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THE JUDICIAL SERVICE ACT

(*No*. 1 *of* 2011)

THE NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE (NCAJ)

ANNUAL ADMINISTARTION OF JUSTICE REPORT 2021/2022

IN ACCORDANCE with the requirement under section 37 of the Judicial Service Act, 2011, the Chief Justice of the Republic of Kenya and Chairperson of the National Council on the Administration of Justice publishes the Annual Administration of Justice Report, 2021/2022.

FOREWORD

The National Council on the Administration of Justice (NCAJ) was established in 2011 to ensure a coordinated, efficient, effective and consultative approach to the administration of justice, and reform of the justice system. The NCAJ aspires to strengthen and entrench a well-coordinated justice sector that will guarantee access to justice for Kenyans and contribute to social justice and transformation as envisioned under the Constitution of Kenya, 2010. The strategic programmes of the NCAJ are provided in our Strategic Plan 2021-2026. These programmes are aligned to Kenya's development agenda articulated in Vision 2030 and our international obligations under the Sustainable Development Goals.

This Inaugural Administration of Justice Report was prepared in compliance with Section 37 of the Judicial Service Act, 2011. The Report details the progress in the Administration of Justice in Kenya through NCAJ. The Report presents the myriad achievements in FY 2021/22. The achievements presented in this Report are attributable to the relentless hard work and partnership of the NCAJ agencies, both at the level of the Council and at the local level through the Court User Committees. Through the Court User Committees, the Council ensured that its work was people-driven and impactful to the citizens.

I am delighted and appreciative of the strides made by NCAJ Secretariat and Working Committees. The enormous strides were especially in sustaining the policy, legal and administrative reforms in the FY 2021/22. The Council will continue to deliver its mandate through its Committees assisted by a strengthened Secretariat.

The Report has also identified priority interventions to foster efficient administration of justice for the FY 2022/23. We will continue to leverage technology to timeously serve clients seeking services in the justice sector and take deliberate steps to adequately help the vulnerable persons in our society. In the service delivery, NCAJ will adopt a holistic approach to removing barriers that hinder the efficient administration of justice and consequently promote access to justice for all.

As the NCAJ, we reiterate our commitment to *a coordinated and cohesive Justice Sector serving the people of Kenya*. I laud all the Agencies for their outstanding contributions captured in this Report. I urge all NCAJ institutions and partners to embark on the priorities outlined in this Report for the FY 2022/23 as we serve the citizens.

HON. JUSTICE MARTHA K. KOOME,
*Chief Justice and President of the Supreme Court of Kenya and*
*Chairperson, National Council on the Administration of Justice*

ACKNOWLEDGEMENTS

The preparation of the Inaugural Annual Report on the Administration of Justice in Kenya 2021/22 has immensely benefited from the entire leadership of the NCAJ.

I appreciate the Hon. Chief Justice, who, as the Chairperson of NCAJ, guided on the utility of having a distinct and detailed reporting of progress made on the administration of justice in Kenya. The continued support and participation in the Council by the Heads of NCAJ agencies throughout the year and allowing their technical persons to participate in NCAJ committee meetings led to the realisation of many achievements in this report.

Credit goes to all chairpersons of the NCAJ Working Committees who tirelessly offered leadership to their committees on the reform agenda. I acknowledge the valuable contribution of the NCAJ Secretariat, who tracked the progress in the administration of justice throughout the year, appraised the Council every quarter, and supported the Working Committees.

Special appreciation goes to the committee drawn from NCAJ agencies that assiduously wrote this report. The team was led by Dr. Moses Marang'a (Executive Director of NCAJ), and comprised of Prof. Jack Mwimali (Editor/CEO - National Council for Law Reporting), Dr. Miriam Nyamwamu (Kenya Prisons Service), Ms. Lillian Ogwora (Senior Assistant Director of Public prosecutions, Office of the Director of Public Prosecution), Mr. Charles Ismael Otiende (Superintendent of Police, National Police Service), Mr. Kennedy N. Mutiso (Senior State Counsel, Office of the Attorney General and Department of Justice) and Ms. Hellen Musyoki (Senior Economist in the Judiciary).

The Committee further comprised NCAJ staff namely; Ms. Irene Omari (HOD, Council Coordination), Ms. Sylvia Yiantet (HOD, Court User Committees and Ag. HOD, Civil Justice Reforms), Ms. Susan Ouko (HOD, Criminal Justice Reforms), Ms. Roselyne Kabata (HOD, Access to justice for Vulnerable Groups), Ms. Jackie Mulwa (HOD, Human Resource & Administration), Mr. Mohamed Abdiqafar Isaak (HOD, Finance & Administration), Patricia Nyaundi SC (Rule of Law Advisor to the Hon. Chief Justice/NCAJ), Ms. Wendy Wairimu and Mr. Eliud Githua. I also acknowledge the support that was accorded to the committee by Mr. Peter Oko, Ms. Emily Maranya and Mr. Samson Odhiambo from NCAJ Secretariat, Ms. Felyn Nekesa from the ODPP and Hon. Joseph Were from the Judiciary.

Special appreciation goes to players in the justice arena who partnered with NCAJ and provided financial support towards this report's preparation and launch. These partners are; United Nations Office on Drugs and Crime through the European Union-funded PLEAD partnership, International Development Law Organization, the International Justice Mission, UNICEF, Equality Now, the Faraja Foundation, Cleanstart Solution, and International Commission of Jurists.

ANNE A. AMADI,
*Chief Registrar of the Judiciary of Kenya and*
*Secretary - National Council on the Administration of Justice*

EXECUTIVE SUMMARY

*Background*

The National Council on the Administration of Justice (NCAJ) is established under the Judicial Service Act 2011 as a high-level policymaking, implementation and coordinating body. The overarching mandate of the NCAJ is to coordinate the administration of justice and reforms in the justice system. This Inaugural Annual Report has been prepared to track and document the progress realised by NCAJ, in line with Section 37 of the Judicial Service Act 2011. Drawing from the NCAJ Strategic Plan 2021-2026, the Report primarily provides the achievements realised in the administration of justice in Financial Year (FY) 2021/22. It culminates by highlighting the priority areas for FY 2022/23.

*Key Achievements*

*Strengthening coordination in the administration of justice*

To strengthen the coordination of the administration of justice in Kenya, NCAJ developed its Strategic Plan (SP) 2021-2026. The Council commenced the preparation of the NCAJ Bill and held four high-level meetings to coordinate the justice sector. To strengthen internal governance, the Council formed four sub-committees; the Executive, Finance and Administration, Communication and Information Management, and Administration of Justice and Implementation. To foster collaboration in the justice sector, diverse stakeholders, notably the development partners, civil society organizations and other government institutions, were engaged. Three sectoral monitoring reports on the administration of justice were prepared by the Secretariat and adopted by the Council. The NCAJ Working Committees held 21 meetings to articulate and spearhead reforms. During the period under review, the Judicial Service Commission (JSC) recruited the Executive Director to offer leadership at the NCAJ Secretariat. To enhance efficiency at the Secretariat, seven Departments were created.

*Deepening criminal justice reforms*

The NCAJ successfully organised and hosted the second national conference on criminal justice reforms. The conference focused on; enhancing human rights, leveraging technology, ensuring free and fair elections, safeguarding the rights of vulnerable groups using a rights-based approach to sentencing, and addressing corruption. The NCAJ developed various policies to enhance the service delivery in criminal justice. These are; Law and Practice Guidelines on Arrest and Conditions of Pre-trial Detention, Law and Practice Guidelines on the Management of Petty Offenders, Fair Trial Guide and Checklist, Witness Protection Regulations, National Correctional Policy, Paralegal Policy, and Child Care Policy. A Working Committee on anticorruption was gazetted. The National Crime Research Centre conducted diverse crime research to advise criminal justice actors from an empirical viewpoint. In 2021, the National Police Service processed over 500,000 criminal cases with 81,272 being serious crimes, the Office of the Director of Public Prosecution processed 477,572 matters, and Ethics and Anti-Corruption Commission processed 4,997 matters. Further, 257,205 criminal cases were filed in all courts, with 231,415 criminal cases being resolved. Additionally, 66,086 referrals were made by courts and other penal organs to the Probation and Aftercare Services Department for the preparation of Social Inquiry Reports. At the end of the period under review, the prison population stood at 54,795.

*Strengthening civil justice reforms*

To entrench reforms in civil justice, NCAJ launched the commercial justice and environment and land justice Court Users' Committees (CUCs). The NCAJ also formed a Working Committee on civil justice reforms. The Office of the Attorney General and Department of Justice, working alongside the Kenya Law Reform Commission, developed the Political Parties Primaries Bill, 2021, which was assented into law in January 2022. Beyond publishing diverse case digests, the National Council for Law Reporting developed the Conflict Resolution Policy, Public Participation Policy and Whistle-blowers Policy. Additionally, the Office of the Attorney General expanded its regional offices to Machakos and Kericho and recruited 50 State Counsels. In Courts, 147,107 civil cases were filed, while 149,902 were resolved during the period under review. By the end of June 2022, there were 384,419 pending civil cases in all courts. The courts continued to render judicial decisions of immense jurisprudential value, settling crucial constitutional and legal interpretations impacting operations and reforms of the justice system. To support alternative dispute resolution, courts continued to stay proceeding in cases to facilitate arbitration and further continued to entrench court-annexed mediation. To enhance access to justice, Judiciary established and operationalised various law courts. The Commission of Administrative Justice resolved 2,093 complaints, while the National Land Commission determined 126 historical land injustices claims.

*Enhancing access to justice for the vulnerable groups*

During the period under review, 26,864 vulnerable persons were handled by various NCAJ agencies. To enhance access to justice for children, there was enhanced coordination of justice actors leading to the enactment of the Children Act, 2022. The NCAJ oversaw the undertaking of Child Justice Service Month in November 2021, participated in the Day of the African Child celebrations on June 16th, and organized an inaugural town hall meeting that 1,200 children attended. The NCAJ established *Wakili Wa Watoto* Clubs in all the Law Schools in Kenya, developed a curriculum on Online Child Sexual Exploitation and Abuse and a report on budgetary needs for the child justice sector. Also, Throughcare and Aftercare Procedures for Statutory Children Institutions were revised. The NCAJ launched the Child Care and Protection Officers and Facilitators Manual and

trained Kakuma and Lodwar CUCs on child justice. The NCAJ revamped its Working Committee on Sexual and Gender-Based Violence, and developed the Standard Operating Guidelines on Sexual Gender Based Violence Case Management during a Crisis. Civil Society Organisations also undertook numerous initiatives that positively impacted the administration of justice for vulnerable groups.

*Enhancing the administration of justice at the grassroots through CUCs*

At the end of the period under review, there were 236 CUCs, representing a 26 per cent increase compared to the previous FY. To enhance CUCs activities and best practices, NCAJ hosted a delegation from Mozambique led by the Chief Justice of Mozambique, Lord Adelino Muchanga. The CUCs were trained on emerging issues such as Active Case Management, plea bargaining, bond administration and diversion. Further, the Children CUCs Guidelines and the Sensitization Toolkit were developed to guide operations and sensitization programs. To enhance stakeholder engagement in tribunals, NCAJ held consultative forums with members of the Business Premises Rent Tribunal and the Rent Restriction Tribunal. To ensure that CUCs continuously and effectively undertook their mandate, NCAJ carried out a monitoring exercise for the administration of justice at the grassroots.

*Capacity improvement in the justice sector*

The Judicial Service Commission recruited the Executive Director of NCAJ to oversee the operations of the NCAJ Secretariat. Over the same period, Judiciary deployed the Head of the Human Resource and Administration Department, two drivers, an office administrator, an accounts assistant, and a supply chains officer to support the NCAJ secretariat operations. The NCAJ staff requirement was analysed and submitted to JSC for deliberation and consideration. At the end of the review period, NCAJ Secretariat had 15 employees and a staffing gap of 66 per cent. During the review period, six students were taken up for an internship. In conjunction with the Government of Rwanda, NCAJ hosted a conference on automating criminal cases to share best practices and gaps in legislative, policy and institutional contexts to technology. The NCAJ Working Committee on ICT was gazetted under the Chairperson of Hon Justice Isaac Lenaola, Judge of the Supreme Court. Further, the European Union donated ICT equipment to NCAJ agencies, including 444 laptops, 166 printers, 37 scanners and 12 videoconferencing devices to support virtual courts.

*Financial resources and utilisation at NCAJ*

Adequate resources play a crucial role in sustaining the coordination and reform agenda of the NCAJ. During the period under review, the budget for NCAJ comprised office rent of KSh 8.3 million, Secretariat office operations at KSh 12 million, and direct disbursements to CUCs at KSh 30 million. The funding requirement for select core NCAJ agencies was KSh 253 billion, with the approved budget being KSh 166 billion. This resulted in a funding Gap in FY 2021/22 of KSh 87 billion. Out of the approved budget of KSh 166 billion, KSh 159 billion was recurrent since most of the NCAJ agencies are services oriented, while 6.5 billion went towards the development expenditure.

*Challenges Experienced in the Administration of Justice*

Despite the myriad achievements realised, various challenges adversely affected the efficient administration of justice during the period under review, key among them being inadequate funding. The Council promptly resolved some of the inter-agency conflicts that emerged. Perceived weak relations between the public and some justice sector employees could have affected service delivery. There were delays in criminal justice processes, notably investigations, prosecution, and timeous resolution of disputes due to frequent adjournment of cases. The prisons continued to face congestion. Numerous applications also caused a delay in the completion of court cases, especially in corruption-related cases. The uptake of technology was slow, affecting the efficiency of the administration of justice. Access to legal aid services did not reach the desired level. Moreover, CUCs did not adequately address the justice needs of vulnerable persons. The impact of the COVID-19 pandemic also continued to be felt.

*Priority Programmes and Activities on Administration of Justice for FY 2022/23*

Against this backdrop, NCAJ has lined up priority programmes to enhance the coordination of the administration of justice in FY 2022/23. First, the Council has prioritised the development of the NCAJ Bill. Secondly, the Council will seek to timely resolve any interagency disputes that may arise. Coordinating responses to corruption will be prioritised to entrench a culture of integrity. The NCAJ will also develop an action plan of reform priorities for the civil justice sector. To enhance the administration of justice at the grassroots, CUCs will hold quarterly meetings, and a monitoring system will be put in place. To improve access to justice for vulnerable groups, priority will be on policy, legal and institutional reforms. These reforms will be reinforced by undertaking community outreach programs, strengthening the provision of pro-bono services, and coordinating sector-wide training. Sector-wide application of alternative forms of dispute resolution and fast-tracking the review of various laws and guidelines will be undertaken. To support the realization of these programs, NCAJ will enhance the Secretariat's staff capacity and develop operational procedures. A robust monitoring framework and tools will be set to track the performance of the justice sector. Further, strategic engagement with the National Assembly, the National Treasury, the Council of Governors, development partners, private sector and CSOs will be upscaled to secure adequate funding for NCAJ.

DR. MOSES W. MARANG'A
*The Executive Director*
*National Council on the Administration of Justice*

CHAPTER 1: INTRODUCTION

*1.1 Background*

The justice system is a crucial and strategic part of any system of governance, playing a fundamental role in maintaining the rule of law, observance of human rights, and contributing to social-economic growth. The system, which entails the recursive functioning of various interdependent institutions, with decisions of one institution influencing other institutions, plays an essential role in fostering the cohesive existence of a democratic society. Fundamentally, the justice system involves the interplay of state actors, non-state actors and the citizens.

The recurrent nature of interactions between the justice system institutions is characterised by multiple policies and procedures at the different levels of service delivery, with the citizens and social groups being the beneficiaries. To the citizens, services received from the justice sector institutions impact their freedoms and rights, consequently aiding in maintaining a harmonious social structure. The citizens are satisfied when the services rendered are timely and adequate. The realisation of timeliness and adequacy in service delivery, in this case, the administration of justice services, requires rigorous and relentless coordination of the justice system institutions. The coordination function of the administration of justice in Kenya is vested with the National Council on the Administration of Justice (NCAJ).

Therefore, in the quest to address the cross-institutional inefficiencies that may occur in the delivery of justice and maintenance of the rule of law, the NCAJ was established as an umbrella body to ensure effective coordination. The coordination aims at ensuring that the Kenyan justice system renders services efficiently, effectively and collaboratively. The architecture of NCAJ comprises both the apex on a policy level and the grassroots on an operational level. While the top focuses on policy, legal and high-level administrative reforms, the grassroots level aims at harnessing community engagement, performance improvement, problem-solving and optimal utilisation of resources.

*1.2 Brief History of the Establishment of NCAJ*

Prior to the promulgation of the Constitution of Kenya (2010), there was low public confidence in the institutions of the justice sector. The citizens felt that the services received from these institutions were sub-optimal, slow and inadequate, and that the administration of justice was not well coordinated. There was also weak inter-institutional communication which adversely affected the consumers of justice services. Also, the citizens considered the justice system institutions as inward-looking. Notably, there was less cooperation in the criminal justice system, characterised by weak investigations, failure to prosecute many crimes, and lengthy trials that adversely affected the observance of human rights and freedoms.

The first move toward a coordinated approach to the administration of justice began in 2005 when actors in the criminal justice system in Nakuru law courts began to engage regularly. The engagement arose from the need to address the recurrent operational and legal challenges that led to the massive dismissal of cases on technicalities and delays due to inefficiencies of players in the justice sector. There was low faith in the Judiciary and the police due to the lengthy trials and complicated judicial processes. The constellation of these challenges had yielded inadequate redress of disputes through Courts. Against this backdrop, in 2006, the leadership of the Nakuru Law Court at the time and the Kenya Magistrates and Judges Association (KMJA) proposed establishing the Court User Committee (CUCs) as a forum to deliberate and resolve the challenges and frustrations that characterised the administration of justice. Therefore, it was felt that addressing the existing institutional inefficiencies and heightened public involvement in judicial processes would foster mutual understanding, participation, clarity, and timeliness in rendering judicial decisions.

In 2010, the Report of the Taskforce on Judicial Reforms, which was chaired by Honourable Justice William Ouko, a Supreme Court Judge at the time of writing this report, noted as follows:

*…the administration of justice requires closer coordination between all the agencies involved in the justice system. This means that only comprehensive reforms can restore the integrity, efficiency and effectiveness of the administration of justice.*

Consequently, the Taskforce recommended that a National Council on the Administration of Justice be established under the Judicial Service Bill to strengthen interagency coordination in the administration of justice. The Bill yielded the Judicial Service Act 2011, which legally anchored the coordination of the administration of justice under NCAJ.

1.3 Establishment, Mandate and Composition of NCAJ

1.3.1 Establishment and Mandate

The NCAJ was established in 2011 under Section 34 of the Judicial Service Act (No. 1 of 2011) as a high-level policymaking, implementation, oversight, and coordinating body. The overarching mandate of the NCAJ is to ensure a coordinated, efficient, effective, and consultative approach to the administration of justice and undertaking reforms in the justice sector. Specifically, NCAJ formulates policies relating to the administration of justice, monitors their implementation, and reviews strategies for the efficient administration of justice. Further, NCAJ facilitates the establishment CUCs and mobilises resources for the efficient administration of justice. Primarily, NCAJ focuses on coordination of the justice sector and spearheads reform agenda in legal, policy and administrative arena.

1.3.2 Composition

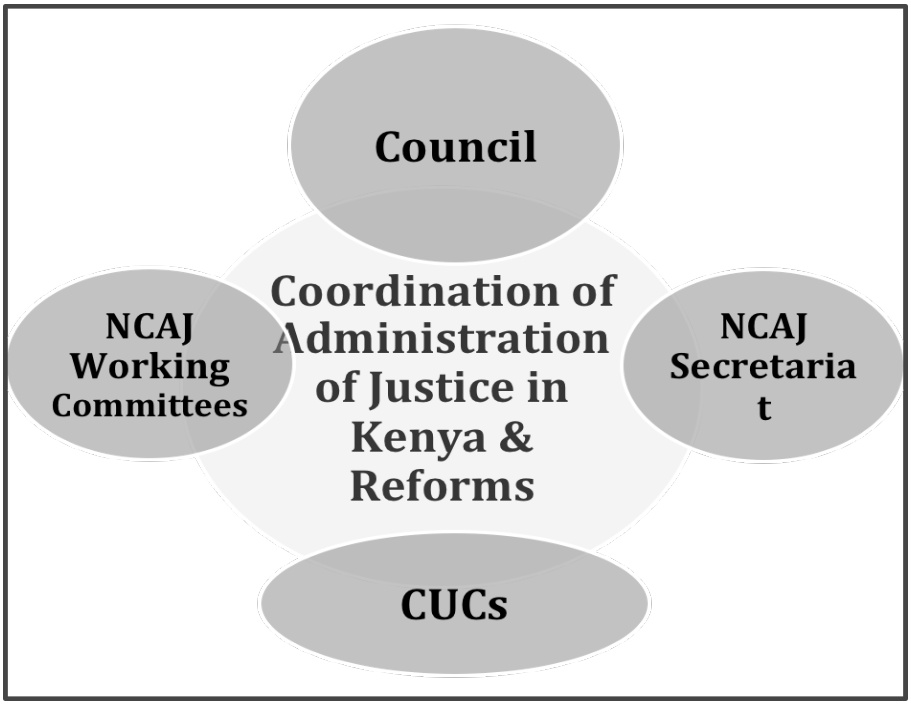
The Kenyan justice system comprises many institutions, including state and non-state actors, who, drawing from their legal mandates, offer justice services to citizens within diverse contexts. Thus, in its design, NCAJ has numerous institutions, some of which are expressly provided for in the statute, while others are co-opted. As per the Judicial Services Act 2011, the Council is comprised of the following members:-

1. the Chief Justice as the Chairperson;
2. the Cabinet Secretary for the time being responsible for matters relating to the Judiciary, or his or her representative appointed in writing;
3. the Attorney-General, or his or her representative appointed in writing;
4. the Director of Public Prosecutions, or his or her representative appointed in writing;
5. the person for the time being exercising command over the National Police Service, or his or her representative appointed in writing;
6. the Commissioner of Prisons, or his or her representative appointed in writing;
7. the Chairperson of Law Society of Kenya, or his or her representative appointed in writing;
8. the Principal Secretary for the time being responsible for matters relating to the Cabinet and the public service, or his or her representative appointed in writing;
9. the Principal Secretary for the time being responsible for matters relating to gender, women and children's' affairs, or his or her representative appointed in writing;
10. the Principal Secretaries for the time being responsible for matters relating to labour, environment and land, or their representatives appointed in writing;
11. the Director of Witness Protection Agency, or his or her representative appointed in writing;
12. the Director of Probation and After-care Services, or his or her representative appointed in writing;
13. a representative of an organisation or association dealing with human rights issues and the provision of legal aid to women;
14. a representative of an organisation or association dealing with human rights issues and the provision of legal aid to children;
15. a representative of the private sector; and
16. A representative of Non-Governmental Organisations dealing with human rights issues and the provision of legal aid.

The Chief Registrar of the Judiciary is the NCAJ Secretary. The Council also co-opted the Ministry of Defence, Kenya Law Reform Commission, Commission on Administrative Justice, Kenya National Commission on Human Rights, Independent Electoral and Boundaries Commission, Ethics and Anti-Corruption Commission, Independent Police Oversight Authority, Council for Legal Education, Council of Governors, Department of Children's Services, Directorate of Criminal Investigation, National Transport and Safety Authority. Other agencies are the National Lands Commission, Ministry of Health, Victim Protection Board, National Crime Research Centre, State Department for Correctional Services, National Legal Aid Service, Community Service Order and National Council for Law Reporting. Civil Society Organisations, Non- Governmental Organisations, the Private Sector and other bodies are also represented in the NCAJ. These are FIDA-Kenya, Equality Now, International Commission of Jurists- Kenya, The Cradle, KEPSA, Kenya Association of Manufacturers, Kenya Human Rights Commission, Legal Resources Foundation, and Kenya Magistrates and Judges Association.

1.4 Structure of the NCAJ

The NCAJ comprises the Council, Secretariat, Working Committees and CUCs.




1.4.1 The Council

The Council, which is the highest governance organ, is responsible for coordinating the administration of justice, formulating policies and spearheading the reform agenda in the administration of justice. In its functions, the Council is supported by four sub-committees namely; Executive, Finance and Administration, Communication and Information Management, and Administration of Justice and Implementation committees. The Council is also supported by a Technical Committee comprising of technical persons from the agencies. To realize its mandate, the Council meets at least once every three months.

1.4.2 The Secretariat

The NCAJ Secretariat undertakes technical work concerning the administration of justice, coordination assignments and provides linkages between the Council, Working Committees and CUCs. Besides directly spearheading some of the programs in the NCAJ Strategic Plan (SP), the Secretariat coordinates the Council programmes and supports Working Committees and CUCs to deliver on their mandate. The Secretariat has eight Departments and one Unit. Details about the Departments and the Unit are expounded in Chapter Two.

