of gender based offences 8 = Others (specify) _____ 0 = Don't know	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
A16	Which of the following socio-economic and cultural factors are obstacles on access to Justice?	1 = Gender Economic dependence/ resource inequality 2 = Patriarchal (Matriarchal) attitudes and beliefs 3 = Gender biased attitudes 4 = Lack of access to information 5 = Stereotypes 5 = Others specify 0 = Don't know	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
CASE LOAD AND OPERATIONAL COSTS TO ACCESSING JUSTICE			
A17	On average, how many new cases do you receive in a day?		<input type="text"/>
A18	Does your organization have standard operating procedure with timelines for handling reported cases?	1 = Yes 2 = No 3 = Depends (specify) _____	<input type="text"/> <input type="text"/> <input type="text"/>
A19	Among those new cases that you receive, how many do you typically/usually resolve within the timelines specified in your standard operating procedures?	1 = None 2 = One 3 = Two 4 = Three 5 = Four 6= All	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
A20	What are the possible reasons for not concluding cases within the standard operating procedure timelines?	1 = Lack of adequate Staff 2 = Many cases to handle at a point in time 3 = Inadequate physical facilities 4 = Inadequate financial resources 5 = Immobility (movement challenges) 6= Others (Specify) _____	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

A21	On average, how much time (person hours) do you spend in resolving one case?	1 = Thirty minutes to one hour 2 = One to two hours 3 = Three to Six hours 4 = Seven to nine hours 5 = Twelve hours and above	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
A22	Among the cases that you don't resolve the same day, how long does it take to resolve one?	1 = One Day 2 = One to six days 3 = One to two weeks 4 = Two weeks to one month 5 = Two to three months 6 = Four to six months 7 = Six months and above	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
A23	On average, about how many cases is an individual staff handling at any one time?	= 1 – 5 = 6 – 10 = 11 – 15 = 16 – 20 = 21 – above	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
A24	Does an individual staff deal with the cases alone or with others?	1=Yes 2=No Please explain:	<input type="text"/>
A25	Are there cases reported to you that you cannot deal with?	1=Yes 2=No	<input type="text"/>
	Please explain reasons why.		
A26	How do you deal with such cases that you are unable to deal with?		
A27	How often do you refer cases to other organizations?	Always Frequently Sometimes Never	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
A28	What is the estimated annual budget of your organization in matters relating to dispute resolution?	1 = Less than Ksh 50,000 2 = Kshs 50,001 – Ksh 100,000 3 = Kshs 100,001 – 500,000 4 = Kshs 500,001 – 1,000,000 5. Above Kshs 1,000,000	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

A29	Have you calculated on average what it costs to deal with a case?	1=Yes 2=No	<input type="checkbox"/> <input type="checkbox"/>
A30	Can you give a breakdown of what it costs between different elements of dealing with a case? <ul style="list-style-type: none"> • transport; • electricity; • office equipment; • stationery; • training & supervision; • quality control; • security; • communication; • personnel costs; • rent? 		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
A31	How does your organization get funding? (Select all that apply)	1. Personal funds 2. Private and family donations 3. Community donations 4. Development Aid (donors) funding 5. Religious organization funding 6. Pro Bono services 7. Government 8. Others (please specify) _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
SECTION B: SPECIFIC ACCESS TO JUSTICE INITIATIVES THAT ARE RELEVANT TO THE MARGINALISED AND VULNERABLE GROUPS IN THE AREA YOU SERVE			
B1	To which of these justice institutions do people in the community you serve mostly report their cases? (Select all that apply)	0 = Don't Know 1 =NGO Based Justice Centres 2 =Religious Based Justice Centres 3 =Traditional Councils of Elders 4= National Administrative Officers e.g. chiefs 5 =Lands Tribunal 6 =Rent Tribunal 7 =Law Firms 8 = Other (please specify) _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

B2	<p>Why do you think people report their cases to these alternative institutions and not the through the police or local administration? (Select all that apply)</p>	<p>0 = Don't know 1 = Because they are closer to them 2 = Because the services are free 3 = Because they are cheap 4 = Because the procedure is fair and impartial 5 = Because they are respectful 6 = Because they are skilled at resolving disputes 7 = Because they can deliver justice to victims without fear or favour 8 = Because they can restore what the victims lost 9 = Because they can repair damaged relations 10 = Because they can enhance community peace and cohesion 11 = Because they are fast to deliver 12 = Because police and the local administration are corrupt 13 = Others (specify) _____</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
B3	<p>Why is it that people report their cases to your institution and not the others? (Select all that apply)</p>	<p>1 = Because it is closer to community 2 = Because the services are free 3 = Because they are fast 4 = Because they are cheaper 5 = Because they are respectful 6 = Because they are skilled at resolving disputes 7 = There is no alternative 8 Others (specify) _____ 0 = Don't know</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
B4	<p>What are the common types of cases that people in this community mostly report to this institution? (Select all that apply)</p>	<p>1 = Theft 2 = Land dispute 3 = Child support 4 = Gender based violence 5 = General family conflicts 6 = Mal-administration 7 = Commercial / business related issues 8 = Others (specify) _____</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
B5	<p>From your observation, what is the gender of people that mostly report the type of cases that you deal with?</p>	<p>1 = Men 2 = Women 0 = Don't know</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

SECTION C: COSTS AND BENEFITS OF THE SPECIFIC IDENTIFIED ACCESS TO JUSTICE INITIATIVES

COSTS OF ACCESS TO JUSTICE THROUGH ALTERNATIVE INITIATIVES

C1	Do you take every case that comes to you?	1=Yes 2 = No	<input type="checkbox"/> <input type="checkbox"/>
C2	If no, what are the criteria for accepting or rejecting a case?		
C3	To what extent do you agree that there are job losses in formal judicial institutions as the judicial practitioners direct disputants to alternative justice institutions	1 = To No Extent 2 = To a Little Extent 3 = To a Moderate Extent 4 = To a Great Extent	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
C4	To what extent do you agree that disputants in alternative justice resolution mechanisms raise similar disputes afterwards and otherwise would have been preempted had the disputants gone through court system	1 = To No Extent 2 = To a Little Extent 3 = To a Moderate Extent 4 = To a Great Extent	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

BENEFITS OF ACCESS TO JUSTICE THROUGH ALTERNATIVE INITIATIVES

C5	What are the pull factors that make people in the community you serve choose these alternative justice mechanisms? (Select all that apply)	1 = Because they are closer to the community 2 = Because the services are free 3 = Because the services are cheap 4 = Because they are fair 5 = Because they are respectful 6 = Because they are skilled at resolving disputes 3 = Because they are fast 7 = Others specify 0 = Don't know	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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To what extent do you agree with the following statements concerning alternative dispute resolution?						
		1 = To No Extent	2 = To a Little Extent	3 = To a Moderate Extent	4 = To a Great Extent	5 = It Depends
C6	Alternative mechanisms to justice are more flexible in conflict resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C7	Cases filed in the formal courts have reduced over time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C8	There are more opportunities for practitioners as neutral parties in alternative justice institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C9	Cases that should end up in court are diverted to the alternative justice institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C10	Bottlenecks in courts have been reduced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C11	Backlogs in courts have been reduced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C12	There are reduced caseloads for judges and judicial staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C13	There is perceived improvement in the quality of the legal system for the judicial process beneficiaries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C14	There is increased trust in the fair resolution of conflicts for the judicial process beneficiaries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C15	Alternative justice institutions have a greater choice of dispute resolution mechanisms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C16	Through alternative justice institutions, offenders do not spend time behind bars	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C17	Offenders are not exposed to opportunities of developing more sophisticated criminal knowledge, criminal network and propensity to violent behaviour	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C18	Costs associated with traditional incarceration, such as feeding, clothing and housing are nonexistent in alternative justice framework	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C19	The work of organisations like yours that help settle disputes lead to reductions of tension and violence in society, and therefore to the work of the police and the criminal justice system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C20	In your view, what should the government do to improve access to justice to this community?					
C21	How has COVID – 19 impacted on your work of promoting access to justice.					

SECTION D: SECONDARY DATA ON COSTS AND BENEFITS OF THE SPECIFIC IDENTIFIED ACCESS TO JUSTICE INITIATIVES

(Information can be obtained from organizational records)

1. Benefits	
2. Number of cases concluded in alternative justice initiatives	
3. Average time period to conclude alternative justice initiatives	
4. Backlog reduction in the litigation process	
5. Assets released through alternative justice initiatives (in monetary terms)	
6. Do you follow up to see that if the agreements reached in the dispute resolution are complied with?	

7. Decision enforcement (in days) through alternative justice initiatives	
8. Costs	
9. Costs of setting up alternative justice initiatives (One time cost of constructing the system)	
10. Annual operational costs of the alternative justice initiatives (staff salaries, maintenance and other overhead and utility expenses)	
11. Marginal costs (Additional costs of ensuring enforcement of a decision including time used in following up)	
12. What additional information would you like to give us about your organization?	

SECTION E: BASIC DEMOGRAPHIC INFORMATION

E1	Name of the Organization		
E2	Occupation	01 = Head/ Executive Director 02= Programme Manager 03 = Field Office Manager. 04 = Lawyer/Legal Officer 05 = Corporate Relations Office 06= Other (Please specify)_____	<input type="text"/> <input type="text"/>
E3	Age	01= 18 to 25 years 02= 26-35 years 03=36-45 years 04=46-55 years 05=56-65 years 06 =65 and above	<input type="text"/> <input type="text"/>
E4	Sex	01 = Male 02 = Female 03= Other (Please specify) _____	<input type="text"/> <input type="text"/> <input type="text"/>
E5	Education	01 = No Formal Schooling 02 = Primary School 03 = Secondary School 04 = Technical/ Vocational Education 05 = Undergraduate University Education 06=Post graduate education	<input type="text"/>

E6	Religion	01 = Christianity 02 = Islam 03 =Hindu 04 Other (Please specify) _____	[]
E7	County of Residence of institution		
E8	For how long have you worked for this organization?		

THANK THE RESPONDENT AND CLOSE THE INTERVIEW

THE END