1.4.3 Working Committees

The NCAJ Working Committees, which also comprise taskforces, and which may be either ad-hoc (established as need arises and for a short period) or standing (with a continuous mandate, but a renewal of term after expiry of a specified period), primarily spearhead policy and legal reforms of NCAJ, assisted by the Secretariat. The Chairpersons of the Committees are drawn from NCAJ agencies, while the secretaries are from the Secretariat. This renders a seamless flow of information and alignment of the Committee's work plans with the NCAJ Strategic Plan. The NCAJ had nine Working Committees in FY 2021/22. Information about the committees is given in Chapter Two while their Terms of Reference (TORs) are highlighted in the Appendices.

1.4.4 Court Users Committees

The CUCs are forums that bring together players, both state and non-state, involved in the administration of justice at the local level. Hence, CUCs are domiciled at the grassroots level, specifically at the court level, with the primary mandate of ensuring the efficient administration of justice within the court's jurisdiction. The CUCs ensure accountability and performance of the justice actors and cultivate partnerships amongst various stakeholders in the justice sector. The membership of CUCs primarily mirrors that of the Council.

Ordinarily, therefore, CUCs are expected to resolve local disputes regarding the administration of justice and find local solutions to emerging issues. They are required to meet every quarter, address emerging issues and implement their work plans. Legal, policy and administrative matters that the CUCs cannot handle are escalated to the Council through the Secretariat for deliberation and directions. The Council decisions then trickle back to the CUCs or the specific justice institutions for action.

1.5 Brief Mandates of some NCAJ Agencies

There are diverse agencies and institutions whose mandates fall within the coordinating function of the NCAJ and are thus critical to the work of the Council. As already indicated, some of these agencies sit in the Council by virtue of Section 34 of the Judicial Service Act, 2011, while others have been co-opted on account of the roles they play in the administration of justice. It is also notable that some of these agencies have the primary mandate of administration of justice, while others have extensive mandates beyond the administration of justice, but play a critical role in the justice sector and are thus members of the NCAJ.

It may, therefore, not be possible to address all the constituent institutions in every part of this report. The report will consequently highlight them in sections where their role in the administration of justice is central. It is, however, important to highlight some of the core agencies and institutions of NCAJ whose functions are overarching and will thus be recurrently addressed in this report.

The *Judiciary*, established under Chapter 10 of the Constitution, is a critical institution in the administration of justice in Kenya. Its primary function is to dispense justice by resolving cases. Under Article 159 (1) of the Kenyan Constitution, judicial authority is vested and exercised by courts and tribunals. The courts consist of the Supreme Court, Court of Appeal, High Court, Employment and Labour Relations Court (ELRC), Environment and Land Court (ELC), Magistrates Court, Small Claims Court, Kadhi Courts and Tribunals.

The *Office of the Director of Public Prosecutions* (ODPP), established pursuant to Article 157 (1) of the Constitution of Kenya and the ODPP Act No. 2 of 2013, prosecutes all persons charged with criminal offences. The Director of Public Prosecutions can institute criminal proceedings against any person before any court other than a court martial. Further, the DPP can discontinue any criminal proceedings commenced by itself or any other person in any court before judgment is delivered.

The *National Police Service* (NPS), established under Article 243 of the Kenyan Constitution, provides national security. The provision of national security entails protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability, prosperity, and other national interests. Further, the NPS undertakes investigations on criminal conduct and apprehends offenders.

The *Office of the Attorney General and Department of Justice* (OAG&DOJ) is established pursuant to Article 156 of the Constitution of Kenya and Office of the Attorney General Act No. 49 of 2012. The OAG&DOJ provides legal advice to the Government. The Office also represents the Government in court, promotes the rule of law and defends public interest. In addition, the Attorney General serves as the Cabinet Secretary in charge of matters relating to justice.

The *Kenya Prisons Service* (KPS) is established as a uniformed and disciplined entity under the Prisons Act Cap 90 and Borstal Institutions Act Cap 92 Laws of Kenya. The Service is domiciled under the Ministry of Interior and Coordination of National Government. In the administration of justice, the Service's core function is to contain and rehabilitate offenders.

The *Probation and Aftercare Services* (PACS) Department supervises, rehabilitates, and reintegrates offenders serving non-custodial sentences within the community following the determination of cases by courts. Further, the Department generates advisory reports to courts and penal organs for bail, sentencing, and pre-release decision-making.

The *Witness Protection Agency* (WPA) is established under Section 3A(1) of the Witness Protection Act, 2011. The Agency is mandated to provide special protection on behalf of the State for persons possessing important information and face potential risk or intimidation due to their cooperation with the prosecution and other law enforcement agencies.

The *Ethics and Anti-Corruption Commission* (EACC) is a public body established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011. The Commission is mandated to combat and prevent corruption, economic crime, and unethical conduct in Kenya through law enforcement, prevention, public education, promotion of standards and practices of integrity, ethics, and anti-corruption.

The *Kenya National Commission on Human Rights* (KNCHR) is an independent national human rights institution created by Article 59 of the Constitution and the Kenya National Commission on Human Rights Act, 2011. The Commission promotes and protects human rights and acts as a watchdog over the Government in observance of human rights.

The *Commission on Administrative Justice* (CAJ), also known as the Office of the Ombudsman, is a constitutional commission established under Article 59 of the Kenyan Constitution and the Commission on Administrative Justice Act, 2011. Its core mandate is to resolve maladministration in the public sector.

The *National Land Commission* (NLC) is established under Article 67 of the Constitution to handle land matters with the specific mandate anchored in the National Land Commission Act 2012, Land Act 2012, Land Registration Act 2012, and National Land Policy 2009. The Commission investigates complaints received on historical land injustices and recommends appropriate redress.

The *Law Society of Kenya* (LSK), established under the Law Society of Kenya Act, 2014 and composed of practising advocates, represents individuals in courts in the litigation process, thus playing a critical role in advancing the rule of law in the justice sector. The LSK also promotes professional competence in the legal profession and formulates policies. Also, LSK assists the Government in the administration of justice and practice of laws in Kenya. Further, LSK assists the public in matters ancillary or incidental to the law.

1.6 Legal, Policy and Strategic Anchorage of Administration of Justice in Kenya

Kenya's Constitution recognises the need for citizens to have a government based on the values of human rights, equality, freedom, democracy, social justice and the rule of law. Article 10(2) (b) of the Constitution envisions a free and open society founded on human dignity, equality, equity and freedom. The commitment of the Kenyan government to the UN Sustainable Development Goals (SDGs)-2030 Agenda emphasizes the need for a just society. The SDG 16 calls for peaceful, just, and inclusive societies with effective, accountable, and inclusive institutions. The SDG 16 further highlights the role of justice institutions for sustainable development through ending violence, promoting the rule of law, and providing access to justice for all.

The Kenya Vision 2030 aspires to create a transformed society that observes and ascribes to, among others, the rule of law and observance of human rights, given its crucial role in supporting a modern, market-based economy. The Vision envisages the alignment of the national policy and legal framework with human rights and gender equity commitments, increasing access and quality of services available to the public and reducing barriers to justice. Further, the vision aims at having a society where the functional capability of legal and judicial institutions is streamlined to enhance inter-agency cooperation, inculcating a culture of compliance with laws and pursuing legal reforms to foster transparent and accountable government institutions.

The Vision is implemented through Medium Term Plans (MTP). The MTP III (2018-2022) emphasizes strengthening policy, legal framework, and access to justice and legal services. The Plan outlines priorities on police modernization, strengthened prosecution services, implementation of the Bill of rights, timely disposition of cases, increased justice sector employees to population ratio, provision of legal aid to vulnerable groups, the establishment of courts and case management systems, enhanced witness protection, and promotion of alternative justice systems.

The NCAJ was established to contribute to these goals and to ensure a coordinated, fair, and effective administration of justice that is responsive to the demands of the public. Following a resolution of the Council, the Hon. Attorney General gazetted a committee in April 2022 to develop a draft NCAJ Bill providing for an autonomous and strengthened NCAJ.

The NCAJ Strategic Plan (2021 - 2026) was launched in October 2021 to strengthen coordination and reforms in the justice sector. The NCAJ Strategic Plan has six Key Result Areas (KRAs). Each KRA has priority programs and activities covering policy, legal and institutional priorities, and reforms for efficient and impactful administration of justice.

*The launch of the NCAJ Strategic Plan 2021-2026, October 2021*

The KRAs of the NCAJ Strategic Plan 2021-2026 are:

1. Strengthened NCAJ coordinating mechanisms for improved access to justice.
2. Deepened criminal justice sector reforms.
3. Strengthened CUCs for effective coordination of the administration of justice.
4. Strengthened partnerships and stakeholder engagement.
5. Effective monitoring and evaluation of programs in the justice sector.
6. Improved access to justice for vulnerable groups.
7. Deepened civil justice sector reforms *(In its statutory meeting of February 2022, the Council resolved to have a renewed focus on civil justice reforms. Consequently, civil justice reforms was adopted as an additional strategic focus area for the NCAJ).*

1.7 Achievements by NCAJ between 2011 to 30th June 2021

There has been myriad successes and achievements for the NCAJ since its formation in 2011. These included legal, policy and administrative reforms that affects many facets of the administration of justice. The achievements from 2011 to 30th June 2011 are:

A. Laws

The following Bills were developed:

i. Bail and Bond Bill, 2021.
ii. Children's Bill, 2021 (Currently Children Act No. 29 of 2022).

B. Policies and Guidelines

The policies and guidelines that were developed are:

i. NCAJ Strategic Plan, 2012 – 2016.
ii. Policy on Continuous Professional Development on Juvenile Justice, 2020.
iii. Bail and Bond Policy Guidelines.
iv. Court User Committees' Guidelines.
v. Direction on Traffic Cases, 2016.

C. Manuals & Standard Operating Procedures

The following manuals were completed:

i. Enforcement Manual to Combat Illicit Trade in Kenya (1st Edition-2014, 2nd Edition-2020).
ii. Practitioners Guide for Enforcement Officers on Combating Illicit Trade, 2020.
iii. Bail and Bond Trainers Manual, 2020.
iv. Bail and Bond Training Course, 2020.

D. Reports, Case Studies and Surveys

The following reports, case studies and surveys were undertaken:

i. Status Report on Children in the Justice System in Kenya.
ii. Fixing the broken child justice chain link.
iii. Criminal Justice System in Kenya: An Audit, 2016.
iv. Bail and Bond M & E Report.
v. Status Report on Implementation of the Bail and Bond Policy Guidelines.

E. Curriculums, Practice Directions and Protocols

The following Curricular, Practice Directions and Protocols were prepared:

i. Protocol on Service Week for Children Matters.

ii. Curriculum for Child Care and Protection Officers & Facilitators Manual.

F. Digests and Forms

The following digests and forms that were developed:

i. Bail and Bond Digest Volume 1.

ii. Bail and Bond Digest Volume 2.

iii. Protection and Care Form for children.

G. Achievements by Defunct and Transited Working Committees

Other working committees existed at NCAJ between 2011 and June 2021. Their key achievements are listed as follows:

1. *The Bail and Bond Implementation Committee*: The committee was established in October 2015 to ensure the appropriate application of bail and bond terms. The Committee identified bail and bond reform priorities, developed the Bail and Bond Guidelines, and a framework for continuous sensitisation and training of officers on the administration of bail and bond. The Hon. Lady Justice Jessie Lesiit, Judge of the Court of Appeal, chaired the committee.

2. *The Active Case Management (ACM) Committee*: The committee was established in 2015 to ensure speedy trials in the criminal justice system, a constitutional imperative under Article 159. The Committee developed ACM guidelines, the Manual on Active Case Management in Criminal Cases in Kenya, and Mock Case File and Case Study on ACM. The Committee was chaired by Hon. Lady Justice Pauline Nyamweya, Judge of the Court of Appeal.

3. *The NCAJ Committee on Covid-19 Pandemic*: The committee was formed in the wake of the COVID-19 pandemic to review the pandemic situation, advise the Council on requisite preventive measures, and ensure that the pandemic did not adversely affect the employees and clients of justice system institutions. The Committee was chaired by Hon Justice William Ouko, then Judge of the Court of Appeal of Kenya.

1.8 Capacity of NCAJ as of 30th June 2021

By the end of June 2021, NCAJ had a technical committee and four working committees. The Council had held 20 statutory meetings by 30th June 2021. Between 2011 and June 2021, NCAJ had one Strategic Plan for the period 2012-2016, which focused on five broad areas namely: Review of legal and policy frameworks for NCAJ and the entire justice sector; Strengthening the institutional operation framework for NCAJ and its membership; Mobilising resources for the efficient and effective administration of justice; Coordinating and monitoring strategies on the administration of justice; and Operationalizing the Court Users Committees. The reporting of progress on the administration of justice was done through the State of the Judiciary and the Administration of Justice Report (SOJAR), this being a Judiciary publication.

By June 2021, the NCAJ secretariat had six staff members. Three staff had been embedded through the support of the development partners, while the other three were Judiciary employees recruited by the JSC. There was no Executive Director at NCAJ Secretariat, and leadership was overseen by the Chief-of-Staff in the Office of the Chief Justice. The Secretariat operated as a single unit without departments. The NCAJ had 123 CUCs at the magistracy level, 40 at the high court or county level, 2 ELC CUC, 2 ELRC CUC, one commercial justice CUC. Two children's justice CUCs, 14 Kadhis court CUCs and 3 Tribunals CUCs.

On physical infrastructure, the NCAJ moved to Mayfair Centre Building in April 2018. Previously, NCAJ Secretariat operated from a single office at the Supreme Court Building. The Judiciary offered transport services as no vehicles had been allocated to NCAJ. The annual financial allocation for the NCAJ in the FY 2020/21, excluding salaries and personnel emoluments, stood at 43.8 million, comprising rent at KSh 8.3 million, KSh 30 million for the CUCs, and KSh 5.5 million for the NCAJ Secretariat operations.

1.9 Rationale and Scope of the Annual Administration of Justice Report

The preparation of the Report is anchored on Section 37 of the Judicial Service Act 2011, among other legal provisions. In the Act, the Council is expected to prepare and submit annual reports on its activities, with the final output expected to be presented to the National Assembly. The Report covers the FY 2021/22 and primarily documents the progress realised in the administration of justice as envisaged in the NCAJ Strategic Plan 2021-2026. The Report emphasises outcomes of within and inter-institution interactions that involve collaboration in the administration of justice. Further, the Report provide brief insights on priority areas for FY 2022/23.

CHAPTER 2: COORDINATION AND LEADERSHIP IN THE JUSTICE SECTOR

2.1 Introduction

A well-coordinated justice sector is crucial for the efficient and effective administration of justice in Kenya. Also, having a strengthened leadership and governance structure for the NCAJ is essential for realising the NCAJ mandate as articulated in the Strategic Plan 2021-2026. This Chapter presents the progress realised in the overall coordination of the administration of justice in Kenya. The Chapter provides the leadership role and activities undertaken by the Council, structural changes and reforms thereof, including the broad achievements of Working Committees and the Secretariat. Further, the highlights of the continued partnership between NCAJ and players in the justice sector are provided.

2.2 Structural and other Reforms in the NCAJ

2.2.1 The Council

In the period under review, the NCAJ created four sub-committees; Executive, Finance and Administration, Communication and Information Management, and Administration of Justice and Implementation Committees. The Council had formed a special committee to develop the terms of reference (TORs) for the NCAJ sub-committees led by Mr. Noordin Haji, the DPP, as the Chairperson. The other members were Hon. Lady Justice Cecilia Githua (Community Service Order (CSO) programme), Prof. Jack Mwimali (National Council for Law Reporting (NCLR)), Mr. Joash Dache (Kenya Law Reform Committee (KLRC)), Ms. Jedidah Waruhiu (Witness Protection Agency (WPA), Patricia Nyaundi SC, and Dr. Moses Marang'a, the Executive Director NCAJ as the secretary.

2.2.2 The Secretariat

The Executive Director was recruited by the JSC and appointed as the head of the NCAJ Secretariat. The Secretariat underwent a reorganisation, with eight departments and one unit being created during the period under review. The Heads of Departments (HODs) provide strategic and operational leadership to the departments. The specific departments are:

i. *Council Coordination Department:* The primary responsibility of the NCAJ is coordinating various facets of the administration and reform of the justice system. The Department is responsible for ensuring that the Council functions optimally and can efficiently and effectively coordinate the administration of justice in Kenya.

ii. *Criminal Justice Reforms Department:* The Department coordinates the reform agenda in the criminal justice sector and acts as an essential focal point between the Council and Criminal Justice Reforms, Anticorruption and Traffic Reforms Working Committees.

iii. *Civil Justice Reforms Department:* The Civil Justice Department was created to coordinate the reforms in the broad civil justice arena, covering *inter alia*, land justice, commercial justice, employment and labour relations justice and succession matters.

iv. *Court Users Committees Department:* The Department handles all CUC matters, including grassroots issues on the administration of justice.

v. *Access to Justice for Vulnerable Groups Department:* The Department focuses on enhancing administration and access to justice for vulnerable groups.

vi. *Strategy, Monitoring and Evaluation Department:* The Department spearheads sectoral and internal planning, monitoring and evaluation of the administration of justice. The Department also undertakes research and data management.

vii. *Human Resource and Administration Department:* The Department is responsible for managing the human resource affairs of the NCAJ Secretariat and offering administrative support.

viii. *Finance and Accounts Department:* The Department manages NCAJ finances to facilitate the other departments in the undertaking of their programs.

ix. *Supplies Chain Unit:* The Unit is responsible for procurement and stores management.

2.2.3 Working Committees

The Council establishes the Working Committees to spearhead a specific reform agenda, primarily legal, policy and administrative reforms. They have representation from NCAJ agencies, but they may co-opt technical and resource persons to deliver on their mandate effectively. Once constituted, they are gazetted. At the end of the reporting period, NCAJ had nine Working Committees. These were:

i. *NCAJ Committee on Criminal Justice Reforms* - The Committee has 36 members, and its chairperson is Hon. Lady Justice. Grace Ngenye, Judge of the Court of Appeal.

ii. *NCAJ Standing Committee on Court Users* - The Committee has 24 members. The chairperson is Hon. Justice Alfred Mabeya, Judge of the High Court of Kenya, who succeeded the previous Chairperson, Hon. AbdulQadir Lorot, a Chief Magistrate.

iii. *NCAJ Standing Committee on the Administration of Justice for Children* - The Committee has 23 members. The chairperson was Hon. Lady Justice Teresia Matheka, Judge of the High Court of Kenya, who succeeded the Hon. Justice Martha Koome, the Hon. Chief Justice, who was a Judge of the Court of Appeal during her tenure as the chairperson.

iv. *NCAJ Working Committee on ICT* - The Committee has 22 members, and its chairperson was Hon. Justice. Isaac Lenaola, Judge of the Supreme Court of Kenya.

v. *NCAJ Committee on Anti-Corruption* - The Committee has 12 members and is chaired by Ms. Dorcas Oduor SC, Secretary - Public Prosecution.

vi. *NCAJ Committee on Traffic Reforms* - The Committee has 17 members. The chairperson is Mr. Noordin Haji, the Director of Public Prosecution.

vii. *NCAJ Committee on the Review of Laws and Policies on SGBV* - The Committee has 19 members and is chaired Ms. Nancy Ikinu of FIDA-Kenya.

viii. *NCAJ Committee on Civil Justice Reforms* - The Committee has 15 Members. The Hon. Attorney General or the Solicitor General chairs the Committee.

ix. *NCAJ Ad-hoc Committee on Elections Preparedness* - During the review period, the *ad-hoc* Committee on elections preparedness was chaired by Mr. Wafula Chebukati, the IEBC chairperson.

The percentage composition of the chairpersons of the Working Committees by gender is presented in Figure 1:

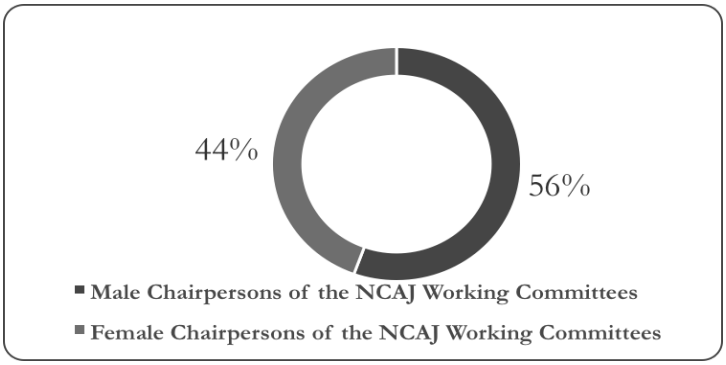



Figure 1: Composition of the chairpersons of NCAJ Working Committees by gender

2.2.4 Court Users Committees

At the end of the review period, CUCs stood at 231. This marked a 26 per cent increase in comparison to the previous FY. The number of CUCs by type is given in Table 1.

Table 1: Number of CUCs by Type, FY 2020/21-2021/22

| *Nature of CUC* | *FY 2020/21* | *FY 2021/22* |
|---|---|---|
| Court Users Committees at High Court | 40 | 40 |
| Employment and Labour Justice CUCs | 2 | 2 |
| Environment and Land Justice CUCs | 2 | 37 |
| Court Users Committees at Magistrates' Court | 123 | 125 |
| Children CUCs | 2 | 7 |
| Commercial Justice CUCs | 1 | 5 |
| Court Users Committees at Kadhis Court | 14 | 14 |
| Court Users Committees at Tribunals | 3 | 6 |
| Total | 187 | 236 |

2.3 Programs and Activities of the Council

2.3.1 High Level Meetings on Administration of Justice

In FY 2021/22, four Council meetings were held. The meetings broadly discussed, among other issues, policy, legal and institutional reforms on coordination and effective administration of justice. The Council held its first meeting in July 2021. The second Council meeting was held on 29th October 2021. The meeting's focus was on the launch of the NCAJ Strategic Plan 2021-2026 and diverse NCAJ publications, empowering the NCAJ Secretariat and the Working Committees, and the best approaches to implementing the Strategic Plan.

In the third quarter, the Council held its meeting on 9th February 2022. The meeting assessed the progress on the implementation of the NCAJ Strategic Plan. Other crucial outcomes of this meeting included: the ratification of the report on Online Child Sexual Exploitation and Abuse (OCSEA); ratification of the opening of an NCAJ bank account to enhance financial efficiency; and the establishment of an ad-hoc committee on elections preparedness. The specific details of the reform instruments that the Council approved are explained in subsequent chapters.

*The Hon. Chief Justice and Chair of NCAJ consulting with the CS Ministry of Interior, Dr. Fred Matiang'i, Inspector General of Police, Mr. Hillary Mutyambai, and the Secretary of the Council, Hon. Anne Amadi during the NCAJ Council meeting held on 16th July 2021.*

*Mr. Noordin Haji, the DPP and Vice Chairperson of NCAJ, contributing to a discussion during the Council meeting*

The meetings held by NCAJ Working Committees during the period under review are enumerated in Table 2.

Table 2: Meetings held by NCAJ Working Committees, FY 2021/22

| Committee | | Number of Meetings Held |
|---|---|---|
| 1 | Council | 4 |
| 2 | Technical Committee | 5 |
| 3 | Standing Committee on CUCs | 3 |
| 4 | Criminal Justice Reforms Committee | 8 |
| 5 | Standing Committee on Children Matters | 4 |
| 6 | Committee on Traffic | 2 |
| 7 | Committee on Issues of SGBV | 2 |
| 8 | Committee on Anti-corruption | 1 |
| 9 | *Ad-hoc* Committee on Elections preparedness | 1 |

2.3.2 Development of the NCAJ Strategic Plan

During the period under review, NCAJ developed its Strategic Plan covering 2021-2026. The Plan focuses on efficient coordination of the administration of justice. Further, the Plan emphasises civil and criminal justice reforms, grassroots administration of justice through CUCs, sectoral monitoring, and access to justice for vulnerable groups. The development of the Plan was supported by the UNODC under the European Union PLEAD program.

2.3.3 Conferences on Administration of Justice

During the period under review, NCAJ organised and hosted the 2nd National Criminal Justice Conference, which brought together diverse stakeholders in the criminal justice sector. The stakeholders included state actors, development partners, CSOs, academia, and practitioners who deliberated and proposed reforms. Details of the Conference are in Chapter Three.

*2.3.4 Benchmarking on Best Practices*

During the period under review, NCAJ also hosted a Mozambique delegation led by Hon. Chief Justice of Mozambique Lord Adelino Muchanga. The engagement focused on sharing experiences on CUCs and mobile courts.

Further, NCAJ organised and hosted a Conference on Automation of Criminal Cases focusing on legislative, policy, and institutional contexts. The Conference also provided a platform for deliberating on experiences and challenges in administering justice in the context of automated criminal justice processes while protecting human rights. It allowed the Kenyan justice actors to interact and share information on best practices for automating criminal cases with regional counterparts. Detailed highlights of the engagements are provided in Chapters 6 and 7.

2.3.5 Review of the Preparedness by NCAJ Agencies Regarding Elections

The NCAJ ad-hoc committee on Elections Preparedness held a meeting in April 2022 under the leadership of Mr. Wafula Chebukati, the Chairperson of IEBC. The purpose of the meeting was to assess the readiness of the NCAJ agencies concerning the August 2022 general elections. Among the critical issues of deliberations were processes, work methods, and policies relating to the administration of justice, including the strategies for realizing NCAJ goals of enhanced adherence to the rule of law during the electioneering period.

The roles and responsibilities that each NCAJ agency bears, and expectations from each other, were discussed to ensure that the country was well prepared for the elections. Specifically, the ad-hoc committee deliberated on the expectations of IEBC from NCAJ Agencies on election preparedness, the expectations of NCAJ agencies on IEBC, and maintenance of the rule of law pre, during, and after elections. The report of the ad-hoc committee was presented and adopted by the Council in May 2022.

2.3.6 Partnerships and Stakeholders Engagement

The NCAJ engaged diverse stakeholders, notably development partners, civil society organizations, and other government institutions. The development partners included the European Union, UNODC, International Development Law Organisation (IDLO), United Nations Children Fund (UNICEF), World Vision Kenya, and the United States Department of Justice (USDOJ). The NCAJ also forged and sustained existing partnerships with CSOs, including Equality Now, FIDA Kenya, International Commission of Jurists (ICJ), International Justice Mission (IJM), Legal Resources Foundation (LRF), Justice Defenders, Reprieve, Clean Start and Faraja Foundation. Further, the Law Society of Kenya (LSK) engaged NCAJ on diverse matters related to the efficient administration of Justice.

The areas of engagement were priority programs on the administration of justice, including those covering access to justice for vulnerable and marginalized groups. The discussions also explored areas for continued partnerships and strategic financing. Further, the Executive Director of NCAJ engaged the public through the KTN TV and Spice FM radio show. The engagement covered the administration of justice in Kenya through NCAJ, focusing on the relevance and efficacy of coordinating roles, priority programs, and service delivery benefits that Kenyan citizens would achieve through coordinated justice sector institutions.

*2.4 Monitoring, Evaluation and Reporting of the Administration of Justice*

The NCAJ monitors the progress made in the implementation of programs on the administration of justice in Kenya. The Secretariat presents the progress report to the Council every quarter. The Council deliberates and synthesises the submitted report and gives guidance and directions, especially in areas of slow progress or significant challenges. During the period under review, three monitoring reports were presented and adopted at the Council's meetings. Field monitoring of CUCs activities was undertaken in 12 law courts. Two NCAJ Working Committees undertook monitoring exercises on criminal justice reforms and access to justice for vulnerable groups in Turkana County. The other chapters have provided detailed information on the outcomes of the monitoring exercises during the period under review.

CHAPTER 3: PROGRESS AND REFORMS IN CRIMINAL JUSTICE

1.1 Introduction

In compliance with the constitutional and other legal provisions, the criminal justice system (CJS) strives to deliver fair and just outcomes to its clients. To achieve this, the CJS protects the innocent, prosecutes accused persons, convicts offenders, rehabilitates convicts, supports victims, keeps communities safe, and maintains law and order in a country. For this to be realised, continuous policy improvement and sustenance of reforms in the CJS is crucial. The ongoing reforms in the CJS were catalysed by the promulgation of the Constitution of Kenya in 2010, which under Article 48, obligates the State to guarantee the freedom of access to justice for all persons. Article 25(c) guarantees the right to a fair trial as one of the rights which cannot be limited. In addition, the rights of arrested persons are comprehensively captured under Article 49, the right to a fair trial is expounded under Article 50, and the rights of detained persons are captured under Article 51. Further, efficient administration of criminal justice is anchored in the United Nations Sustainable Development Goal on promoting peaceful and inclusive societies for sustainable development.

Despite the Constitutional guarantees and international obligations, numerous challenges impede the effective and efficient functioning of the criminal justice sector. An audit of the Criminal Justice System in Kenya published in 2017 by the National Council on the Administration of Justice (NCAJ) revealed numerous systemic weaknesses and shortcomings. One of the finding was that the criminal justice system is skewed mainly against the poor and criminalises petty offences through the use of custodial measures, resulting in overcrowding in places of detention. Further, state laws and policies put in place to regulate commercial and environmental activities often create criminal offences that would otherwise require administrative solutions. There also exist gaps and inconsistencies in law, practice and policy application, which present significant challenges in upholding the rule of law and adhering to constitutional and human rights prescripts.

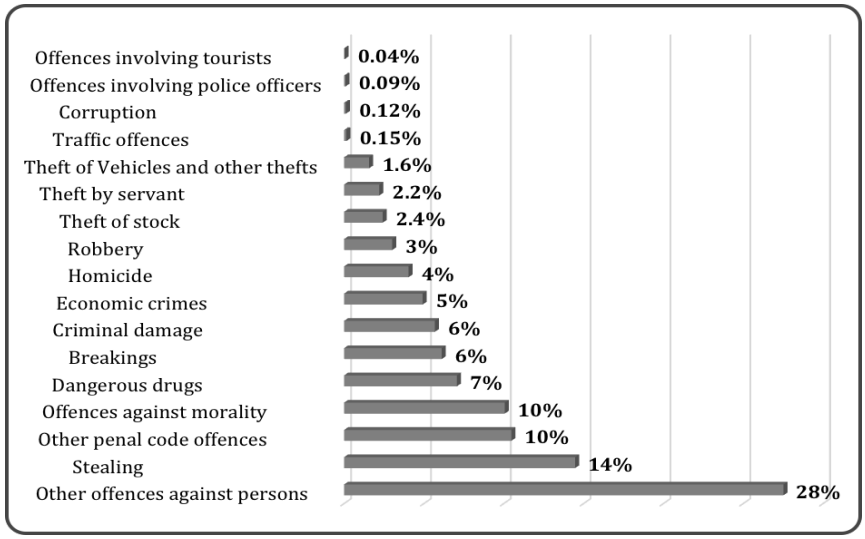
All actors within the criminal justice sector who exercise a function in the administration of criminal justice are obligated to ensure the aforementioned rights are upheld in the context of offenders and the victims of crime. To realise this, the NCAJ plays a pivotal role as the body mandated to ensure a coordinated approach in the administration of justice in Kenya. The NCAJ Strategic Plan 2021-2026 emphasizes the collaboration of sector agencies. Specifically, NCAJ strives to deepen reforms within the criminal justice sector and ensure equality and fairness to all persons in compliance with the Constitution. The entire process from the investigation, arrest, prosecution, trial, sentencing and rehabilitation requires concerted and coordinated policy, legislative and administrative actions.

The NCAJ has remained at the forefront in ensuring a coordinated approach to the efficient administration of justice. The coordinated approach has, over time, yielded myriad benefits covering legal, policy and administrative reforms beyond the normal progress on Agencies core mandate. This chapter, therefore, provides information on progress and reforms in the CJS that NCAJ undertook in FY 2021/22. The chapter culminates by highlighting the challenges experienced in the administration of criminal justice and recommendations thereof.

1.2 Progress in Administration of Criminal Justice

1.2.1 Criminal Cases Processed by the National Police Service

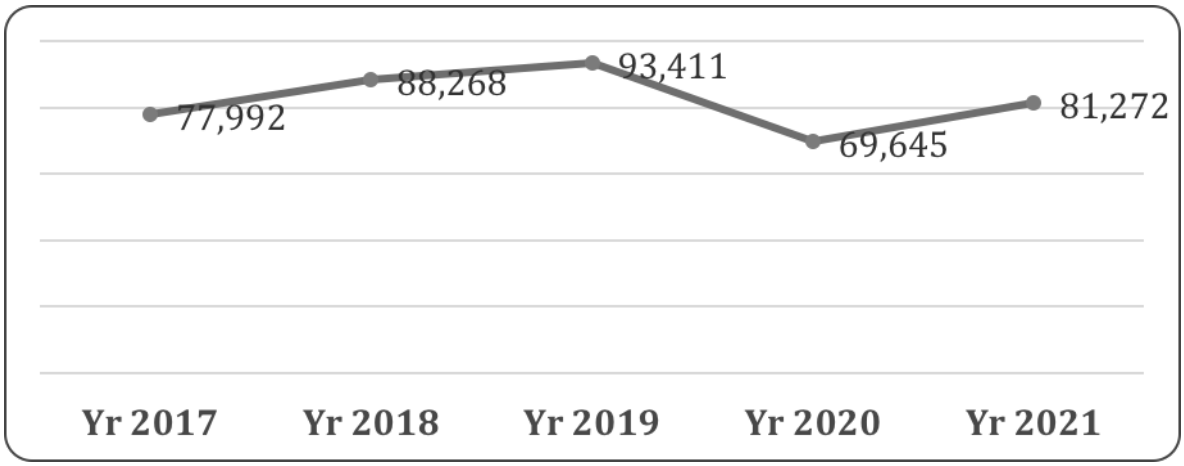
The National Police Service (NPS) is principally the first point of contact for most persons entering the CJS in Kenya. By executing its mandate to maintain the rule of law, the NPS investigates and apprehends offenders who commit crimes. The crimes committed often differ by type, location and prevalence. In the period under review, over 500,000 incidents of crimes were processed by the NPS across all the police stations in the country. Out of these cases, 81,272 were serious crimes. The average serious crimes reported to the police by type are shown in Figure 2.




*Source: NCAJ Analysis using NPS data published in the KNBS Economic survey*

Figure 2: Average serious crimes reported to the police by type, FY 2016/17-2020/21

Figure 2 shows that the most prevalent crimes were offences against persons at 28 per cent followed by stealing at 14 per cent. The offences involving tourists were the least at 0.04 per cent. The crime trend between 2017 and 2021 is given in Figure 3.




*Source: NCAJ Analysis using NPS data published in the KNBS Economic survey*

Figure 3: Trend of serious crimes reported to the police, 2017-2021

Figure 3 shows the increase in the total reported cases from 77,992 offences in 2017 to 93,411 crimes in 2019. This was followed by a decline to 69,645 in 2020 before a rise to 81,272 offences at the end of the period under review. The decline could be attributed to either less offending or reporting during the COVID-19 pandemic period. The details of prevalent crime over time are summarised in Table 3.

Table 3: Trend of serious crimes reported to the police by type, 2017-2021

Error! Not a valid link. *Source: NPS as Published by KNBS Economic Survey 2022*

From Table 3, there is no apparent much deviation in crime occurrence for any given type of offence between 2017 and 2021. This, therefore, provides the justice sector institutions a better planning platform to institute specific mitigation measures for a given crime type.

To avert crime, the NPS rolled out various capacity-building initiatives for its personnel during the period under reference. These entailed, among others, increasing the number of stations and patrol bases. Further, the NPS deployed financial resources to all levels of the Service structures, including the officers commanding police stations, to improve service delivery and establish community-policing structures for enhanced cooperation

between police and the community. The service was further instrumental in the review of the Medical Examination Report Form (P3 form) to resolve the hurdles encountered in accessing justice by the poor and vulnerable.

The Directorate of Criminal Investigations (DCI) embraced virtual and video conferencing to give evidence during court proceedings. The Directorate further introduced initiatives to broaden relations with the public through increased platforms of case reporting such as *Fichua Kwa DCI* and DCI toll-free numbers. The Directorate, with other stakeholders, participated in reviewing and enacting the Sexual Harassment Policy to enhance better work ethics and compliance with the Sexual Offences Act 2006 and in drafting the Standard Operating Procedures (SOPs) for investigations and prosecution of Human Trafficking and Organized Crimes.

1.2.2 Addressing Corruption by the Criminal Justice Sector

During the period under review, NCAJ gazetted the Working Committee on Anti-corruption. In commemorating NCAJ's 10th anniversary, the Committee organised a webinar on *Corruption within the Justice Sector: Reflections on Strides and Challenges*. The webinar brought together key justice actors and other stakeholders to discuss the vulnerabilities that corruption poses to the delivery of justice, appraise the sector's efforts to address corruption, identify the sector's corruption-friendly flaws, and propose subsequent steps geared toward reform. The Committee convened a meeting to identify areas that need to be addressed and charted a roadmap towards enhancing the efficient and effective administration of justice in corruption matters. The NCAJ will prioritise the identified programs in the next reporting period.

*A. Cases Processed by Ethics and Anti-Corruption Commission*

The Ethics and Anti-Corruption Commission (EACC) is mandated to investigate corruption cases and forward the files to the Office of the Director of Public Prosecutions (ODPP) for action. The trend analysis of cases reported and processed by EACC is shown in Figure 4.

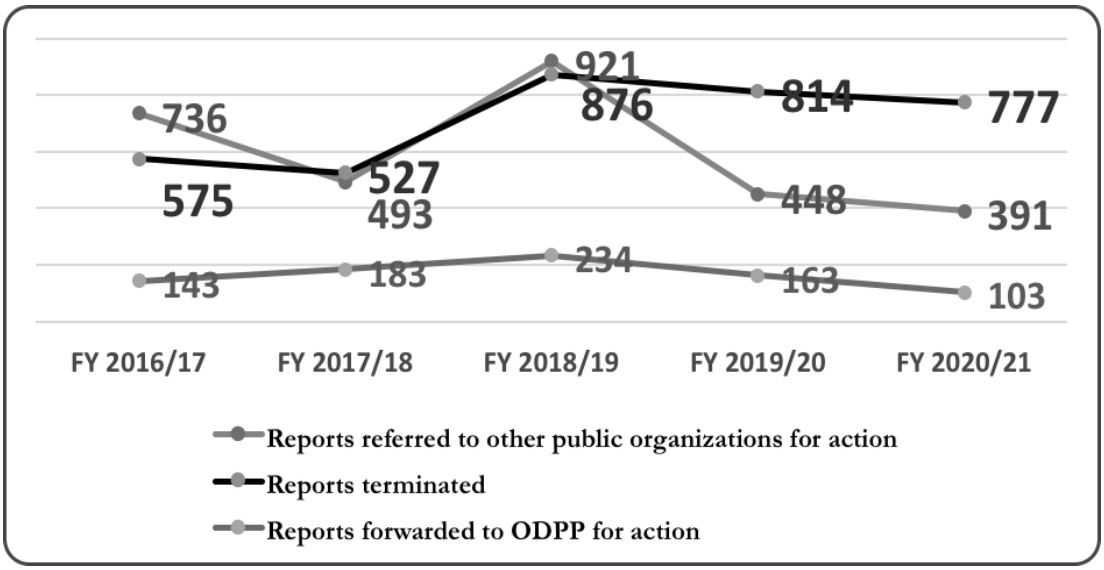



*Figure 4: Trend of cases processed by EACC, FY 2016/17-2020/21*

From Figure 4, most complaints received were terminated or referred to other public bodies for action. Overall, reports forwarded to ODPP for action are generally less than those forwarded to other public organizations for further action upon conducting investigations. The graph above shows that between FY 2016/17 and 2018/19, there was an increase in cases forwarded to the ODPP for action. The rise was followed by a decrease between FY 2018/19 and FY 2020/21. On the other hand, there was a decrease in the number of reports referred to public organizations for further action between FY 2016/17 and 2017/18. This was followed by an increase between FY 2017/18 and 2018/19 and decline in the FY 2020/21. The details of the reports handled by EACC and the action taken are provided in Table 4.

Table 4: Anti-corruption matters processed by EACC

| *Matters processed* | *2016/17* | *2017/18* | *2018/19* | *2019/20* | *2020/21* |
|---|---|---|---|---|---|
| 1) Reports for investigation | 3,735 | 2,898 | 3,482 | 2,221 | 2,032 |
| 2) Reports referred to public organizations | 736 | 493 | 921 | 448 | 391 |
| 3) Reports pending more information | 64 | 86 | 226 | 125 | 73 |
| 4) Complainants advised on where to report | 3,045 | 2,207 | 3,803 | 2,308 | 1,621 |
| 5) Reports Terminated | 575 | 527 | 876 | 814 | 777 |
| 6) Reports forwarded to ODPP | 143 | 183 | 234 | 163 | 103 |
| Total Matters Processed | 8,298 | 6,394 | 9,542 | 6,079 | 4,997 |

*Source: EACC and as Published KNBS Economic Survey, 2022*

Table 4 shows the reports EACC received for investigation decreased between FY 2016/17 and FY 2017/18. There was an increase between FY 2017/18 and 2018/19, which decreased between FY 2018/19 and 2020/21. The decrease may be attributed to covid 19 pandemic, which slowed down most processes. Also, the number of terminated reports within the years is more than the number of reports forwarded to ODPP for further action.

*B. Action on Reports submitted to ODPP by EACC*

In the year under review, the ODPP processed 103 matters that had been received from EACC as shown in Table 5.

Table 5: Processing of Matters by ODPP from EACC, 2016/17-2020/21

| *Action Taken* | *2016/17* | *2017/18* | *2018/19* | *2019/20* | *2020/21* |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| 1. Recommendation to prosecute accepted | 89 | 113 | 77 | 41 | 14 |
| 2. Recommendation to prosecute not accepted | 8 | 6 | 1 | 3 | 1 |
| 3. Recommendation for administrative or other action accepted | 7 | 9 | 13 | 9 | 5 |
| 4. Recommendation for administrative or other action not accepted | 0 | 1 | 0 | 3 | 1 |
| 5. Recommendation for closure accepted | 25 | 31 | 31 | 20 | 6 |
| 6. Recommendation for closure not accepted | 1 | 2 | 2 | 2 | 0 |
| 7. Files returned for further investigations | 13 | 18 | 59 | 56 | 34 |
| 8. Reports awaiting DPP Action | 0 | 3 | 51 | 29 | 42 |
| Total | 143 | 183 | 234 | 163 | 103 |

*Source: EACC and as Published in the KNBS Economic Survey, 2022*

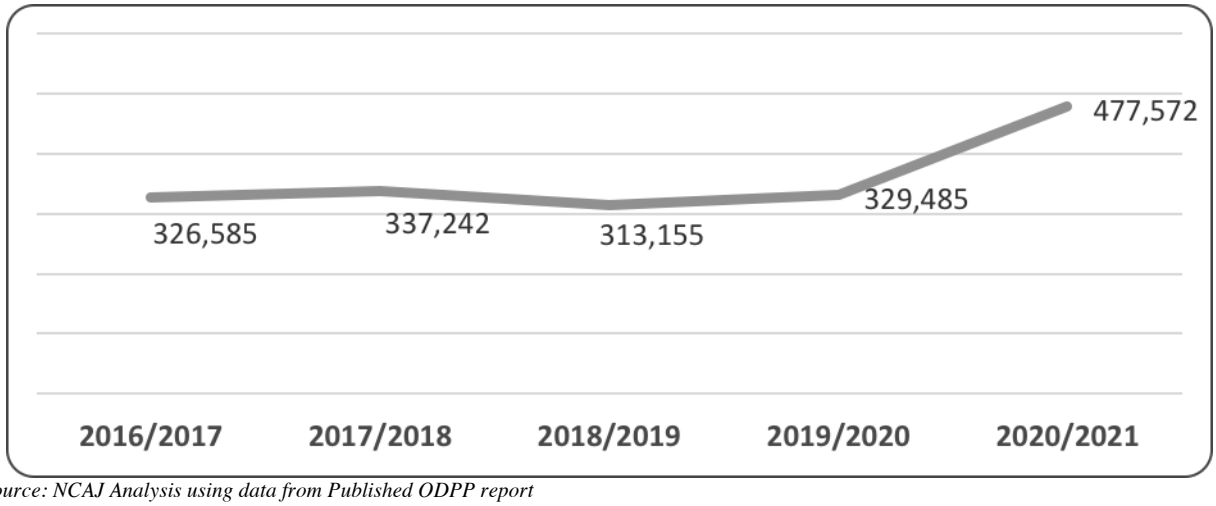
From Table 5, there was a decline in processing of matters from 234 in FY 2018/19 to 163 in 2019/20 and further to 103 in 2020/21.

*1.2.3 Criminal Cases Processed by Independent Policing Oversight Authority*

The Independent Police Oversight Authority (IPOA) is mandated to investigate cases of police misconduct. In the FY under review, it carried out 862 investigations and forwarded 135 cases to the ODPP for action. By the end of the FY, 169 cases investigated by IPOA were before various courts. In addition, the Authority conducted 686 inspections in police premises and detention facilities and monitored 67 police operations affecting members of the public. The Authority gave its recommendations to the NPS and other relevant actors for action.

*1.2.4 Criminal Cases Processed by the Office of the Director of Public Prosecutions*

The ODPP exercises State Powers of Prosecution and matters incidental thereto. To this end, the ODPP conducts criminal trials and criminal appeals, prosecutes criminal applications, extradition and mutual legal assistance, give directions on inquiries and advice files, and address complaints. The cases handled by ODPP from 2016/17 to 2020/21 are shown in Figure 5.




*Source: NCAJ Analysis using data from Published ODPP report*

Figure 5: Trend of cases processed by ODPP, FY 2016/17-2021/21

There was an increase in cases handled between FY 2016/17 and 2017/18, which then decreased between 2017/18 and 2018/19. The cases then continued to increase after FY 2018/19 settling at 477,572 in FY 2020/21. The details of the cases processed by ODPP are provided in Table 6.

Table 6: Cases processed by ODPP by type, FY 2016/17-2021/21

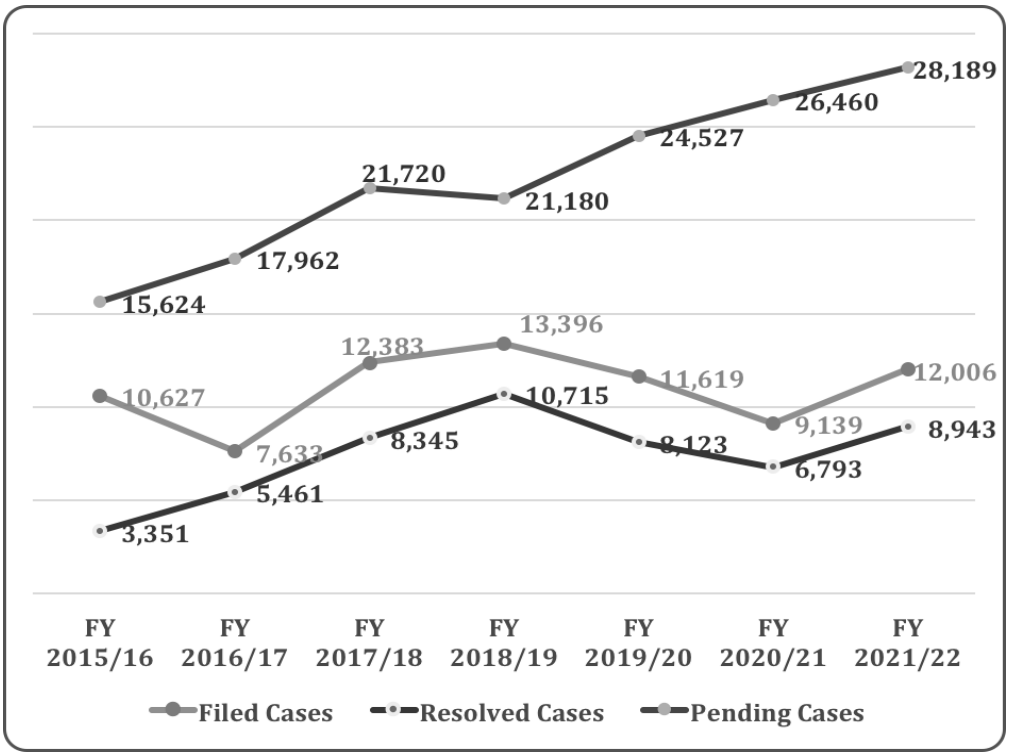
| *Description* | *2016/2017* | *2017/2018* | *2018/2019* | *2019/2020* | *2020/2021* |
|---|---|---|---|---|---|
| Criminal Trial | 290,129 | 310, 591 | 291,053 | 310,313 | 448,762 |
| Criminal Appeals | 12,549 | 13,562 | 10,575 | 8,957 | 10,658 |
| Criminal Applications | 18,499 | 8,761 | 6,342 | 5,329 | 6,741 |
| Extradition & MLA | - | - | - | 28 | 22 |
| Advice Files | 3,164 | 2,911 | 2,658 | 2,730 | 7,843 |
| Complaints | 2,187 | 1,417 | 2,527 | 2,128 | 3,546 |
| TOTAL | 326,528 | 337,242 | 313,155 | 329,485 | 477,572 |

*Source: Published ODPP Annual Report*

Table 6 shows that the bulk of cases handled by ODPP were criminal trials with an annual average of 335,064 between 2016/17 and 2020/21. Over the same period, criminal appeals averaged at 11,260 cases. To enhance efficiency in the trial process, the ODPP continued to implement the Decision to Charge Guidelines to ensure that only cases that reach evidentiary thresholds make it to court. The Office implemented the Diversion and Plea-bargaining Rules and Guidelines, which involved incorporating alternatives to prosecution by resolving matters through alternatives to trial. The ODPP also implemented the Standard Operating Procedures on Investigations and Prosecutions of Police Officers and developed a specimen charge sheet under the Prevention of Torture Act. The ODPP also validated the Rapid Reference Guide on the Prevention of Torture.

1.2.5 Criminal Cases Handled by Courts

Resolution of criminal cases in superior courts entails the collaboration of different CJS actors. The trends of filed, resolved and pending criminal cases in these courts are given in Figure 6.




*Source: NCAJ Analysis using data from various editions of published SOJAR*

Figure 6: Trend of criminal cases handled by superior courts, FY 2015/16-2021/22

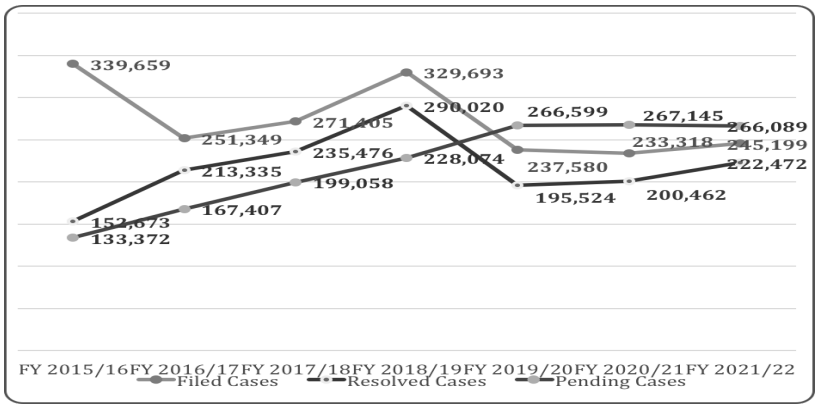
Figure 6 shows caseload statistics for the criminal cases handled by superior courts over time. The cases comprise the filed cases, depicting the demand for justice, the resolved cases, representing the supply of justice at courts, and pending cases, depicting the closing workload of criminal cases. During the period under review, 12,006 criminal cases were filed in superior courts, while 8,493 were resolved. From Figure 6, filed cases are slightly higher than the resolved cases implying a rising pendency of criminal cases. At the end of the review period, 28,189 cases remained pending, depicting an increasing workload.

Table 7: Criminal cases handled in superior courts, FY 2017/18-2021/22

| *Court Type* | *Cases* | *FY 2017/18* | *FY 2018/19* | *FY 2019/20* | *FY 2020/21* | *FY 2021/22* | *% Change 20/21 to 21/22* |
|---|---|---|---|---|---|---|---|
| Court of Appeal | Filed | 485 | 585 | 557 | 355 | 489 | 38% |
| | Resolved | 166 | 310 | - | 271 | 200 | -26% |
| | Pending | 1,393 | 1,839 | 2,069 | 2,153 | 2,442 | 13% |
| High Court | Filed | 11,898 | 12,811 | 11,062 | 8,784 | 11,517 | 31% |
| | Resolved | 8,179 | 10,405 | 8,123 | 6,522 | 8,743 | 34% |
| | Pending | 20,327 | 19,341 | 22,458 | 24,307 | 25,747 | 6% |
| All Superior Courts | Filed | 12,383 | 13,396 | 11,619 | 9,139 | 12,006 | 31% |
| | Resolved | 8,345 | 10,715 | 8,123 | 6,793 | 8,943 | 32% |
| | Pending | 21,720 | 21,180 | 24,527 | 26,460 | 28,189 | 7% |

*Source: NCAJ Analysis using data from various editions of published SOJAR*

Table 7 shows that overall, the filed cases have consistently remained slightly higher than the resolved cases, which implies a case clearance rate (CCR) by the superior courts of less than 100 per cent. A less than 100 per cent CCR yields a rising pendency of cases in these courts, as depicted by the uppermost curve in Figure 6. The details of the adjudication of criminal cases in subordinate courts are provided in Figure 7.




*Source: NCAJ Analysis using data from various editions of published SOJAR*

Figure 7: Trend of criminal cases handled by subordinate courts, FY 2015/16 -2021/22

The graph shows a decrease in the number of filed cases between 2015/16 to 2016/17, which increased between 2016/17 and 2018/19. The cases decreased between 2018/19 and 2020/21 then increased between 2020/21 and 2021/22. There was an increase in the number of resolved cases between 2015/16 and 2018/19, which then decreased between 2018/19 and 2020/21. The resolved cases then increased in the FY 2021/22.

Overall, filed cases in subordinate courts consistently remained slightly higher than the resolved cases, implying a CCR of less than 100 per cent. A less than 100 per cent CCR yields a rising pendency of cases, as depicted by the rising trend for the pending cases over time. The details of the adjudicated criminal cases for subordinate courts are provided in Table 8.

Table 8: Criminal cases handled in subordinate courts, FY 2017/18-2021/22

| Court | | FY 2017/18 | FY 2018/19 | FY 2019/20 | FY 2020/21 | FY 2021/22 | % Change 20/21 to 21/22 |
|---|---|---|---|---|---|---|---|
| Magistrate Court | Filed Cases | 271,405 | 329,693 | 237,580 | 233,318 | 245,199 | 5% |
| | Resolved Cases | 235,476 | 290,020 | 195,524 | 200,462 | 222,472 | 11% |
| | Pending Cases | 199,058 | 228,074 | 266,599 | 267,145 | 266,089 | -0.4% |

*Source: NCAJ Analysis using data from various editions of published SOJAR*

The courts also rendered judicial decisions of immense jurisprudential value, settling crucial constitutional and legal interpretations impacting operations and reforms of the criminal justice system. During the period under review, and drawing from the published State of the Judiciary and Administration of Justice Report (SOJAR) for FY 2021/2022, there was the growth of jurisprudence with the potentiality of impacting the operations and reforms of the criminal justice system. Since it is impossible to capture all details in this report exhaustively, a few highlights have been accentuated. The courts addressed the issue of criminal responsibility and the appropriate sentence, if any, for a person with mental illness found guilty of committing an offense and recommended the commencement of legal reforms providing for the conviction of such persons. The courts also affirmed that a victim in a criminal case, having resolved the matter with the accused out of court, could not withdraw the case without the consent of the Director of Public Prosecutions. The courts also addressed the question of criminal proceedings and the formalities of a charge sheet, maintaining that the sample charge sheet, although ideal, cannot overrule the provisions of the Criminal Procedure Code.

1.2.6 Committing of Offenders to Prisons

Once adjudication of cases through courts is accomplished, conviction and subsequent imprisonment follows. The average number of persons committed to prisons annually for the period 2019- 2021 stood at 140,138 for male offenders and 15,007 for the female offenders. On average, the percentage unconvicted persons has remained relatively high in comparison to the convicted persons. Details on persons committed to prisons are provided in Table 9.

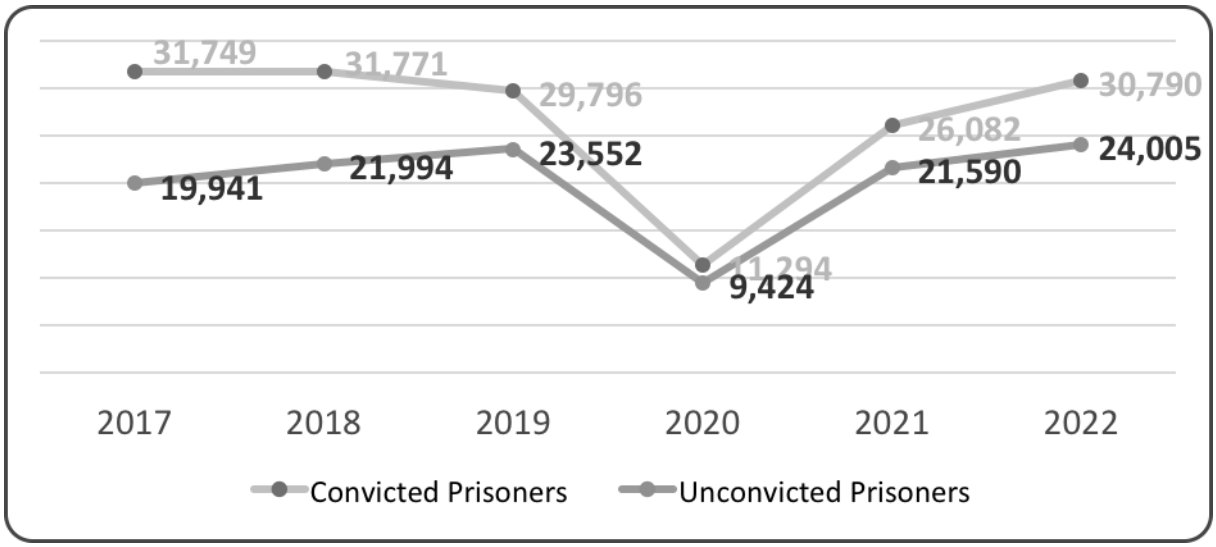
Table 9: Analysis of convicted and unconvicted persons, 2019-2021

| | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|
| Sentenced to | Male | Female | Male | Female | Male | Female |
| less than one month | 16,400 | 1,643 | 3,563 | 522 | 12,579 | 1,198 |
| 1 month to 2yrs | 42,712 | 7,627 | 17,254 | 2,854 | 37,171 | 6,885 |
| Above 2 years | 7,797 | 538 | 4,642 | 321 | 6,881 | 403 |
| Life imprisonment | 507 | 4 | 128 | 2 | 268 | 5 |
| Death Sentence | 114 | 5 | 20 | 0 | 72 | 1 |
| Total Convicted Prisoners | 67,530 | 9,817 | 25,607 | 3,699 | 56,971 | 8,492 |
| Committed to civil debt | 503 | 145 | 178 | 22 | 307 | 115 |
| Committed to remand | 129,049 | 12,251 | 52,446 | 4,167 | 87,824 | 6,412 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Total unconvicted prisoners | 129,552 | 12,396 | 52,624 | 4,189 | 88,131 | 6,527 |
| Total committed to prisons | 197,082 | 22,213 | 78,231 | 7,888 | 145,102 | 14,919 |
| Previously convicted | 16,484 | 2,265 | 7,780 | 391 | 9,876 | 645 |
| Previously convicted (%) | 8% | 10% | 10% | 5% | 7% | 4% |
| Convicted (%) | 34% | 44% | 33% | 47% | 39% | 57% |
| Unconvicted (%) | 66% | 56% | 67% | 53% | 61% | 44% |
| % sentenced to < one month | 24% | 17% | 14% | 14% | 22% | 14% |

*Source: NCAJ Analysis using KPS data from published KNBS Economic Survey 2022*

An average of 20 per cent of male offenders were sentenced for less than one month with 15 per cent of female offenders being sentenced to less than one month. This is a pointer to what would constitute as a focus area for prison decongestion effort. The trend analysis of the daily average prison population, covering both the convicted and unconvicted prisoners is shown in Figure 8.




*Source: NCAJ Analysis using KPS data from published KNBS Economic Survey 2022*

Figure 8: Daily average prisons population, 2017-2022

The graph shows the number of convicted prisoners decreased from 2018 to 2019, followed by a sharp decline in 2020. The sharp decline is attributed to decongestion measures undertaken during the Covid-19 pandemic. The sharp decline was also witnessed even for the unconvicted prisoners. From Figure 8, prison population steadily rose, settling at 54,795 at the end of the review period. Details on the average prison population by gender is provided in Table 10.

Table 10: Daily average prison population, 2017-2022

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022* |
|---|---|---|---|---|---|---|
| Convicted Prisoners | | | | | | |
| Males | 30,28 0 | 30,246 | 28,289 | 10,727 | 24,331 | 29,324 |
| Females | 1,469 | 1,525 | 1,507 | 567 | 1,751 | 1466 |
| Convicted Prisoners | 31,749 | 31,771 | 29,796 | 11,294 | 26,082 | 30,790 |
| Unconvicted Prisoners | | | | | | |
| Males | 18,156 | 20,141 | 21,482 | 8,725 | 19,954 | 22,642 |
| Females | 1,785 | 1,853 | 2,070 | 699 | 1,636 | 1,363 |
| Unconvicted Prisoners | 19,941 | 21,994 | 23,552 | 9,424 | 21,590 | 24,005 |
| Total Prisoners | 51,690 | 53,765 | 53,348 | 20,718 | 47,672 | 54,795 |
| % convicted | 61% | 59% | 56% | 55% | 55% | 56% |
| % unconvicted | 39% | 41% | 44% | 45% | 45% | 44% |
| % Male prisoners | 94% | 94% | 93% | 94% | 93% | 95% |
| % Female prisoners | 6% | 6% | 7% | 6% | 7% | 5% |

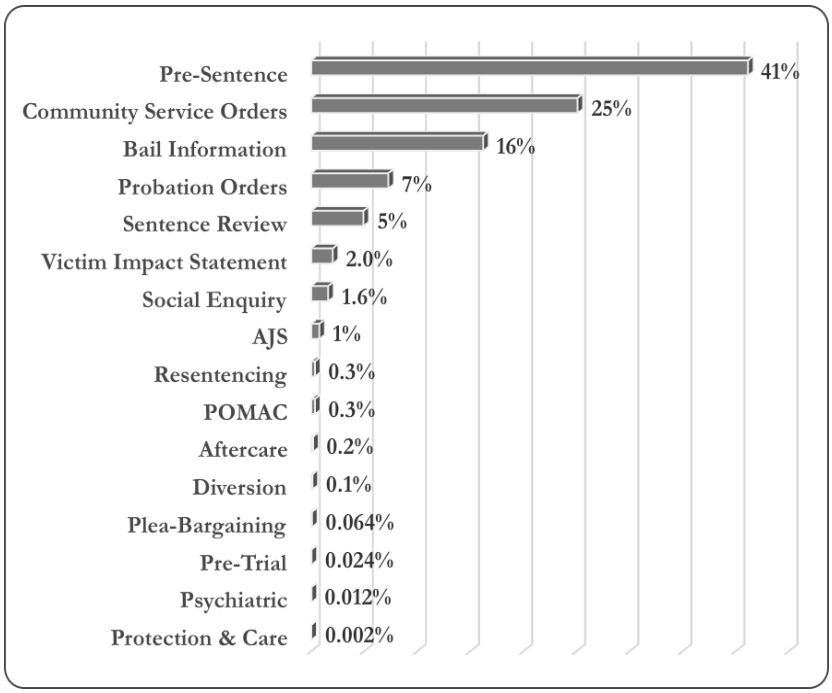
*Source: NCAJ Analysis using KPS data from published KNBS Economic Survey 2022*

Table 10 shows that the percentage male prisoners averaged at 94 per cent 2017 and 2022 while the female prisoners averaged at 6 per cent. Perhaps, there is need to investigate this disproportionate phenomena. Further, the convicted prisoners averaged at 57 percent of the daily prison population compared to 43 per cent of the unconvicted daily prison population.

To enhance internal processes, the Kenya Prisons Service conducted capacity building for staff in legal matters, human rights requirements, dynamic security and treatment and handling violent extremist offenders. Further, the Service undertook paralegal training for approximately 150 paralegals in liaison with stakeholders such as Justice Defenders and Legal Resources Foundation. The service further sensitised inmates on their rights to bail and bond, fair trial, and in line with the United Nations instruments on Human Rights.

1.2.7 Probation, Community Service and Aftercare

In the CJS, not all persons are committed to prison upon conviction, as some offenders are sentenced to serve probation, Community Service Orders, and aftercare. The courts and penal organs make referrals for Social Inquiry Reports (SIR) to the Probation and Aftercare Services (PACS) Department at pre-trial, sentencing and post-sentencing stages to assist in decision-making in the administration of justice. At the end of FY 2021/22, 66,086 referrals were made. The percentage distribution of the 66,086 referrals is given in Figure 9.




*Source: NCAJ Analysis using the submitted PACS data*

Figure 9: Percentage of referrals to PACs by type, FY 2021/22

A total of 28,199 referrals were placed on non-custodial sentence programs, namely probation orders (8,618), CSO (19,467), and aftercare services (114). The Department trained 26 Probation Officers on the Risk Needs and Responsivity Principles to enhance the professional assessment of offenders. The Department further developed a Blended Induction Training Course for probation officers and Induction Training Manuals and inducted 300 probation officers. The Department trained 66 probation officers on social behaviour change to enhance interaction with offenders, criminal justice actors, and the community. The Community Service Order (CSO) Programme, in collaboration with the PACS, reformed the execution of the CSO sentence by infusing counselling of offenders by the probation/CSO Officers.

*Hon. Lady Justice Githua, the Chairperson of the CSO Programme leading a team on CSO work in Murang'a*

*Environment conservation, a greening initiative, at Kenya Forest Service through CSOs in Malindi*

1.3 Legal, Policy and Administrative Reforms in the Criminal Justice

1.3.1 Legal Reforms

As part of the legal reforms, the NCAJ, through its Committee on Criminal Justice Reforms (NCCJR), developed Draft Amendment Bills to the Penal Code and Criminal Procedure Code. The amendments are aimed at addressing various gaps in the law and at aligning both statutes with provisions of the Constitution of Kenya (2010). During the reporting period, three meetings were held to review the draft Amendment Bills with support from the International Development Law Organization (IDLO). After the meetings, the Bills were tabled before the Council in October 2021 and approved to proceed for public participation.

*Participants interrogating the proposed amendments during a consultative workshop on the Criminal Procedure Code and Penal Code Amendment Draft Bills in December 2021*

Two public participation stakeholder consultative workshops were convened to review the draft Amendment Bill with support from IDLO and LRF. In a workshop held in December 2021, expert representatives from 30 institutions within the criminal justice system attended. A second workshop was held in February 2022 with representatives from CUCs from Milimani Law Courts, Kibera Law Courts, Makadara Law Courts, City Court, Kiambu Law Court, and Kajiado Law Courts. The NCAJ also submitted feedback on the Penal Code and Criminal Procedure Code Amendment Bills which were tabled before the departmental committee on justice and legal affairs of the National Assembly.

*Stakeholder engagement on the proposed amendments to the Penal Code and Criminal Procedure Code with CUC representatives from Milimani, Kibera, Makadara, City Court, Kiambu and Kajiado Law Courts*

To further entrench legal reforms in the criminal justice sector, the Proceeds of Crime and Anti-Money Laundering Act No 9 of 2009 was amended through the Proceeds of Crime and Anti-Money Laundering Amendment Bill 2022. The amendment aimed at expanding the persons mandated to report by the requirement of Section 2 of the Act to include advocates, notaries, and other professionals who are sole practitioners, partners, or employees within professional firms. The amendment was spearheaded by actors in the criminal justice sector and is essential in combating corruption in money laundering and dealing with crime proceeds. The Bill was assented to by HE President Uhuru Kenyatta in January 2022.

The National Crime Research Centre initiated the development of the National Crime Research Centre Bill 2022. The draft bill was submitted to the Office of the Attorney General and the Ministry of Interior and Coordination of National Government for input.

1.3.2 Policy Reforms

In the reporting period, NCCJR and diverse agencies in the criminal justice sector initiated policy reforms that impact the administration of justice.

*Participants at the stakeholder engagement and sensitization meeting in July, 2021 in Nairobi to review and refine publications developed by NCAJ through NCCJR. The publications were subsequently launched during in October, 2021.*

*Law and Practice Guidelines on Arrest and Conditions of Pre-trial Detention* - The guidelines were developed by NCAJ through NCCJR to address the gaps between law and practice in the arrest process, the handling of arrested persons, and pre-trial detention conditions. The guidelines are a capacity-building tool for law enforcement officers, investigating officers, prosecutors, advocates, legal aid service providers, judicial officers, correctional officers, children officers, and non-state actors. The guidelines present arrested persons as right holders, and criminal justice system agency actors as duty bearers charged with the promotion of Articles 27, 48, 49, 50, 51, and 53 of the Constitution of Kenya (2010.) To this end, the guidelines are aimed at enhancing procedural efficiency, professionalism, and accountability in the protection of the rights of arrested persons, more so for vulnerable groups.

*Law and Practice Guidelines on the Management of Petty Offenders* - The guidelines provide a framework and standard against which petty offenders within the meaning of Article 49 (2) of the Constitution, should be handled. As such, they are intended for use by law enforcement officers, prosecutors, and courts for training and sensitization about the management of petty offenders. They comprise a raft of laws and best practices for managing petty offenders from the point of arrest to trial and sentencing. Special consideration is given to vulnerable groups such as street children, persons with disabilities, street vendors/traders, and persons who with substance abuse disorders. Measures like decriminalisation and reclassification will be prioritised to mitigate the prosecution of petty offenders, and where appropriate, effective alternatives such as cautions, citations, and warnings should be utilized to enforce petty offences.

*The Fair Trial Guide and Checklist* - The right to a fair trial, as captured under Article 25(c), cannot be limited. In the context of the criminal justice system, to guarantee a fair trial, the interests of the accused person, the victim, and the community must be considered. In addition, their right to a fair trial is intrinsically connected with the rights guaranteed at all stages of the criminal justice process. This guide was developed as a reference tool to assist actors in the criminal justice sector to better understand the rights and obligations contained in the Constitution, domestic laws, and regional and international instruments as they apply to the accused persons and the victims of crime. Institutions can use information and checklists in the guide to review their policies and practices to ensure that the right to a fair trial is upheld for all persons, be they, offenders or victims.

*Witness Protection Regulations, 2022* -The Witness Protection Agency prepared the draft Witness Protection (Reciprocal Protection Arrangement) Regulations, 2022 covering the admission of international witnesses into Kenya's Witness Protection Programme or relocation of a Kenyan witness into a foreign witness protection authority. The regulations ensure that the Victim Protection Board appropriately caters to the victims of crime. In August 2021, the Victim Protection Board organized a stakeholder forum to review and validate the Victim Protection (General) Regulations, 2020 and the Victim Protection (Trust Fund) Regulations, 2020.

*Diverse Policies and guidelines by the Kenya Priosn Service* - The Kenya Prison Service developed the National Correctional Policy, Paralegal Policy, and Child Care Policy for children aged four years and below accompanying their mothers to prison.

*The Whistle Blowers Policy* - The National Council on Law Reporting developed the Whistle-blowers Policy to enable stakeholders and staff to raise legitimate concerns through the established channels within Kenya law.

*Diverse Policies and guidelines by the NPS* - The NPS developed various policies and guidelines to ensure the efficient undertaking of its mandate. These are; Standard Operating Procedures on COVID – 19 response, a pocket guide to election security 2022, Development of POLICARE Policy and Guidelines, and Standard Operating Procedures (SOPs) on the Prevention and Response to Sexual Violence.

1.3.3 Administrative Reforms and Other Initiatives

In September 2021, NCAJ, through NCCJR, held a stakeholder consultative meeting with representatives from the key institutions of the criminal justice system to discuss the issues concerning the administration of expenses related to the trial process. The particular focus was on witness expenses, supply of the charge sheet, witness statements, and other evidence to an accused person as stipulated under Article 50 of the Constitution.

The ODPP established the Prosecution Training Institute (PTI) in Loresho, a regional Anti-Corruption, and Counter-Terrorism centre of excellence, to offer capacity building to staff and stakeholders in criminal justice. The ODPP developed Electoral Justice Compendium to aid in prosecuting Election offences, Hate Speech, SGBV, and other related offences and highlight jurisprudential developments and best practices. The ICJ supported and partnered with ODPP on this initiative, including facilitated training of the prosecutors.

The NPS up-scaled online complaints reporting through toll-free lines by the Internal Affairs Unit, established police stations and posts, introduced PCR Sheet for prosecuting child offenders, and set a POLICARE section in the Service. Further, the NPS initiated the digitalisation of the Occurrence Book at police stations to ensure service efficiency. In June 2022, the DCI launched National Forensic Laboratory to improve the DCI's ability to unravel complex crimes through evidence-based investigations. The Anti-Terrorism Police Unit (ATPU) police station in Mombasa was operationalised to deal with terror-related matters.

The Kenya Prison Service (KPS) undertook decongestion of prisons activities, especially for petty offenders, in collaboration with the Power of Mercy Advisory Committee (POMAC) and in partnership with the Judiciary and ODPP. The KPS facilitated access to Legal Aid services in partnership with Kituo Cha Sheria, Justice Defenders, LRF, and LSK in Machakos women, Thika, Langata, and Kamiti prisons. Additionally, Eldas Prison in Wajir County was gazetted.

The OAG&DOJ trained stakeholders, drawing representatives from NPS, IPOA and ODPP, on preventing torture and implementing the Torture Act No 12 of 2017. The National Council for Law Reporting trained its members and users on using the new case law database. The WPA developed portable witness protection boxes to protect threatened and intimidated witnesses. The agency further ensured that the application of protection orders is not uploaded online to safeguard the confidentiality of the process and the information of the protected witness in any particular case. Also, the WPA developed various standard operating procedures to standardize the quality of witness protection operations and conducted sensitization on witness protection to members of the NCAJ and the public.

The Faraja Foundation, an actor in the justice sector, enhanced rehabilitation in correctional facilities by participating in and supporting behavioural programmes through the provision of skills, mentorship, and the purchase of machines to enhance practical skills. The Foundation undertook human rights interventions and constructed toilets and water points which has been maintained over the years. In 2021, the Foundation constructed one kitchen facilities in Meru Main Prison and a water tank serving over 10,000 inmates in two prison facilities. The Foundation conducted Human Rights Training to facilitate behaviour change, enhance performance and promote and protect human rights. Further, the Foundation trained over 397 officers on performance for change, aimed at influencing the character and work ethics of prison officers to be agents of change as the first handlers of the incarcerated offenders. Target locations were Garissa Command, Wajir Command, Mandera Command, Kwale Main Prison and Narok Command.

The Kenya Magistrates and Judges Association (KMJA) sensitised 500 Judges and Judicial Officers on protecting the rights of women and children, including the survivor-centred approach to accessing justice against harmful practices and gender-based violence. The KMJA increased webinar-based capacity-building initiatives, which ensured low-cost cross-border participation and sensitization of members of the criminal justice sector.

The International Justice Mission (IJM), an NCAJ partner, represented victims of abuse by providing legal representation and compensation on a pro bono basis. During the period under review, IJM took up 16 criminal cases and initiated the 'Victims and Witnesses Psychosocial Support Network', which brings together psychosocial staff from different CJS agencies and Civil Society Organizations that handle victims of injustices. The network aims to enhance inter-agency referral mechanisms so that the victims and witnesses can receive services wherever they seek justice. The IJM also helped publish 7000 pocket guides for the police on security management during the electioneering period and equipped a registry for police in Makadara Law Courts.

The IJM supported the development of the ODPP's decision to charge guidelines and subsequent stakeholders engagement. Further, in partnership with ODPP, IJM undertook community dialogues in various informal settlements in Nairobi to raise awareness, strengthen police & community relations, and increase awareness of sexual abuse and channels for victim support. The IJM also lobbied the Justice and Legal Affairs Committee (JLAC) to Petition Parliament to adopt the report on the inquiry into extra-judicial killings and enforced disappearances in Kenya in November 2021 and supported the drafting of the inter-agency guidelines on collaboration in the investigation and prosecution of terrorism cases.

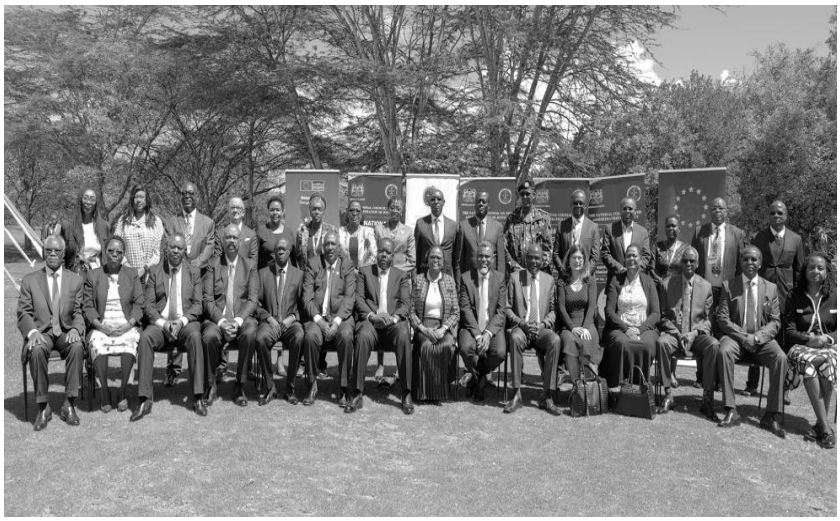
1.4 The National Conference on Criminal Justice Reforms

The NCAJ convened the 2nd National Conference on Criminal Justice Reforms in May 2022 in Naivasha under the theme *"Towards a rights-based criminal justice sector."* The Conference brought together State and non-State justice sector actors, practitioners, academicians, and persons who have interacted with the criminal justice system to share their experiences and best practices. Participants reflected on challenges impeding efficient service delivery and collaboratively generated workable solutions geared towards criminal justice reform. The Conference was organized and convened by NCAJ with support and partnership from UNODC, IDLO, ICJ-Kenya, IJM, Equality Now, Reprieve and Justice Defenders. A detailed list of the Conference participants is given in Annex 5.

*The Hon. Justice Martha K. Koome, the Chief Justice and Chairperson of NCAJ, making keynote address during the 2nd National Conference on Criminal Justice Reforms in May 2022*

*Anne A Amadi, the Chief Registrar of the Judiciary and Secretary of NCAJ making remarks during Conference*

*The opening ceremony of the 2nd National Conference on Criminal Justice Reforms*



*One of the group photo for the delegates comprising the leadership of NCAJ and other Government institutions*

*The Chairperson of NCCJR, Hon. Justice Grace Ngenye, giving a status report on the implementation of the 2019 Conference recommendations during 2022 Conference*

1.4.1 Enhancing Human Rights through Alternatives to Prosecution

It was resolved that all actors in the criminal justice system, particularly the police and the Director of Public Prosecutions, will mainstream alternatives to prosecution to enhance human rights in the criminal justice system. Other agencies will support the uptake of alternatives to imprisonment by establishing structures to support the use of such alternatives.

*Right to Left: Hon. Justice Isaac Lenaola, CBS (Judge of the Supreme Court) Ms. Jacinta Nyamosi, OGW (Ag. Deputy Director, ODPP), Mr. Elisha Ongoya (Senior Lecturer, Kabarak University), making paper presentations during the 2nd National Conference on Criminal Justice Reforms*

1.4.2 Leveraging Technology to Safeguard Human Rights in the Criminal Justice System

It was resolved that all actors in the criminal justice system will adopt and up-scale interconnected digital technology solutions in service delivery. The design and use of new technologies are to be undertaken with respect for the human rights of persons in contact with the criminal justice system, including the right to a fair trial, due process, non-discrimination, equality and equal protection before the law. The NCAJ was tasked to coordinate lobbying and mobilizing resources to support technology, especially in ensuring relevant interconnectedness accross institutions.

1.4.3 Promoting Accountability to Ensure Free and Fair Elections

The state actors whose mandate includes enforcement of electoral offences, particularly the IEBC, ODPP, NPS, National Cohesion & Integration Commission and Judiciary, agreed to enforce accountability for electoral offences to ensure free and fair elections. Appropriate interventions were to be prioritized ahead of the general election that was to be held in August 2022.

*High level panel discussion on the Intersection between the Criminal Justice System and the General Elections during the Conference. From left is Dr. Samuel Kobia (Chairperson, NCIC), Dr. Fred Matiang'i EGH (Cabinet Secretary, Ministry of Interior and Coordination of National Government), Hon. Justice Martha K. Koome, EGH (The Chief Justice & Chairperson of NCAJ), Ms. Mary Wairagu (CEO-Victim Protection Board), Mr. Wafula Chebukati (Chairperson, IEBC) and Hon. Lady Justice Njoki Ndung'u (Judge of the Supreme Court)*

1.4.4 Safeguarding the Rights of Vulnerable Groups in the Criminal Justice System

At the Conference, it was resolved that all agencies will be mindful of the unique barriers in accessing justice and particularly the challenges faced by children, SGBV victims, and other vulnerable groups in their interactions with the criminal justice system. The agencies agreed to put adequate measures to safeguard the rights of vulnerable persons and ensure the criminal justice system is responsive to these particular groups.

1.4.5 Rights-based Approach to Sentencing

At the Conference, criminal justice agencies, particularly the Judiciary, the Director of Public Prosecutions, the Kenya Prison Service, and the Probation and Aftercare Service agreed to adopt a rights-based approach to sentencing and managing offenders. Agencies will encourage the use of non-custodial sentences in all appropriate cases.

1.4.6 Addressing Corruption within the Criminal Justice Sector

At the Conference, the NCAJ agencies resolved to adopt a zero-tolerance approach to corruption and other unethical conduct, and deploy adequate internal mechanisms to fight corruption within their rank and file.

*Experts examining indeterminate sentences and non-custodial sentences during a panel discussion on a rights-based approach to sentencing during the Conference: Hon. Francis Andayi (Chief Magistrate), Hon. Justice George Odunga (Judge of the Court of Appeal), Mr. Clement Okech, OGW*

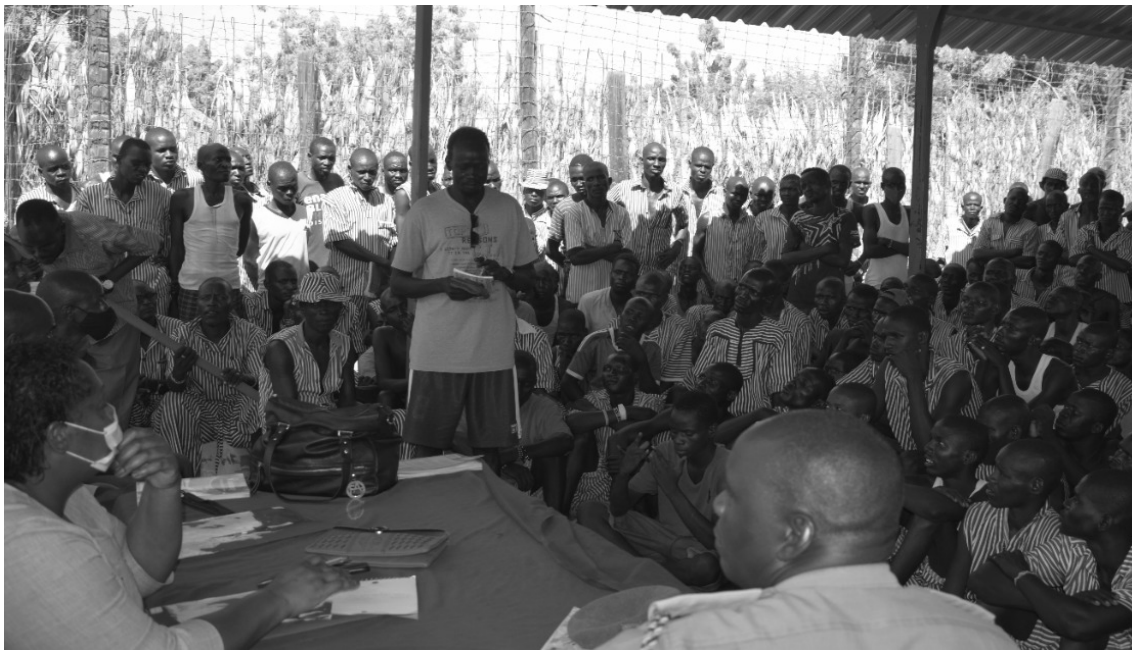
*(Deputy Director Probation & Aftercare Services), Ms. Elsy Sainna (Executive Director - ICJ-Kenya), Mr. Peter Ouko (Founder, Crime si Poa) and Hon. Justice Luka Kimaru (Judge of the Court of Appeal)*

1.5 Monitoring and Research in the Criminal Justice System

1.5.1 Assessment of Conditions of Detention

In November 2021, the NCCJR conducted a regional visit to Turkana County to engage with agencies and stakeholders in the region and assess the conditions of detention facilities. The team was able to visit the Prison, Police Stations, and Courts. Through the engagement with stakeholders and assessment of the detention facilities, the team was able to observe, identify, collect and recommend solutions to seal barriers that impede the efficient functioning of the criminal justice system and assess institutions' compliance with human rights standards.

The challenges observed included inadequate access to legal aid services by accused persons and measures to protect vulnerable persons in detention. Further, long-distance and poor road networks between agencies such as the Courts, prisons, police stations and children's institutions, hindered effective management and processing of suspects and accused persons contributing to lengthy trials. The opportunities for training, capacity building, and continuous professional development were also few and inconsistent for actors across all institutions.



M*embers of NCCJR engaging with prisoners at the Lodwar Prison in Turkana County during a regional visit in November, 2021*

1.5.2 Baseline Survey on the Manifestation of State Regulated Offences

The Survey was done in Kisii and Meru counties due to a high number of offenders in custody resulting from the enforcement of State regulated offences. The Survey was a follow-up to the NCAJ Audit Report on the Criminal Justice System (2017) findings. The Audit had identified the need to review the punishment of State Regulated offences through the use of custodial sentences considering that it resulted in the criminalisation of livelihoods, particularly for small-scale and informal traders. The Survey collected views from the public, the County Inspectorate Teams, the County Directorate of Public Health, Kenya National Chamber of Commerce and Industry, The ODPP, County Based Activists, Members of the County Assemblies, Directorate of Liquor Licensing, the National Police Service, and County Executives in charge of Trade. The Report recommends enhancing public participation in formulating county by-laws, continuous training of county officers on human rights, and establishing county inspectorate oversight authorities.

1.5.3 Status Report on Persons with Mental Illness in Criminal Justice System

From the first contact with the police through to disposal, challenges exist regarding the criminal justice system's response to mental health issues. For example, many persons fail to access mental health treatment once they enter the criminal justice system after committing a crime or access psycho-social support as victims. The Report reviews laws and policies that govern persons with mental illness within the criminal justice system, the gaps and challenges in practice, and assesses the detention conditions for offenders with mental illness. The Report also contains a raft of recommendations for reforming the criminal justice system and enhancing access to justice for persons with mental illness.

1.5.4 Research in the Criminal Justice Sector

The National Crime Research Centre (NCRC), a crucial actor in the criminal justice sector, is mandated to research diverse aspects of crime to aid other agencies in making informed decisions and ultimately reduce crime. During the reporting period, NCRC conducted various crime research studies with important recommendations for the CJS. The highlights of some of the research work by NCRC are highlighted herebelow.

*Criminality in Kenya in the Context of the Covid-19 Pandemic in Kenya* - The study aimed to establish the crimes that escalated during the COVID-19 period. Further, it sought to look at gender-based violence, violations of children's rights, and the forms of girl child disempowerment; and identify victims and perpetrators of crimes during the COVID-19 period. The study found that women and children were most affected during the period. The study recommended for county-specific crime prevention strategies by agencies within the National Security Sector for individual counties. There was also the need for National Security Agencies to collaborate with county governments to address crime in times of pandemics.

*Public Perceptions and Experiences on the Access to Criminal Justice in Kenya* -The study assessed the knowledge levels of the public on access to criminal justice. Further, it sought to establish public perceptions and experiences on the effectiveness of the criminal justice actors. The study recommended that criminal justice actors ought to make corruption prevention a standing agenda in their operations and reduce case delays in processing criminal matters.

*The Problem of Human Trafficking in Kenya* - The study sought to establish the prevalent and prominent types and forms of human trafficking, identify the victims and perpetrators of human trafficking, examine the factors contributing to human trafficking and examine the modes of operation of human trafficking. The study recommended the need for strengthened counter-trafficking law enforcement to reduce the confidence of actual and potential human traffickers to engage in the crime. There is also the need to economically empower society and especially the vulnerable youth. Also, effective partnerships among stakeholders involved in counter-trafficking, awareness creation on human trafficking and improving the capacity of organisations and public officials handling human trafficking are crucial.

Elsewhere, ICJ Kenya conducted a study on the cost-benefit analysis of legal in the context of legal aid services. The study focused on the policy and institutional frameworks, salient legal aid issues, risks associated with providing legal aid services, and recommendations for monitoring and evaluation. A key finding from the report was that if the government invested one billion Kenyan shillings in legal aid, the benefit to the economy would be worth thirteen billion Kenyan shillings.

### 1.6 Challenges and Recommendations on Efficient Administration of Criminal Justice

#### 1.6.1 Challenges

The criminal justice system faced challenges that hindered the efficient administration of criminal justice. Some of the challenges that were encountered during the year under review were;

1. Inadequate funding adversely affected the full realisation of the agencies' mandates.

2. Incidents of inter-agency conflicts in interpreting conflicting or unclear roles.

3. Poor relations between the public and some justice sector employees affected service delivery.

4. Delay in CJS processes notably investigations, prosecution and frequent adjournment of cases.

5. Slow uptake on the use of alternatives to prosecution and alternatives to trial initiatives.

6. Rising congestion of prison facilities occasioned by, among others, low infrastructure development, high bail and bond terms, inadequate uptake to alternatives from imprisonment, especially for petty offenses.

7. Reluctance of witnesses to testify, withdrawal, fatigue, intimidation, inadequate resources and amenities to facilitate and protect them, and getting vulnerable witnesses to testify

8. Perceptions and incidents of corruption in criminal justice institutions coupled with filing of numerous applications caused delays in completing corruption-related cases timely.

9. Low uptake of technology and interlinkages in the CJS institutions

10. Physical access to CJS institutions remains a challenge, more so in the marginalised regions of the country. The distance between some police stations, detention facilities and courts is vast.

11. Low access to legal aid services especially for vulnerable offenders.

12. Inadequate access to psychosocial support and counselling services for victims and offenders.

#### 1.6.2 Recommendations

To address the above challenges, the NCAJ will continue to coordinate diverse policy, legal and administrative reforms and lobby for partnerships for the agency driven initiatives. The coordination will require support and partnership from other GOK agencies, development partners and CSOs. The interventions will include but are not limited to;

1. Lobbying for increased budgetary allocation to, among others, facilitate investigations, prosecution, trial, witness facilitation, legal aid, custodial services, rehabilitation and aftercare services, construction of physical facilities, and acquisition of technology.

2. Raising public awareness of the mandates of players in the CJS to enhance stakeholders' collaboration and coordination for effective justice delivery.

3. Speeding investigations, prosecution and trial of cases. Individual agencies will also put-in measures to reduce institutional delays that lead to unnecessary case adjournments.

4. Prioritising case backlog reduction is crucial. All NCAJ agencies to effectively and timely play their role in resolving delayed cases.

5. Undertaking joint training for cross-cutting criminal justice issues

6. Imposing reasonable bail/bond terms and using diversion, plea bargaining and non-custodial sentences on petty offenders to ease congestion in prisons

7. Increasing sharing of office space to accommodate other agencies within the CJS.

8. Enhancing two-way information sharing with the public.

## CHAPTER 4: PROGRESS AND REFORMS IN CIVIL JUSTICE

### 4.1 Introduction

Civil Justice is a branch of law that deals with resolution of disputes between individuals and/or organisations, to achieve a fair solution when they have been injured or harmed due to another person's negligence, recklessness, or malpractices. It is a system that allows one to hold others accountable for their actions. Civil justice has three components namely the institutional component, the professional component, and the procedural component. In Kenya, the critical actors in the civil justice system include: the Judiciary, who resolve or adjudicate disputes when they arise, the Attorney General, who represents the government in all civil cases as stipulated in section 5(1) (i) of Act. No. 49 of 2012, other State actors as well as non-state actors, who operate within the various mechanism of administration of justice. Ultimately, the intention is to ensure that the citizenry, who are the claimants and/or the respondents in any civil claim, can access justice effectively and promptly.

This chapter provides the progress, achievements and reforms undertaken in all the facets of the administration of civil justice in Kenya in FY 2021/22. The chapter covers the administration of civil justice through the dispute resolution mechanisms utilised in Kenya under the NCAJ mandate

to coordinate effective administration of justice between the various stakeholders. Administration of civil justice in Kenya is done through litigation, alternative dispute resolution and complaint and investigation mechanisms.

4.2 Progress in Administration of Civil Justice

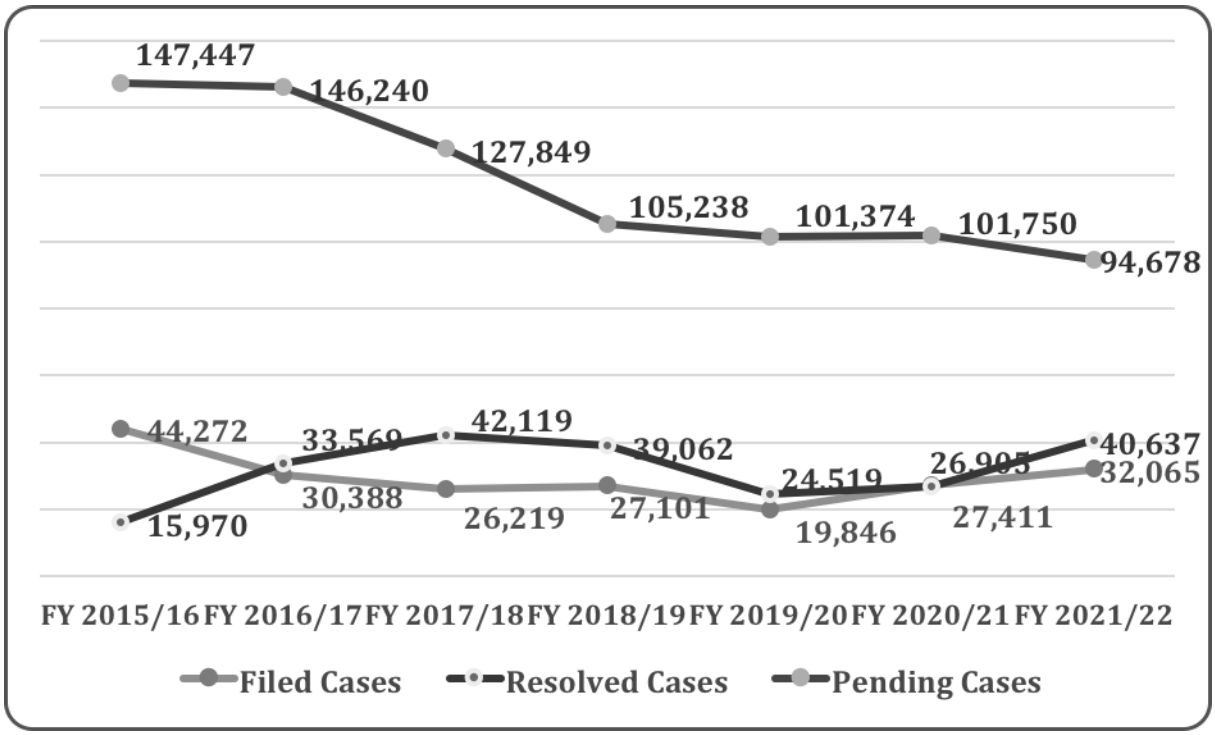
As part of its functions, the NCAJ directed its focus on reforms to address the challenges and emerging issues in the administration of civil justice to complement the various activities undertaken in the criminal justice sector and other areas. The Council established a Working Committee on Civil Justice Reforms to spearhead this. The Working Committee is chaired by the Hon. Attorney General with membership from the Judiciary, Council of Governors, Asset Recovery Agency (ARA), Ethics and Anti-Corruption Commission (EACC), National Legal Aid Service (NLAS), Kenya Human Rights Commission (KHRC), Kenya Law Reforms Commission (KLRC), Law Society of Kenya (LSK), National Environment Management Authority (NEMA), Charted Institute of Arbitration and National Land Commission (NLC), with NCAJ Secretariat being the secretary to the Committee. The Committee has a three-year tenure and a quarterly reporting mandate to the Council.

4.2.1 Achievements in Civil Litigation

Litigation is the primary mode through which civil justice, as per Article 159 of the Constitution of Kenya 2010, is administered, through courts. Individuals and entities seeking civil dispute resolutions have to ordinarily file their cases in the courts established under article 162 and 169 of the Constitution of Kenya and subject thereto, by the enabling statutes enacted by Parliament. In the financial year under review, a total of 116,561 civil matters were filed, 102,081 matters were resolved and 409,152 matters were pending comprising among others, constitution petitions, commercial matters, arbitration disputes and family disputes.

**A.** Civil Litigation in Superior Courts

The superior courts consist of the Supreme Court, the Court of Appeal, the High Court, the Employment and Labour Relations Court (ELRC) and the Environment and Land Court (ELC). Besides appeals, these courts have original jurisdiction on some civil matters. The Judiciary has, over the years, received civil matters filed in an increasing trend in which they have managed to resolve. Still, there were also pending matters that accrued from each financial year, burdening the administration of justice. Notably, however, measures were put in place to reduce the number of pending cases by invoking alternative dispute resolution (ADR) mechanisms by the courts. In the superior courts, 29,206 civil matters were filed, 30,357 were resolved and 107,855 were pending at the end of FY 2021/22.




*Source: NCAJ Analysis using data from various editions of published SOJAR*

Figure 10: Trend of civil litigation in superior courts, FY 2015/16 - 2021/22

Figure 10 shows that cases filed declined marginally between the FY 2015/16 to 2019/, followed by a slight increase up to the end of the period under review. The pending civil cases have not been increasing given that the clearance rate of these cases has been slightly above 100 per cent, as illustrated in Table 11.

Table 11: Civil litigation in superior courts, FY 2017/18- 2021/22

| *Court Type* | *Case handled* | *FY 2017/18* | *FY 2018/19* | *FY 2019/20* | *FY 2020/21* | *FY 2021/22* | *% Change 20/21 to 21/22* |
|---|---|---|---|---|---|---|---|
| Supreme Court | Filed | 61 | 96 | 72 | 47 | 41 | -13% |
| | Resolved | 39 | 89 | 76 | 62 | 63 | 2% |
| | Pending | 95 | 93 | 89 | 74 | 52 | -30% |
| Court of Appeal | Filed | 1,528 | 1,955 | 2,063 | 2,150 | 2,345 | 9% |
| | Resolved | 1,029 | 990 | 745 | 969 | 1,020 | 5% |
| | Pending | 2,812 | 4,211 | 5,529 | 6,637 | 7,962 | 20% |
| High Court | Filed | 13,151 | 17,884 | 12,540 | 17,440 | 19,760 | 13% |
| | Resolved | 29,503 | 26,593 | 14,612 | 17,692 | 25,628 | 45% |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Pending | 83,998 | 68,136 | 66,957 | 66,594 | 57,105 | -14% |
| ELRC | Filed | 5,645 | 2,672 | 2,015 | 2,918 | 3,518 | 21% |
| | Resolved | 3,661 | 4,228 | 3,568 | 2,434 | 5,662 | 133% |
| | Pending | 15,733 | 13,778 | 12,907 | 14,040 | 11,943 | -15% |
| ELC | Filed | 5,834 | 4,494 | 3,156 | 4,856 | 6,401 | 32% |
| | Resolved | 7,887 | 7,162 | 5,518 | 5,748 | 8,264 | 44% |
| | Pending | 25,211 | 19,020 | 15,892 | 14,405 | 17,616 | 22% |
| All superior Courts | Filed | 26,219 | 27,101 | 19,846 | 27,411 | 32,065 | 17% |
| | Resolved | 42,119 | 39,062 | 24,519 | 26,905 | 40,637 | 51% |
| | Pending | 127,849 | 105,238 | 101,374 | 101,750 | 94,678 | -7% |

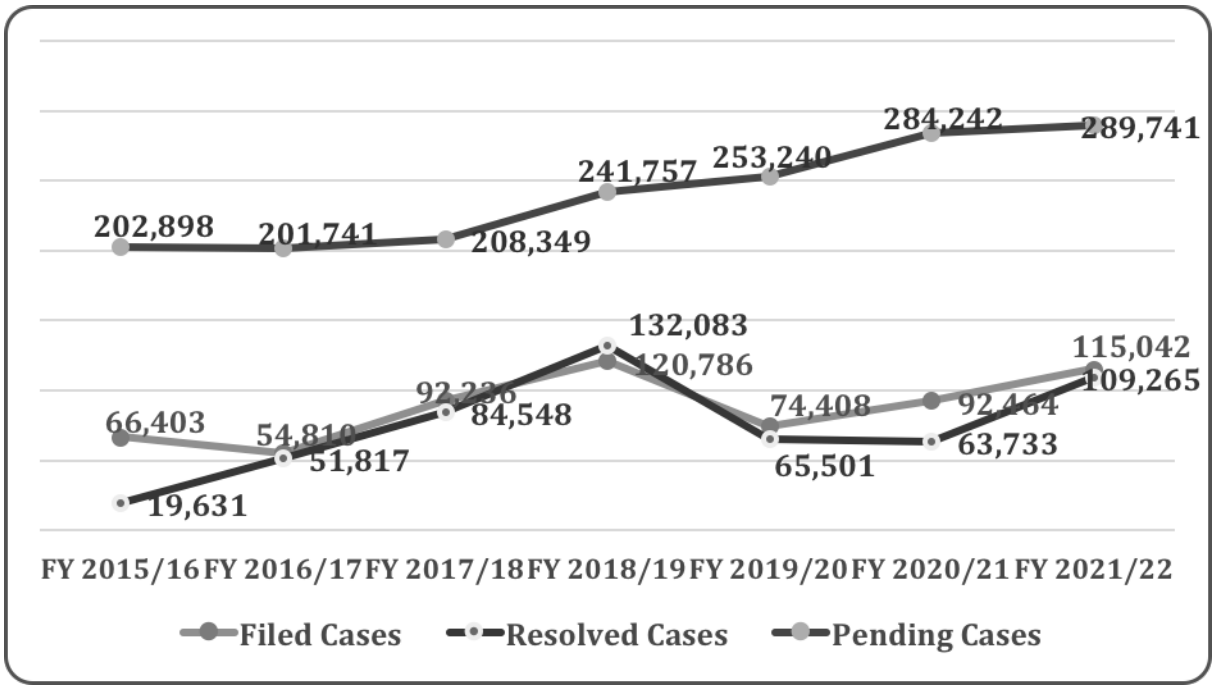
*Source: NCAJ Analysis using data from various editions of published SOJAR*

From Table 11, the demand for justice in superior courts depicted by the number of filed cases increased by 17 per cent between FY 2020/21 and 2021/22. Also, there was positive growth in the number of resolved cases, depicting the supply of justice, by 51 per cent over the same comparative period. Overall, the pendency of civil cases was reduced by 7 per cent between the FY 2020/21 and 2021/22 for the superior courts.

The courts continued to deliver landmark judicial decisions with immense jurisprudential value in settling important constitutional and legal questions that affect civil justice. This report has not provided detailed information, but a few overarching highlights have been given. From the SOJAR 2021/22, the courts pronounced themselves on whether Kenya is a Unitary or Federal State, the bearer of the responsibility for the progressive realisation of human rights under the Constitution, and the applicability of the Basic Structure doctrine in Kenya. The courts also addressed the question of whether the Marriage Act of 2014 was discriminatory and unconstitutional regarding the dissolution of civil marriages. The courts also addressed the question of whether or not members of a company's Board of Directors should be classified as workers in the context of employment and labour relations disputes. Concerning commercial justice, the courts concluded that tithes, free-will donations and other offerings made to churches and other religious institutions are not taxable income and hence are not subject to taxation. Regarding environmental justice, the courts ruled that applicants seeking remedy for a violation or threat of violation of the right to a clean environment do not need to show that any person has incurred loss or suffered an injury under the Constitution.

**B.** Civil Litigation in Subordinate Courts

Within the subordinate courts' system, Magistrate Courts, Small Claims Court, Kadhis' Court and Tribunals exist. The small claims courts were established under the Small Claims Act 2016 to create a framework for expedited resolution of small value claims. For persons professing Islamic faith, Kadhis' Courts have also become very critical in applying Islamic law in matters relating to personal status, marriage, divorce and inheritance. The advantage of dispute resolution through tribunals is that they are cost-effective, timely in terms of the duration of adjudication and rely less on procedural technicalities, thereby facilitating litigants to have matters resolved less formally. Moreover, they help divert cases from the courts, thus reducing the workload of the civil court, hence reducing the case backlog. During the year under review, 87,355 civil cases were filed, 71,724 were resolved, and 301,297 remained pending in the subordinate courts. Figure 12 shows a fluctuating trend of cases resolved between the FY 2015/16 and 2021/22.




*Source: NCAJ Analysis using data from various editions of published SOJAR*

Figure 11: Trend of civil litigation in subordinate courts, FY 2015/16- 2021/22

The civil matters pending at the subordinate courts have been on a steady increase necessitating the operationalisation of the small claims courts, which will assist in clearing the magistrates' court cases, thus enhancing access to justice.

Table 12: Civil litigation in subordinate courts, FY 2017/18 - 2021/22

| *Court Type* | *Cases handled* | *FY 2017/18* | *FY 2018/19* | *FY 2019/20* | *FY 2020/21* | *FY 2021/22* | *% Change 20/21 to 21/22* |
|---|---|---|---|---|---|---|---|
| Magistrate Court | Filed | 84,680 | 105,720 | 61,258 | 77,152 | 91,748 | 19% |
| | Resolved | 77,886 | 123,312 | 55,972 | 52,810 | 86,010 | 63% |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Pending | 204,457 | 209,313 | 217,265 | 245,309 | 255,734 | 4% |
| Small Claims Court | Filed | - | - | - | 1,023 | 8,503 | 731% |
| | Resolved | - | - | - | 637 | 8,226 | 1191% |
| | Pending | - | - | - | 386 | 1,239 | 221% |
| Kadhis Court | Filed | 7,556 | 8,439 | 7,207 | 8,954 | 9,017 | 1% |
| | Resolved | 6,662 | 6,250 | 5,261 | 7,230 | 6,540 | -10% |
| | Pending | 3,892 | 6,005 | 7,817 | 8,062 | 10,404 | 29% |
| Tribunals | Filed | - | 6,627 | 5,943 | 5,335 | 5,774 | 8% |
| | Resolved | - | 2,521 | 4,268 | 3,056 | 8,489 | 178% |
| | Pending | - | 26,439 | 28,158 | 30,485 | 22,364 | -27% |
| All Subordinate Courts | Filed | 92,236 | 120,786 | 74,408 | 92,464 | 115,042 | 24% |
| | Resolved | 84,548 | 132,083 | 65,501 | 63,733 | 109,265 | 71% |
| | Pending | 208,349 | 241,757 | 253,240 | 284,242 | 289,741 | 2% |

*Source: Published SOJAR, - court was not in existent*

In the subordinate courts, litigation demand increased by 24 per cent between the FY 2020/21 and 2021/22. Also, the supply of justice depicted by the resolution of cases was 71 per cent over the same comparative period. Overall, the pendency of civil cases in subordinate courts increased by 2 per cent between FY 2020/21 and 2021/22.

**C.** Civil Cases Processed through the Attorney General's Office

The mandate of the Civil Litigation Department under the State Law Office (SLO) is drawn from Article 156 (4)(b) and (c) of the Constitution and Section 5 (1) (i) and (j) of the Office of the Attorney General Act. The Department represents the national government in court on all civil and constitutional matters, arbitration and other forms of alternative dispute resolution such as mediation, negotiations and adjudication. It also represents the national government in matters before foreign courts and tribunals. The Department further conducts legal research and advises government ministries, departments and state agencies in all legal matters.

The Office of the Attorney General and Department of Justice plays a critical role in the aspect of access to justice in the civil justice system and is a pivotal state actor in the reforms agenda noting the crucial role played by other state and non-state actors in the civil justice. The State Law Office is a civil justice actor and has the Attorney General sitting at the Council. Table 13 shows the number of civil cases filed, processed and concluded in the FY 2021/22.

Table 13: Civil cases handled by the State Law Office, FY 2021/22

| *State Law Office* | *Filed cases* | *Processed cases* | *Pending cases* |
|---|---|---|---|
| Nairobi (headquarters) | 2,562 | 1,248 | - |
| Mombasa | 376 | 229 | 5016 |
| Malindi | 206 | 108 | 1365 |
| Kisumu | 315 | 64 | 2064 |
| Kakamega | 303 | 112 | 904 |
| Nyeri | 124 | 42 | 1144 |
| Meru | 287 | 122 | 2861 |
| Embu | 139 | 18 | 361 |
| Eldoret | 365 | 98 | 2870 |
| Kisii | 400 | 46 | 2819 |
| Machakos | 71 | 11 | 60 |
| Nakuru | 306 | 100 | 4122 |
| All Stations | 5,454 | 2,198 | 23,586 |

*Source: OAG&DOJ*

4.2.2 Achievements in adoption of Alternative Forms of Dispute Resolution

Besides litigation, the Constitution of Kenya gives centrality to alternative dispute resolution mechanisms. It provides in article 159(2)(c) that in exercising judicial authority, the courts and tribunals shall be guided by among others, the principle that "alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted". Civil justice actors within the NCAJ have embraced ADR mechanisms when receiving complaints and processing the same through investigation to adjudicate civil disputes. NCAJ has identified the progress, supported and encouraged the various agencies in the utilisation of their diverse dispute resolution mechanisms within their agencies. The NCAJ actors addressed this provision in the following ways.

a) Use of Alternative Justice Systems (AJS) and Court Annexed Mediation

For the Judiciary, the defining spirit of the '*Social Transformation through Access to Justice*' saw it facilitate the use of alternative justice systems (AJS) to offer an appropriate and effective system of justice. The judiciary, through the National Steering Committee for the Implementation of the AJS policy, continued to promote and protect AJS across the country. The judiciary held the first Alternative Justice System Conference in June 2022, dubbed 'Social Transformation through Access to Justice'. During the Conference, the role of AJS in accelerating social transformation through access to justice was discussed by the various state and non-state actor. The Conference brought together AJS practitioners, justice system partners, state and non-state institutions, academia, and students to engage in a structured national conversation on justice following the purpose and principles of the Constitution and for the benefit of the peoples and communities of Kenya. In addition, two major AJS suites were opened in Kajiado and Nakuru counties respectively, further strengthening AJS mechanisms and bringing justice closer to the people. Over 1200 stakeholder were sensitised on operations of the court in various jurisdictions.

Another ADR mechanism employed in the administration of civil justice is the adoption of court-annexed mediation. This is a form of ADR whereby cases brought to court for litigation are referred to mediation for possible settlement. On account of the mediation process being harmonious, people in disputes that use the process can maintain their relationship after the dispute is settled. In the reporting period, the Judiciary implemented court annexed mediation (CAM) as a form of diversion of legal disputes where 962 matters were settled through this method, resulting in KSh 2,719,806,023 being released back to the economy. In the period under review, the judiciary rolled out the CAM in Kericho and Trans Nzoia law courts. The total value of the subject matter of matters referred to mediation was approximately KSh 2 billion, with the value of matters settled being approximately KSh 554 million. The NCAJ members and stakeholders embraced ADR in internal conflicts to reduce litigation cases.

b) Encouraging the Use of ADR and Enforcement of Arbitral Awards

Under section 6(1) of the Arbitration Act, the court may stay the proceeding and refer the parties to arbitration in cases where the matter is a subject to an arbitration agreement. Under section 10 of the Act, no court shall intervene in matters governed by the Act, except in situations enumerated therein. Moreover, where there is an arbitral award, it shall be recognized as binding and, upon application in writing to the High Court, it shall be enforced as if it were the decree of that court (section 7(2) of the Arbitration Act).

During the reporting period, courts continued to stay proceedings to facilitate arbitration in cases where there were arbitration clauses in contracts. Examples include in *Meshack Kibunja Kaburi & 3 others v Kirubi Kamau & 5 others* [2021] eKLR, *Euromec International Limited v Shandong Taikai Power Engineering Company Limited* (Civil Case E527 of 2020) [2021] KEHC 93 (KLR) (Commercial and Tax); and *Cape Holdings Limited v Synergy Industrial Credit Limited* (Application 5 (E007) of 2021) [2021] KSHC 4 (KLR). In the above cases, the learned judges reasoned that the necessity of stay of proceedings arises where the parties have a valid arbitration agreement and upon a dispute arising on a matter covered by the same. Under Section 6 of the Arbitration Act, if one party goes to court over a breach, the other party may apply for stay of proceeding to give effect to the arbitration agreement between themselves. Generally, this is intended to ensure the timely and efficient administration of justice.

c) Arbitration of International Disputes

The Office of the Attorney General adopted the use of mediation, arbitration, adjudication and negotiation to resolve disputes they were involved in. Moreover, the International Law Department and the Civil Litigation Department in the State Law Office was involved in defence of international arbitration cases against the government of Kenya. The successful defence of these arbitrations resulted in savings to the exchequer as follows:-

- *Cortec ICSID Arbitration* was a USD. 2,000 million claim against Kenya, which Kenya totally prevailed. This represents a saving of approximately KSh 200 billion;

- *Kinangop ICC Arbitration* was a USD 310 million claim against Kenya which Kenya totally prevailed. This represents a saving of approximately KSh 31 billion;

- *KETRACO LCIA Arbitration* was approx. Euro 55 Million Claim against Kenya, Kenya knocked off over Euro 37 million and interest from the claim. This represents a saving of approximately KSh 4.181 billion;

- *GDC LCIA Arbitration* was a USD 2.7 million claim against Kenya where USD 2.5 million was knocked off from the claim, representing a saving of approximately KSh 250 million.

- *WalAm Energy Inc ICSID Arbitration* was a USD 339.6 million claim against Kenya. The claim was dismissed in its entirety with the claimant ordered to bear own legal fees and expenses and all costs of the arbitration, yielding a saving of approximately KSh 37 billion.

d) Adoption of other Alternative Forms of Dispute Resolution

The Commission on Administrative Justice (CAJ) assisted the applicants in accessing the information held by public officers and/or institutions to further the right to access information under Article 35 of the Constitution. The Commission received 3,894 complaints. Out of these, 2,093 cases were resolved while 1,801 complaints were ongoing at inquiries, investigations, summons, notice to show cause, ADR and determinations. The Commission also conducted Ombudsman *Mashinani* forums and reached over 433 persons.

During the review period, the Kenya National Commission on Human Rights (KNCHR) handled a total of 1,898 complaints, which included a screening of 1,044 new petitions, inquiry letters, telephone calls and email correspondence. The follow-up actions involved corresponding with relevant respondents or institutions, preparing legal opinions, and preparing parties for ADR and case file reviews. The complaints received were addressed through the legal advice, preliminary inquiries, and referral of non-admissible cases to other partners for interventions. Further, 41 cases were admitted for further investigations on various categories of rights and reports with findings and recommendations were prepared. Where violations were established, appropriate redress measures were taken.

The National Land Commission (NLC), operationalised the land acquisition tribunal. The Commission, received 3,663 historical land injustices claims 126 were heard and determined. Of the determined cases, 35 were challenged in court, and others are processed at various stages. The NLC received 4,000 complaints processed through ADR mechanisms. At the end of the period under review, the NLC was handling 2,925 court cases in the Court of Appeal, ELC and magistrates courts across the country.

4.2.3 Institutionalization of Civil Justice Court Users Committees

The CUCs are the optimal site for citizen service delivery and justice sector institutional transformation. Public participation in civil justice was enhanced by creating CUCs dealing with civil matters. They support the function of the entire justice chain in the various court stations, facilitate the functions of the NCAJ and ultimately ensure a coordinated, efficient, effective and consultative approach in the administration of justice. The NCAJ coordinated the effective administration of justice through robust CUCs engagement to bring synergy in ensuring effective delivery of justice.

During the period under review, NCAJ launched the Commercial Justice CUCs. These CUCs were fully operationalised in Nairobi, Kisumu, Mombasa, Eldoret and Nakuru.

Photo

Further as part of this process, the Hon. Chief Justice, launched the ELC CUCs on 14th March, 2022. The event took place in Nairobi. Those in attendance were the Ministry of Lands and Physical Planning, Ministry of Environment and Forestry and the Kenya National Land Commission, who are key stakeholders and was premised on NCAJs efforts to strengthen the Land Justice Sector. Similarly, ELC CUCs were launched and operationalized in 37 court stations covering 36 counties. Detailed information about CUCs are provided in Chapter five.

Photo

An important component of administration of civil justice is publicity and awareness creation in the justice processes. Indeed, the need for improved communication and creation of awareness through public education and information materials to vulnerable users, and the need to enhance public relations by providing information to litigants on court procedures and processes to enhance access to justice, cannot be gainsaid.

4.3 Legal, Policy and Administrative Reforms in the Civil Justice

A number of legal, policy and administrative reforms were initiated during the period under review in the civil justice sector.

4.3.1 Legal Reforms

The Office of the Attorney General and Department of Justice (OAG & DOJ), working alongside the Kenya Law Reform Commission, developed the Political Parties Primaries Bill 2021, which was then passed by Parliament and assented into law on the 27th of January 2022. This statute provides the regulatory framework upon which Political Parties Primaries are conducted, and how conflicts arising from these exercises are to be resolved, thus strengthening the management of political parties and enhancing democracy.

In the year under review, the National Council on Law Reporting (Kenya Law) submitted judgements in which law reform had been recommended to the Attorney General and the Kenya Law Reform Commission to drive the legal reform process. Kenya Law also continued to report judicial opinions containing pertinent pronouncements on legal and administrative reforms.

4.3.2 Policy Reforms

Entities within the NCAJ developed policies that support civil justice by reducing conflicts and, when they arise, ensuring that they are addressed effectively and efficiently. To enhance access to justice, OAG & DOJ lifted the moratorium on the registration of religious institutions on the 13th June, 2022, after successful negotiations between the various stakeholders in the religious sector and the OAG & DOJ and Ministry of Interior and Co-ordination of National Government. The moratorium had been issued on 2014 to curb the alleged illicit activities of certain religious institutions. In lifting the moratorium, it was agreed that religious institutions would be subjected to rules developed by the OAG & DOJ before registration.

During the reporting period, the Commission of Administrative Justice (CAJ), initiated the development of the Access to Information Regulations to provide a framework for public officers/institutions to share the information they hold to the public. The Commission also commenced the formulation of the Investigations Procedure Manual to guide the procedure of systemic investigations carried out specific investigations; and formulated the draft CAJ Reference Manual for Designing and Developing County Complaints Handling Mechanisms. The manual is designed to guide County Governments in developing their complaints handling mechanisms, thereby enhancing access to justice. The outputs therefrom will assist the NCAJ agencies in having a clear and efficient mechanisms of handling complaints within the public sector.

The NCLR under OAG & DOJ developed policies and strategies that have enhanced the administration of civil justice. One of the policies is *the Conflict Resolution Policy,* which is designed to ensure that all potential conflicts of interest are identified and addressed in an appropriate, timely manner. The *Public Participation Policy,* provides the framework for the management and coordination of public participation in the legislative process towards the fulfilment of the constitutional requirement on citizen engagement in development and governance process in Kenya. Further, *the Whistle-blowers Policy* that is intended to encourage and enable stakeholders and members of staff to raise legitimate concerns through the established channels within law.

The Probation and After Care Services developed the Child and Youth Justice Strategy to standardise the management of children and the youth. To enhance efficient administration of family disputes, Equality Now partnered with the judiciary and provided technical assistance by attaching legal persons in the Family Division and Constitutional and Human Rights Division of the High Court of Kenya.

4.3.3 Administrative Reforms and Initiatives by Specific Agencies

Key players in the NCAJ have undertaken measures to enhance dissemination of information publicly to improve access to civil justice, for instance:

A. The Judiciary

Within the Judiciary, the defining spirit of the '*Social Transformation through Access to Justice*' saw it facilitate the use of alternative justice systems (AJS) to offer an appropriate and effective system of justice. The Judiciary, through the National Steering Committee for the Implementation of the AJS Policy, continued to promote and protect AJS across the country. The judiciary held the first Alternative Justice System Conference in June 2022, dubbed "Social Transformation Through Access to Justice", where the role of AJS in accelerating social transformation through access to justice was discussed by the various state and non-state actors who shaped the development and implementation of the AJS policy. The Conference brought together AJS practitioners, justice system partners, state and non-state institutions, academics, and students to engage in a structured national conversation on justice following the purpose and principles of the Constitution and for the benefit of the peoples and communities of Kenya. In addition, two major AJS suites were opened in Kajiado and Nakuru counties respectively, further strengthening AJS mechanisms and bringing justice closer to the people. Over 1200 stakeholder were sensitised on operations of the court in various jurisdictions.

To reduce the proximity of courts to less than 100 kilometres, the Judiciary established and operationalised the Kapenguria law courts in February 2022. The Court of Appeal operationalised its Kakamega sub-registry and held its inaugural court circuit in March 2022. The Court of Appeal further established four other sub-registries at Busia, Meru, Garissa and Kisii. The High Court operationalised three sub-registries at Kapsabet, Kilgoris and Kapsabet. This is an administrative reform, for it is double- headed as its benefits and enhances access to justice in both criminal and civil sphere hence an enabler of Article 48 of the Constitution of Kenya, 2010.

The ELRC sub-registries at Bungoma and Malindi were upgraded to fully fledged courts. The ELC established and operationalized the Iten ELC Court with over 100 matters registered and an ELC judge duly posted. The Supreme Court also established two sub-registries in Mombasa and Kisumu to enable cases filing and defraying the attendant costs of filing the same in Nairobi.

Recognising that the small claims courts enhance access to justice by expanding the reach of the formal justice system to a category of claimants previously unable to access mainstream judicial services for various reasons, the Judiciary continued to implement its ambitious rollout plan for the scaling up of small claims courts across the country. Twelve small claims court were established and operationalised in the FY at Milimani, Kajiado, Machakos, Nyeri, Naivasha, Nakuru, Eldoret, Kakamega, Kisumu, Mombasa, Thika and Meru as well as one virtual sub-registry. Twenty-five magistrates were designated as adjudicators in the various SCC established. In the FY under review, the Judiciary collaborated with the Nairobi Metropolitan Services (NMS) to roll out five small claims courts in Kasarani, Makadara, Dagoretti, Mathare and Embakasi.

B. The Office of the Attorney General and Department of Justice

The Office of the Attorney General undertook sensitisation in various regions to create awareness on civil justice among the stakeholders in the justice system. The Constitution of Kenya stresses the importance of public participation as a national value and principle of good governance. For the citizens to participate and exercise their sovereign power effectively and efficiently, they must possess the requisite knowledge, capacities, and skills hence the need for a sustained, standardised, and coordinated civic education program.

*Chief State Counsel, from OAG&DOJ, issue a copy of the Constitution to the County Commissioner Kirinyaga County Mr. Jim Njoka during the civic education exercise on the Constitution*

*State Counsel from OAG&DOJ conducting civic education to members of the public in the FY 2021/22*

The sensitization exercises were conducted in 12 counties where the target group were the opinion leaders (*nyumba kumi* leaders, youth leaders, women leaders, religious leaders and community-based groups) and the national government administration officers (county commissioners, deputy county commissioners, assistant county commissioners, chiefs and assistant chiefs) were sensitized by state counsels on an array of legal matters that involve their day to day lives like the Constitution provisions on consumer protection and in human rights. Citizens were also sensitised on the mandate of the Advocate Complaints Commission and its role in the civil justice system.

*Participants in Machakos County being sensitized on aspects of justice by the OAG&DOJ State Counsels*

During the reporting period, the OAG & DOJ, expanded its regional offices to Machakos and Kericho, and recruited 50 State Counsels in a bid to improve on court attendance thus enhancing the access to justice to all. The OAG & DOJ also acquired additional ten vehicles that were disbursed to its regional offices to improve on efficiency.

C. Semi-Autonomous Government Agencies

Semi-autonomous government agencies (SAGAs) played a critical role in enhancement of administration of civil justice in the areas of their mandate in the reporting period. The National Council for Law Reporting (Kenya Law) partnered with various stakeholders to publish inter-alia case digest on various thematic areas such as the Supreme Court Case Digest; the Citizens Rights Case Digest; the Agenda Four Case Digest; and the Commercial Law Case Digest. During the reporting period, the Council of Legal Education (CLE) commenced the development of Regulations for Paralegal Education in partnership with UNDP and received the curriculum for Community Paralegals Training from National Legal Aid Service for review and approval.

D. Civil Society Organisations

The KHRC, a civil society organisation and a member of NCAJ, developed and launched three publications on civic space: The Compendium of Laws on the Civic Space; the Digital Space Case Digest; and Democratic Gains and Pitfalls: The Role of Courts in Safeguarding Civic Space in Kenya. The reports increased public conversations on the need for supporting civil society actors and human rights defenders. This has been evident in the numerous public conversations around civic space on different social media platforms.

The recommendations from these publications sought to influence key policy and legislative decisions while constructively engaging state and non-state actors to create an enabling environment for CSOs in Kenya. To ensure that the efforts are sustained, twelve Civil Society Organizations formed the Civic Freedom Forum (CFF), a platform for civil society organizations (CSOs) operating at a national level with a track record and commitment to protecting human rights, civil liberties, and democracy.

4.4 Challenges and Recommendations on Civil Justice Reforms

4.4.1 Challenges

The following challenges have delayed the civil justice reforms.

i. Impact of the COVID-19 Pandemic: The Covid-19 pandemic made it difficult for the entities and departments in the civil justice sector to efficiently conduct their mandates and ensure effective administration of justice. For instance, the downscaling of court activities for an extended period coupled with the government restrictions on movement, curtailed the efficient administration of justice.

ii. Inadequate Funding: The entities and departments that handle civil justice have faced inadequate funding, occasioning the shelving of some of its key projects. For instance, the OAG & DOJ had difficulty in expanding to the regions to render services more accessible.

iii. Inadequate public awareness of the duties and functions: Most Kenyans have limited knowledge about the mandates of various agencies, which sometimes lead to inter-agency conflicts. The limited knowledge exposed innocent persons to conmen who extorted money from them under the guise of helping them access services that may be offered at a much subsidised cost or even freely.

iv. Case backlogs and delays in Court: High case backlog and pendency in courts adversely affected expeditious dispensation of justice. The rising backlog was occasioned by both the internal factors in the judiciary and external from the other agencies causing adjournments. The shortage of judges and judicial officers impacted on case backlog. Most persons, especially the vulnerable groups, were discouraged from pursuing their cases, especially when matters were adjourned.

v. Difficulty in Implementation of Certain Court Judgements: Some of the judgements and orders issued by courts had practical implementation challenges.

vi. Contempt of court: Incidents of failure by some State actors to timely comply with court orders adversely affected the citizens pursuing civil justice through the court process.

vii. Award of Excessive Amounts: Issuances of excessive awards at times, especially in arbitration matters, harboured efficient administration as this led to parties appealing such awards, which only served to extend the already bureaucratic process of litigation.

4.4.2 Recommendations

In light of the challenges identified, the following recommendations are proposed for enhancing civil justice reforms and increasing efficiency in the civil justice system.

i. Greater focus on Public Interest matters: More emphasis should be placed on public interest matters and the implication of judgements and courts orders. There is need for a survey on enforceability of the awards given by the courts to understand the underlying challenges.

ii. Compliance with Court Orders: There is need to develop a strategy to guide the compliance with court orders and address the bottlenecks faced by the actors.

iii. Provision of adequate funding: Adequate funding to critical players in the civil justice sector will allow them to pursue their mandate with ease and effectively. Agencies can also approach the synergy strategy of combining their resources to actualise a common goal.

iv. Creating awareness of the duties and functions of the various actors: To enhance efficiency, it is vital to create awareness through training stakeholders on the roles carried out by different stakeholders. Such sensitizations will also inform and equip the citizens with the necessary information about various offices.

v. Fast -tracking of court cases: The use of service weeks, rapid result initiatives and active case management are some of the initiatives that can ease the case backlogs ensuring smooth case process. The civil justice actors should be encouraged to use these mechanisms to actualize the need for service delivery promptly on time.

vi. Train Police officers on basic civil procedures & processes: This will appropriately guide those submitting such disputes to the police stations due to lack of awareness.

CHAPTER 5: ADMINISTRATION OF JUSTICE FOR VULNERABLE GROUPS

5.1 Introduction

Vulnerability implies the extent to which persons are susceptible to harm, dishonour or exposure to hostile factors or environment. Vulnerable persons are susceptible to various forms of discrimination and therefore require special protection to enjoy their human rights fully. Article 21(3) of the Constitution of Kenya provides that all State organs and public officers have a duty to address the needs of vulnerable groups within society, including children, women, older members of the society, persons with disabilities, youth and members of minority or marginalized communities. Article 50 emphasizes the principles of a fair hearing when dealing with vulnerable groups, including protecting them from unnecessary publicity during proceedings. Further, Article 10 of the Constitution commits to protecting marginalized persons as part of the national values and principles of governance. Through its coordination framework, NCAJ has remained at the forefront in ensuring access to justice for vulnerable in the justice system.

A distinctive feature of the 2030 Agenda for Sustainable Development is its emphasis on reaching out to vulnerable persons. Specifically, Goal 5 emphasizes gender equality while Goal 10 makes provision for the reduction of inequality. Goal 16 addresses the need for peace and strong justice institutions, while Goal 17 provides for forging of partnerships to achieve the goals. States, therefore, need to extend special protective measures to the vulnerable groups and create mechanisms for priority consideration, especially in providing for the rights of the vulnerable groups. Hence, strategic measures should be put forth to provide fair, transparent, adequate, non-discriminatory, and accountable services that promote access to justice for vulnerable groups. The measures would reduce the barriers to those seeking justice, including the physical barriers, high costs, delays in service delivery and unnecessary technicalities.

One of the crucial focus area of the NCAJ Strategic Plan 2021-2026 is to improve access to justice for vulnerable groups. Consequently, the NCAJ has prioritised programs to address the justice needs of children, women, persons with mental health disabilities, intersex persons, the elderly and other vulnerable groups in the society. To achieve its objectives, the NCAJ has established Working Committees on the review laws relating to sexual and gender-based violence, and the administration of justice for children in Kenya.

This Chapter highlights the achievements realized in administering justice for vulnerable groups and looks at the policy and legal reforms touching on the vulnerable groups during the FY 2021/22. The Chapter also highlights the challenges that were faced and provides recommendations for improving access to justice for vulnerable persons.

5.2 Progress on Administration of Justice for Vulnerable Groups

*5.2.1 Vulnerable Persons Handled by the Justice Sector Agencies*

During the period under review, the NCAJ agencies handled diverse groups of vulnerable persons. The percentage vulnerable persons handled by NCAJ by gender is shown in Figure 12.

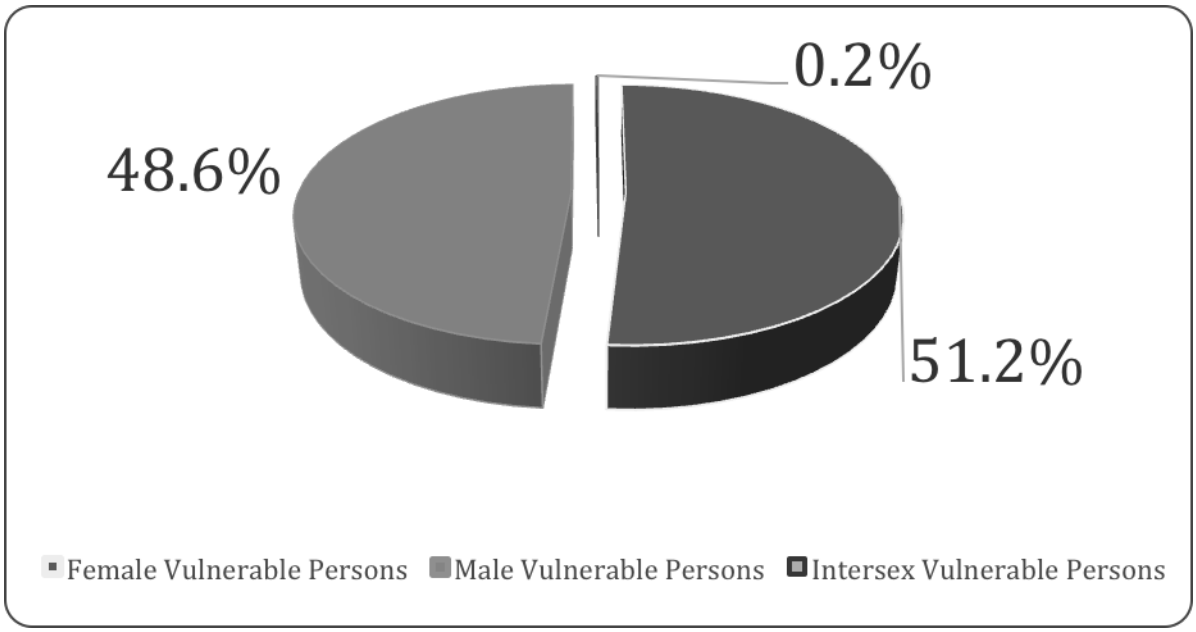



Figure 12: Percentage vulnerable persons handled by NCAJ Agencies by gender

During the period under review, a total of 26,864 vulnerable persons were handled by diverse NCAJ agencies. Table 14 shows the number and type of persons handled by different agencies.

Table 14: Vulnerable persons handled by NCAJ agencies, FY 2021/22

| Agency | Category of Vulnerable Person | Female | Male | Intersex | Totals |
|---|---|---|---|---|---|
| National Police Service | Children | 2,129 | 1,235 | 6 | 3,370 |
| | Physically and mentally challenged | 11 | 12 | 0 | 23 |
| | Persons with disabilities | 133 | 201 | 0 | 334 |
| | SGBV victims | 853 | 177 | 0 | 1,030 |
| | Elderly | 854 | 409 | 0 | 1,263 |

| | | | | | |
|---|---|---|---|---|---|
| | Minority communities | 2 | 4 | 0 | 6 |
| Office of the Director of Public Prosecution | | - | - | - | - |
| Office of the Attorney General | Intersex Persons | | | 1 | 1 |
| | Children | 100 | 100 | - | 200 |
| National Crime Research Centre | Women | 4,414 | 0 | 0 | 4,414 |
| | Youth | 1,551 | 2,156 | 0 | 3,707 |
| | Intersex | N/A | N/A | 3 | 3 |
| National Council on Law Reporting | PWD | 0 | 2 | 0 | 2 |
| Kenya Human Rights Commission | Stateless Community | 1,191 | 1,171 | 0 | 2,362 |
| | Kenya Citizens | 356 | 414 | 3 | 773 |
| | Refugees | 42 | 63 | 1 | 106 |
| Witness Protection Agency | Unaccompanied minors | 4 | 5 | 0 | 9 |
| | Accompanied minors | 11 | 2 | 0 | 13 |
| | Older members of society | 5 | 12 | 0 | 17 |
| | Youth | 16 | 20 | 0 | 36 |
| | Expectant and lactating mothers | 5 | 0 | 0 | 5 |
| | Persons living with Disability | 2 | 2 | 0 | 4 |
| | Teen mothers and SGBV | 3 | 0 | 0 | 3 |
| | Lifestyle disease | 0 | 1 | 0 | 1 |
| Independent Police Oversight Authority | | 631 | 2,066 | | 2,697 |
| Council on Legal Education | PWD | 24 | 28 | 52 | 104 |
| Council on Administrative Justice | | 216 | 780 | 0 | 996 |
| FIDA-Kenya | PWD | 32 | 8 | 0 | 40 |
| | Widows | 113 | 0 | 0 | 113 |
| | Women | 5,232 | 0 | 0 | 5,232 |
| International Council of Jurists | Indigent | | | | - |
| Judiciary | Children | | | | 11,149* |
| | SGBV victims | | | | 8,498* |
| Total | | 17,930 | 8,868 | 66 | 26,864 |

**Cases resolved in magistrate's courts*

*5.2.2 Administration of Justice for Children*

To address access to justice for children, NCAJ and its agencies undertook the following activities:

*The Child Justice Service Month* - The NCAJ, through its Standing Committee on the Administration of Justice for Children, organized and coordinated the child justice service month in November 2021. The service month was launched by the Hon. Chief Justice at Kamukunji Police Station, who also inspected the quality of care and infrastructure of the Child Protection Unit. Most courts in the Country held service weeks. Members of the NCAJ Standing Committee on the Administration of Justice for Children were able to support 6 Court Stations, namely Tononoka, Msambweni, Kisumu, Nakuru and Meru.

*Hon. Chief Justice & President of the Supreme Court of Kenya, Justice Martha K. Koome with Mitchell Njeri from Mickey Kindergarten and Brian Njeri from Halisi Academy during the launch of the National Service week at Kamukunji police station*

*Online Child Protection*: In the emerging area of online child protection, the NCAJ developed a curriculum on Online Child Sexual Exploitation and Abuse (OCSEA). The Directorate of Criminal Investigations through the Anti-Human Trafficking and Child Protection Unit also provided specialized training on handling cases of online child sexual exploitation and abuse. Moreover, UNICEF also supported two training of trainers fora on investigating and prosecuting cases on OCSEA. Training for stakeholders in this area was undertaken through the Kenya Judiciary Academy, Council of Legal Education and Law Society of Kenya. For the prosecutors, it was done through the Prosecutor Training Institute, while for the police, it was done through the National Police Staff Officers Training. Others persons who were trained were drawn from the NCAJ Committee on Criminal Justice Reforms and the Standing Committee on Children Matters. The trainers also participated in an international training webinar to learn from experts from various countries. The webinar was organized by Meta, UNODC, International Center for Missing and Exploited Children, Internet Watch Foundation, Child Helpline International and Mobile Telecommunication Company (MTN).

*The Day of the African Child celebrations:* The National Council for Children Services coordinated the Day of the African Child celebrations on June 16th, bringing together child protection actors. The theme was "*Eliminating Harmful Practices Affecting Children: Progress on Policy and Practice Since 2013*". The National celebration was held in Kajiado where the chief guest was the Chairperson of the NCAJ Committee on the Administration of Justice for Children. The key message was zero tolerance to harmful cultural practices, prevention of violations and the need to reinforce the capacity of the child protection sector in handling these cases.

To commemorate *the Day of the African Child*, NCAJ in collaboration with *Mtoto News*, held the *Inaugural Town Hall Meeting*, which was attended by 1200 children drawn from seven schools. The schools were Mbagathi Primary School, Peace Junior Academy, Shadrack Kimalel Primary School and St. Lukes PCEA Primary School, Jimmy Academy, Golf Course Primary School and Mbagathi Girls High School. Issues discussed during this event included the menace of defilement and violence against children. The Deputy Chief Justice and Vice President of the Supreme Court of Kenya, accompanied by the Chairperson of the NCAJ Committee on the Administration of Justice for Children Matters, graced the occasion.

*Hon. Deputy Chief Justice & Vice President of the Supreme Court of Kenya, Hon. Lady Justice Philomena Mbete Mwilu and Hon. Lady Justice Teresia Matheka at Mbagathi Primary during the Town Hall commemorating the day of the African child*

In partnership with *Mtoto News,* NCAJ commissioned *My Day in Court Children Magazine,* published through the support of Legal Resources Foundation, in November 2021 to enhance children's knowledge of the justice system and administration of justice. The *Mtoto News* rolled out a program to train children in journalism skills so that they can have the capacity to advocate for their rights. The collaboration culminated with a visit to the Kenya Broadcasting Corporation, where the children exposed to making of broadcasts and television presentation.

The NCAJ held the *Inau*gural *Child Justice Summit* and established *Wakili Wa Watoto Clubs*. During the Child Justice Summit held in October 2021, *Wakili Wa Watoto* Clubs were established in Law Schools in Kenya, with 14 Law Schools being represented at the summit. The NCAJ continued to register the clubs, which have encouraged the students to have a keen interest in children matters. Some of the activities undertaken by *Wakili Wa Watoto* Clubs include moot courts on child justice and child rights, the establishment of legal aid clinics, leveraging on social media to raise awareness on child rights and visiting primary schools to sensitise pupils on child justice and child rights. The NCAJ committed to supporting the Clubs to ensure an increase in students interested in matters of children in the justice system, and ultimately build a network of advocates who are passionate about representing children in courts.

*Survey of reintegration of children in Kenya*: NCAJ, through the Standing Committee on the Administration of Justice for Children, participated in a survey organised by Japan International Cooperation Agency (JICA) on the rehabilitation and reintegration of children in Kenya. The Survey, which was aimed at informing the interventions on child justice in Kenya, was part of a long-standing partnership between the government of Japan and Kenya on child Justice.

*Training and capacity building*: A capacity needs assessment of the criminal justice sector concerning handling children in the justice system was undertaken in partnership with IDLO. The Survey aimed at identifying gaps in the capacity of the justice actors to ensure that they are able to handle children effectively and in the children's best interest. In the financial year under review, 30 prosecutors were sensitised on handling children matters. In partnership with US Embassy, UNICEF and IDLO, NCAJ trained 57 magistrates on handling of children in the justice system.

*Ms. Linda Ndambiri from ODPP sensitizing prosecutors on handling children in the Justice system*

*Alternative family care:* In collaboration with Changing the Way We Care Consortium, the Directorate of Children Services organized a virtual exchange program where Kenya and Italy shared best practices and policy direction on alternative family care. The core of this engagement was to give traction to family-based care as the first option for judicial officers when handling children in need of care and protection and those in conflict with the law.

Faraja Foundation, a non-profit organization in the justice sector, refurbished four childcare facilities and built one day-care centre in Women's Prisons. At the end of the reporting period, the Foundation had reached out to 5 women prison facilities namely, Kakamega Women, Kericho Women and Embu Women.

*5.2.3 Administration of Justice for Persons with Mental Illness*

In respect to access to justice for persons with mental illness, the following were the notable achievements that were realized in the FY 2021/22.

*Sensitization on Mental Illness in the Criminal Justice System*: The NCAJ, through its working Committee on Criminal Justice Reforms, hosted a webinar on Mental Illness in the Criminal Justice System in October 2021 under the theme "Observing the Rights of Persons with Mental Illness within the Criminal Justice System." The Committee engaged academia, disability rights experts, KNCHR, organizations representing persons with intellectual and psychosocial disabilities, members of the public, and state actors. Participants were sensitised on the status of persons with mental illness in the criminal justice system in Kenya. The engagement proposed enhanced collaboration and awareness in handling persons with mental illness in the justice system and reduction of bottlenecks in handling such persons from the point of arrest, prosecution, adjudication, aftercare and re-entry. Further, the NCAJ engaged actors on issues of persons with mental illness in the justice system to create synergy with the Special Needs Offenders Special Working Group (constituted under Probation and Aftercare services). During this engagement, the report on the Status of Persons with Mental Illness in the Criminal Justice System in Kenya was shared.

*Research on Inclusion and Responding to Justice Needs for Persons with Mental Disability; An Access to Justice Manual for Persons with Mental Disability*. The ICJ Kenya developed the manual to provide an overview of the policy and legal framework for persons with mental disabilities, including regional and international instruments that provide for their rights and outline state obligations. The manual documents the challenges faced by persons with mental disabilities in the criminal justice system.

*Sensitization on Access to Justice for Persons with Intellectual and Psychosocial Disabilities*: The NCAJ participated in the Kabarak University Conference on Access to Justice for Persons with Intellectual and Psychosocial Disabilities held on 6th and 7th August 2021. This Conference allowed evaluation of the existing legal framework governing the various criminal justice processes, including arrest, investigation, prosecution, sentencing (including non-custodial sentences and incarceration), and post-sentencing practices in respect of persons with intellectual and psychosocial disabilities.

*5.2.4 Administration of Justice for Intersex Persons*

In respect to access to justice for intersex persons, the following were the notable achievements that were realized in the FY 2021/22. The Intersex Persons Implementation Coordination Committee Secretariat developed media content dubbed '*Wajibika'* the rights of intersex persons. A total of 1500 copies of content printed were used in the awareness creation across 12 counties and shared with the media for reporting and publicity.

The Kenya National Commission on Human Rights engaged justice actors on challenges that intersex persons face during elections and on matters relating to the registration of intersex persons as interested parties to vie in the elections. The challenges identified included the lack of identifier "I" in the political parties' register for interested candidates. The other challenge was that identity cards for intersex persons included names they would like to change. Sensitization of police officers in the identification of intersex persons and how to handle them was identified as an urgent need. The KNCHR engaged the Registrar of Political Parties in the inclusion of the marker "I" in the register to ensure non-discrimination.

*5.2.5 Administration of Justice on Sexual and Gender-Based Violence*

The NCAJ, through the National Standing Committee on Court Users, developed the Standard Operating Guidelines on Sexual and Gender-Based Violence Case Management during a Crisis. The Guidelines focus on preventing, responding to, and managing sexual gender-based violence within the justice sector during the crisis. Further, the Guidelines detail the processes for the prevention and response to SGBV and list the responsible sectors for action, including health care providers, psychiatrists and psychologists, legal aid providers and security agencies. Specifically, the Guidelines will:

i. Improve access to justice for survivors of sexual and gender-based violence.

ii. Establish clear procedures for cross-sectoral referral and limit gaps and overlaps in service delivery, particularly in times of crisis.

iii. Clarify the complementary roles of each key actor in crisis times.

iv. Ensure that the minimum standards of care for survivors are always met.

v. Facilitate the free flow of information among the actors.

In July 2021, a stakeholder consultative meeting comprising 30 justice sector actors was held by the Sexual Offences Act Review Committee. The purpose of the meeting was to identify critical issues about sexual offences to be considered by the Council. The outputs of the stakeholder meeting were condensed into a report and submitted to the Council. This led to forming a Working Committee on Review of Sexual Offences and Gender-Based Violence, which successfully held its first meeting in December 2021.

A *pro bono* lawyer was engaged at Busia law courts through the support of Equality Now to watch brief in 98 defilement cases that had been stuck in various stages of legal justice, either at the police station investigation stage, the decision to prosecute stage, or court hearing stages. A Sexual and Gender-Based Violence Information System to collect and collate data on cases of sexual violence from critical agencies was developed through a partnership with the National Gender and Equality Commission, ODPP, the Police, Judiciary, and even the ministry of health through the support of Equality Now. To ensure discourse and narrative on the need to avert SGBV, further support was accorded to convening of Court Users Committee meetings in Busia, Kisumu, Makueni, Narok, Kajiado, and Kwale Counties. In partnership with KMJA and Equality Now, judicial dialogues were convened to create awareness of the Maputo Protocol among Judges,Magistrates and Kadhis.

*5.2.6 Administration of Justice for other Vulnerable Groups*

To tackle discriminatory laws against women, the Office of the Attorney General collaborated with the State Department of Gender and undertook the mapping of discriminatory laws against women and their implications. The Office also instituted proceedings for the benefit of vulnerable groups. A case in point was that of the Ogiek, which was filed and determined at the African Court of Justice at Arusha and involved their reinstatement to the Mau Forest and the award of damages to the tune of KSh 157 million.

Within the reporting period, the National Council for Law Reporting collected and digitised public legal information comprising Kenya Gazette, Sessional Papers and Government Policies to provide free online access to the general public, including the vulnerable groups in society. Kenya law reviewed the existing anonymization guidelines to aid in redacting certain judgments of personal and private details to protect the identity of vulnerable groups in society.

The Witness Protection Agency (WPA) provided protection to threatened and intimidated witnesses in criminal cases who included women, children, youth, and members of minority or marginalised communities. The Agency also took administrative measures to disaggregate data to facilitate particular interventions aimed at enhancing focus on vulnerable groups, especially unaccompanied minors and youth. The WPA also began to develop the Disability Mainstreaming Policy and Psychosocial Policy.

During the period under review, the courts continued to guard the rights of vulnerable groups in society as enshrined in the Constitution. To this end, the courts made landmark judicial decisions with immense jurisprudential value on issues relating to access to justice for vulnerable persons. A few of these decisions are highlighted in this report drawing reference from the published SOJAR 2021/22. For instance, it is discriminatory for an employer to terminate an employee's employment contract on the grounds that the employee is pregnant. The courts also determined that in making orders for actual and legal custody of children, the tender years' doctrine must be subjected to the best interests of the child principle. Regarding access to justice for persons with disabilities (PWDs), courts ruled that it is a violation of the PWD's right to be treated with dignity when an employer invites such a person for an interview despite the employer knowing that they do not have the necessary special facilities or modifications to accommodate such a person.

In partnership with ICJ Kenya, the National Legal Aid Service developed a standardised Paralegal training curriculum to guide the certification regime for paralegals in Kenya as provided under the Legal Aid Act, 2016. The standardised curriculum is expected to actualise the paralegals' training needs assessment to enhance access to justice for the indigent persons.

The IJM partnered with IPOA and refurbished their counselling room to enhance trauma-informed care for victims of police misconduct that report their cases to the authority. The provision of counselling services is critical in processing traumatic experiences and helps victims and witnesses to participate effectively in judicial proceedings.

In Kwale County, LSK, through its extractive project and partnership with Canadian Bar Association, trained marginalised artisan miners on diverse aspects of law and compensation to claims. Further, LSK offered legal aid to indigent clients during the legal aid clinics in various parts of the country, took up impact litigations before courts to correct instances of excesses of actors, and advocated for the recruitment of judges and magistrates to enhance access to justice.

The FIDA-Kenya developed the women's economic empowerment policy and status report. Further, FIDA-Kenya operationalised Virtual Justice centres in Nairobi, Mombasa, and Kisumu, to conduct virtual mentions and hearings for clients.

Faraja Foundation, with the help of its founder, Father Peter Meienberg, donated 2,162 beds to women's prisons in Kenya. This is in addition to the previously donated 750 beds to Langata women's prison and 250 donations of beds to Nakuru Women's Prison. This was done in the spirit of the Bangkok Rules that requires clean and safe accommodations for women in prisons.

1.3 Legal and Policy Reforms on Administration of Justice for Vulnerable Groups

The following legal and policy reforms were carried out in the period being reported.

*1.3.1 Legal Reforms on the Administration of Justice for Children*

The NCAJ prioritised repealing and re-enactment of the Children Act 2001 to align with the Constitution of Kenya 2010 and address emerging issues affecting children. The Children Bill was tabled in Parliament in October 2021 and assented in June 2022. The new Act introduces aspects of child protection such as raising the age of criminal responsibility to 12 years, holding children separate from adults, prioritising family care instead of institutional care, and using alternative dispute resolution mechanisms.

*Children participating in a fora on processes that affect them*

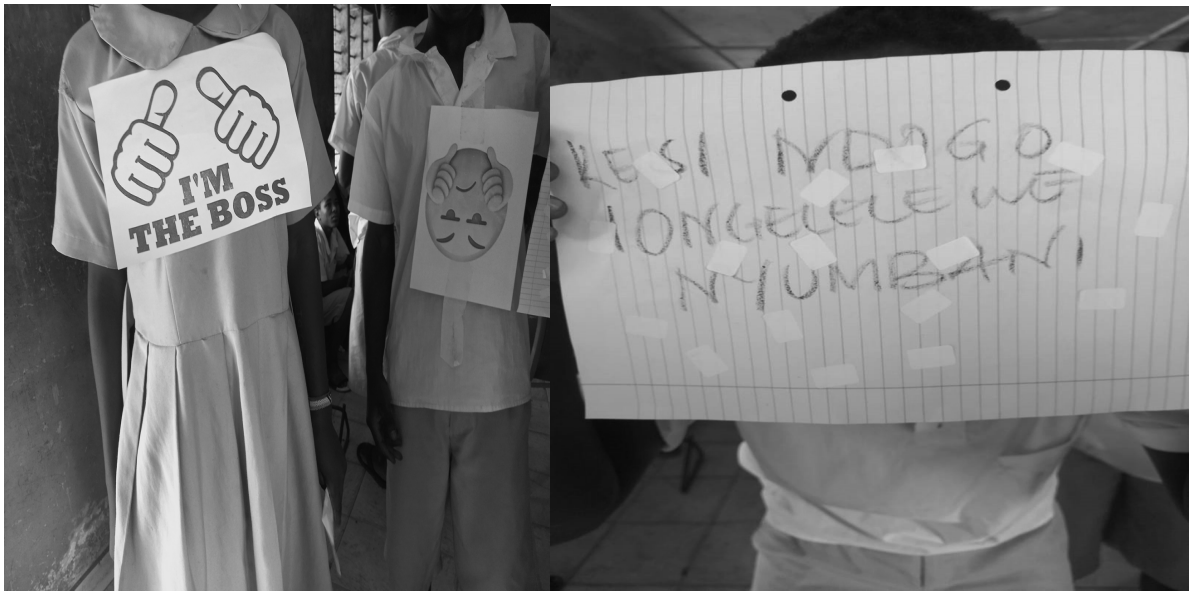
*1.3.2 Legal Reforms on Protection of Vulnerable Witnesses*

The Witness Protection Agency proposed amendments to the Witness Protection Act to include the definition of a vulnerable witness and to the Witness Protection Regulations to require that a professional assist vulnerable witnesses through all stages of the witness protection programme. A further proposed amendments to the Act was aimed to empower the Director to conduct continuous psychosocial, threat and risk assessments to the witnesses under the witness protection programme to ensure the efficiency of the special and continuous protection of the vulnerable witnesses.

*1.3.3 Policy Reforms*

*Preparation of the report on budgetary needs for children in the justice system in Kenya*-Budgeting for children has been identified as a challenge in the child justice sector, resulting in the non-implementation of recommendations to reform the child justice sector. To this effect, NCAJ, with support from UNICEF, developed a report on budgetary needs for the child justice sector in line with the Children Act. The training of actors will be undertaken in the FY 2022/23 to ensure that the report is effectively used in financial planning by NCAJ agencies.

*The Justice Sector Children Strategy* - The NCAJ began developing the Justice for Children Strategy with support from UNICEF. The Strategy is intended to outline priority interventions for children in the Kenyan justice system from 2022 – 2026 and ensure allocation of resources to the most urgent needs for children in the justice system.




*Children at Likoni Remand home contributing to the Justice for Children Strategy*

*Throughcare and Aftercare Procedures for Children in Statutory Institutions* - The Throughcare and Aftercare Procedures for Statutory Children Institutions were revised to address gaps in service provision to children committed to statutory institutions and align them to the Children Act, 2022. The Procedures articulate the overall objectives when handling children in the justice system. They define the roles of child justice agencies in processing children from entry into the system to re-entry back into the community. The Procedures aim to enhance coordination and information sharing between placement officers and officers in institutions. This was made possible with support from UNODC.

*Policy for Children Accompanying their Mothers to Prison* - The Kenya Prisons Service commenced the development of a policy on child-care services in prisons which the NCAJ participated through the Special Taskforce on Children Matters. The policy will support the provision of services to children in prison such as early child development education.

In October 2021, NCAJ launched the Child Care and Protection Officers and Facilitators Manual. In February 2022, the NCAJ partnered with IDLO to train 27 Trainer-of-Trainers. The trainers were drawn from the Directorate of Children Services, Probation and Aftercare Services, Kenya Prisons Services, the Directorate of Children Services, the Judiciary, the National Police Service, and the Law Society of Kenya. The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) provided technical support.

The NCAJ was involved in developing the Standard Operating Procedures on Kafalah, which cater to the needs of Islam professing children in line with Sharia law. The NCAJ participated in sensitization and the launch of the International Institute for Justice (IIJ) and Rule of Law Juvenile Justice Practitioners' Notes organised by the United States Department of Justice. The IIJ Juvenile Justice Practitioners' Notes aim to provide a one-stop shop for judges and judicial officers handling children cases in the terrorism context as the document synthesizes all requirements into easy-to-read reference material.

1.4 Monitoring the Administration of Justice for Vulnerable Groups

Monitoring the Administration of Justice for Children

The NCAJ, through the Standing Committee on Administration of Justice for Children, undertook a field monitoring exercise for the Child Protection Units (CPU) at Kakuma and Lodwar, an exercise which further aimed at identifying solutions to the rising backlog of children cases. Consequently, a training of the Kakuma and Lodwar CUCs was held to improve coordination of the child justice agencies in the two jurisdictions. The training covered diversion, plea bargaining, forensic evidence, the protection and care form opening and legal representation. These two CUCs were targeted due to the gaps in having child-friendly infrastructure, with the nearest remand home being Eldoret which is more than 300 kilometres away. The intervention was supported by US Embassy Department of Justice and UNICEF. After the engagement, the Child Protection Unit, which had been constructed with support from UNICEF and UNHCR, was reallocated to its full use in holding children who are in contact with the law. Further, the Kakuma diversion committee was formed to ensure that children in conflict with the law are diverted from the system.

1.5 Challenges and Recommendations on Administration of Justice for Vulnerable Groups

*1.5.1 Challenges*

The following challenges were reported in respect of access to justice for the vulnerable groups during the period under review.

i. Instances of the slow pace of trials contributed to the high cost of sustaining witnesses and their dependents, especially the vulnerable groups.

ii. Inadequate awareness of the witness protection programme limited the application of protection measures.

iii. The downscaling of court sessions due to the Covid-19 pandemic adversely affected access to justice for vulnerable groups.

iv. Inadequate computer skills hindered the use of virtual justice centres and online platforms for vulnerable persons.

v. Lack of appropriate protection infrastructure like witness protection boxes, screens and voice distortion equipment required to safeguard and conceal witnesses under protection in courts.

vi. Delay in obtaining judgments and typed proceedings for cases involving vulnerable persons.

vii. Inadequate budget allocation to agencies concerned with administering justice to the vulnerable groups affected programmes targeting vulnerable groups.

viii. There was low sensitisation of vulnerable groups of their rights and the framework available for their protection.

*1.5.2 Recommendations*

i. The Justice Sector Agencies to put up measures for enhancing quick service delivery to vulnerable persons.

ii. Enhance the capacity of Justice Sector Agencies to serve vulnerable persons effectively.

iii. Ensure that the existing infrastructure in the justice sector is easily accessible and user-friendly to vulnerable persons.

iv. Provide psychosocial support to vulnerable persons who are victims of crime or in conflict with the law.

v. Equip rescue centres for vulnerable persons who are victims of crime and gender-based violence

vi. Enhance sensitization forums to vulnerable persons of their rights and the available protection frameworks.

vii. Enhance fundraising to address challenges affecting vulnerable groups.

CHAPTER 6: ADMINISTRATION OF JUSTICE AT THE GRASSROOTS THROUGH COURT USER COMMITTEES

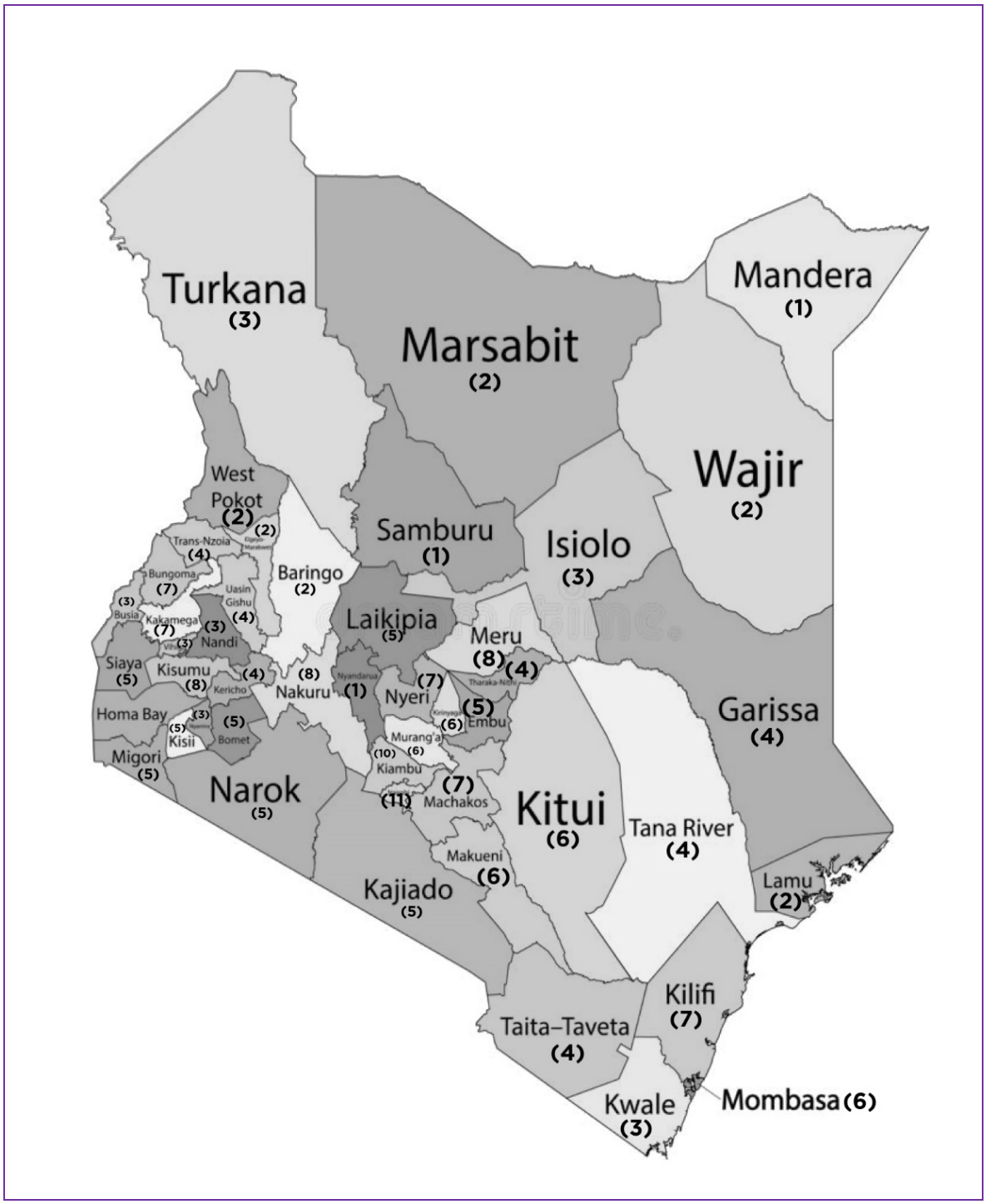



Figure 13: Number of CUCs per County

Success Stories for Select CUCs, FY 2021/22

*Kapsabet Law Court CUC*

- *Donated two laptops, a TV and a mobile phone to facilitate virtual court attendance by remandees*
- *Sensitised the public on Mediation during the launch of the Court-annexed mediation*
- *Visited Kabiyet Law Court, a new court to be established and evaluated readiness to fully operate*
- *Formed Kabiyet, Kabujoi, Songhor/Tinderet, and hall refurbishment sub-committees*
- *Established exhibits management and storage mechanisms*

- *Created distinguishing codes for all sub-stations*
- *Constructed public toilets*

*Vihiga Law Court CUC*

- *Trained CUC members on matters of children and gender-based violence*
- *Held the Children's Service Week*
- *Donated 2 laptops to Kisumu maximum prison*
- *Held a legal clinic*
- *Visited the Kisumu Juvenile remand home*
- *Conduced a successful sensitisation program for boda boda operators*
- *Hosted students from various schools to learn about court processes*
- *Lobbied for purchase of Mwironje land by CDF Luanda and Emuhaya CDF for the construction of the court*

*Ndhiwa Law Court CUC*

- *Conducted decongestion exercise*
- *Established a Pro Bono committee and advocates were appointed to handle matters*
- *Sensitised members on women, land and property rights*
- *Lobbied Ndhiwa CDF to construct toilet in the courts.*
- *Formed Anti-Corruption Liaison Committee to spearhead the fight against corruption*
- *Conducted training for election dispute resolution*

6.1 Introduction

The Court Users' Committees (CUCs) are platforms that bring together actors in the justice sector to ensure a coordinated, efficient, effective, and consultative approach to the administration of justice at the grassroots. The CUCs are institutionalised under Section 35 of the Judicial Service Act No. 1 of 2011 under the NCAJ. They are established at different courts and for a specific justice phenomenon. The overall objective of CUCs is to enhance the administration of justice within the respective courts' jurisdictions and ensure enhanced service delivery to the citizens at the local level. Hence, CUCs create linkages amongst the justice actors and forge local solutions for challenges experienced.

The CUCs undertake, among other assignments, the following:

i. Ensure a coordinated, efficient and consultative approach to delivering justice.
ii. Improve access to justice and especially for vulnerable persons.
iii. Enhance service delivery by all actors in the justice system.
iv. Enhance public participation and engagement in the delivery of justice.
v. Promote information sharing and learning among stakeholders.
vi. Strengthen feedback mechanisms and promote dialogue among stakeholders.
vii. Propose policies and legislation on the administration of justice.
viii. Carry out all incidental functions to their operations.

The priority areas for CUCs include case backlog reduction covering both criminal and civil cases, effective case management, efficient bail and bond implementation, improvement of conditions in detention facilities and holding areas, coordination and communication in the justice sector, enhancing access to justice, expeditious delivery of justice, and prevention of corruption. Additionally, CUCs are engaged in enhancing justice sector capacity at the local level, records management (for instance, police files, prosecution files, and court files), access to justice for vulnerable persons, and collaboration on automation of justice sector services.

This Chapter provides detailed information on the administration of justice at the grassroots through Court Users Committees (CUCs). The emphasis is on the CUCs achievements, cross-cutting challenges, and proposed solutions to enhance the efficient administration of justice. At the end of the period under review, there were 40 CUCs at the High Court, two at ELRC, 37 dealing with environment and land justice, five on commercial justice, 125 CUCs at the magistrate courts, seven dealing with child justice, 14 at Kadhi's Courts and six at the Tribunals.

6.2 Interventions to Enhance Administration of Justice at the Grassroots

During the reporting period, a number of interventions were undertaken in respect to enhancing the administration of justice at the grassroots through CUCs. Some of the interventions are highlighted below:

6.2.1 Development of the Diverse CUCs Policies

*Children Court User Committees Guidelines:* The draft guidelines were developed to institutionalize Children Court User Committees (CCUCs). The CCUCs provide a platform for stakeholders in the justice sector to oversee and facilitate effective administration of juvenile justice in the children's best interest and the promotion and protection of the child's rights. The Guidelines provide a framework for partnership, collaboration, information sharing, knowledge management, and coordination of justice service delivery in children's courts.

*CUCs sensitization Toolkit*: The Toolkit was developed to strengthen sensitisation activities for CUCs by providing practical guidance on organising sensitization events and outreach programs. The aim is to create consistency in sensitization of CUCs in line with their mandate of bringing citizens closer to the justice system. Further, the toolkit gives parameters for sensitization and dissemination by lead agencies to allow for standardization in messaging, simplicity and provision of accurate information.

6.2.2 Training of CUCs

During the review period, NCAJ participated in the inaugural meeting of the Political Parties Tribunal Users Committees. At the meeting, members were sensitised on the CUC guidelines and deliberated on diverse justice issues and expectations, especially since the country was gearing up for elections.

Further, the NCAJ trained the Business Premises Rent Tribunal (BPRT) and the Rent Restriction Tribunal (RRT) on the roles of CUCs. During the engagement, various challenges were highlighted, notably the presence of brokers around the premises and a heavy case backlog. Further, many cases were indicated to have remained dormant upon the issuance of interim orders. The following resolutions were made:

i. There is a need to sensitise the Parties on continuing with cases until their conclusion.

ii. Tribunal Chairpersons to target case backlog clearance in all regions.

iii. The two Tribunals to organize "Public Service Week" forums during their circuit sittings to clear the backlog.

iv. The public to seek other arbitration methods before reporting a matter at the Tribunals.

v. The police, landlords, and auctioneers are to be sensitised on their roles concerning the Rent Act as they play a significant function in speeding the justice process.

During the period under review, the Standing Committee on Court Users was sensitised on the Alternative Justice System (AJS) model and implementation framework. The meeting deliberated and agreed on areas of partnership, given that the AJS framework will primarily be implemented through the CUCs. Among the resolutions made was that CUCs should have a standing agenda on AJS in their quarterly meetings.

*Members of the National Steering Committee on Court Users during a workshop on AJS held on 9th December 2021*

The NCAJ also conducted training for CUCs on emerging issues such as ACM, plea bargaining, bond administration and diversion. The training was undertaken at Milimani, Makadara, Kibera and JKIA law courts. Virtual training was undertaken for Mbita, Baricho, Nkubu, Kapsabet, Nyando, Busia, Narok, Lodwar, Kakuma, Hola, Shanzu and Naivasha CUCs.

6.2.3 Stakeholder Engagements

The The Standing Committee on Court Users held forums with Officers Commanding Station (OCS) in Nairobi Region and with officers in charge of various prison facilities in Nairobi and its environs. The meetings drew an attendance of over 67 OCS and 30 officers from the Kenya Prisons Service. The meetings sought to discern the challenges impeding the smooth administration of justice, including digitization and the use of virtual courts. The key challenges noted in the ICT arena were the institutions' limited infrastructure, equipment, and technical know-how.

The NCAJ participated in the annual Law Society of Kenya (LSK) Nairobi Branch Bar Bench Conference and presented a paper on the place of the Bar Bench Committee and CUCs in the Justice system. The Bar's participation in the administration of justice was discussed and emphasized. The LSK members were urged to continue participating actively in the CUC meetings. Amongst the resolutions of the conference was the need to have specialised training for the Bar members practising in technical areas. The forum also proposed the revision of pro bono lawyers' fees to encourage the uptake of pro bono matters.

6.2.4 Benchmarking Dialogue with Mozambique Delegation

The NCAJ hosted a delegation from the Supreme Court of Mozambique led by Hon. Chief Justice of Mozambique Lord Adelino Muchanga. Hon. Mr. Justice Isaac Lenaola, Judge of the Supreme Court of Kenya, representing the Hon. Chief Justice led the Kenyan delegation at the meeting. The round table dialogue forum was premised on the theme *'Enhanced Access to Justice, Lessons from Kenya and Mozambique'*. The key objective of the meeting was to benchmark and share best practices and experiences on institutionalizing CUCs, operationalization of mobile courts, and the administration of child justice. The benchmarking was facilitated through the joint support of World Vision Mozambique and Kenya.

During the exchange visit, there was a roundtable dialogue with the NCAJ on the 26th of April, 2022. The dialogue focused on CUCs and was led by Hon. Abdulqadir Lorot, the Chairperson of CUCs Standing Committee at the time, and comprised Hon. Emily Ominde, Head of Station of Kiambu Law Courts, and Ms. Jacinta Nyamosi from ODPP. There was also experience sharing on mobile courts focusing on the current system, legal framework, critical successes, challenges, and interagency coordination. Honourable Heston Nyaga, the Chairperson of the Judiciary Committee on Mobile Courts Policy, led the experience sharing. The engagement also focused on the efficient administration of child justice in Kenya, which was led by Honourable Lady Justice Teresia Matheka, Chairperson of the Standing Committee on Administration of Justice for Children, and comprised Ms. Judy Gitau, Regional Coordinator Equality Now, and Mr. Charles Ismael Otiende from the NPS. The delegation had a chance to visit the Karaba Mobile Court in Wangúru, Kirinyaga County.

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6.2.5 Monitoring of Court Users' Committees Activities

In May 2022, NCAJ Secretariat conducted spot-checks for CUCs in Nanyuki, Nyeri, Othaya Law Courts, Karatina, Murang'a, Kangema, Mukuruweini and Kigumo Law Courts. The NCAJ undertook spot checks at Kikuyu and Kibera Law Courts CUC. The CUC members were sensitised on their role and the areas to be prioritised by the CUCs. The meetings guided the need to sort perennial CUC issues and challenges efficiently, emphasising that solutions must come from the CUC members themselves.

The critical challenge highlighted was the need for more support from the National Legal Aid Service (NLAS) Board, given that many indigent people are unrepresented and cannot afford legal Counsel. The other recommendations included increased focus and provision of pro bono services to minors and the facilitation of a centre for Gender-Based Violence rescue centre for vulnerable groups. It was agreed that the CCIs should be included as part of the CUC membership, given that placement orders are given to them. Liaison between the Children's Officers was also encouraged, especially when children are arrested. The presence of Children Protection Units was commended, but the emphasis was put on ensuring that they are better equipped for optimal functioning.

The CUCs' training in the Administration of Justice for Children was prioritized at the Kikuyu Law Courts. A key challenge was access to inmates via virtual platforms. To deal with this challenge, it was agreed that the representatives from the Kenya Prison Service share with the Court, the list of inmates without court dates to allow the allocation of dates at the earliest opportunity. The CUC agreed to have the court visit the Industrial area Remand and Allocation Prison for an expeditious hearing of the cases. The Kikuyu Law Courts CUC requested support towards procuring a photocopier to help provide witness statements.

The Kibera Law Courts CUC highlighted challenges in the interaction of CUC members. The challenge was attributed to most members being new hence the need to train them. The meeting also resolved that all the Officers Commanding Stations in the jurisdiction attend the CUC meetings

in person so that answers to questions can be handled efficiently. Also, there is a need to have an exchange visit with Makadara Law courts CUC to share best practices.

In Othaya, the need to train paralegals in the area was emphasised. In addition, issues around young offenders and substance abuse were indicated to have increased, and measures were recommended to address the abuse. From Mukurweini CUC, the Children Court Users Committee (CCUC) was formed and operationalized. The CUC undertook to do more outreach and sensitization workshops for the community. Further, the CUC held a meeting with chiefs and assistant chiefs within the region and addressed emerging issues around cases of delay in succession matters. Across the CUCs visited, there was an emerging need to sensitize Chiefs and assistant chiefs on succession. The organisation of sensitizations was to be followed up with respective County Commissioners.

Members of LSK from Karatina indicated that there were many brokers around the court jurisdiction. It was agreed that members of the Bar from the region deposit sample stamps with the court registry to curb the vice. The training needs identified for Karatina CUC were strengthening AJS and ADR, juvenile justice, probate and administration, bail and bond administration and ACM.

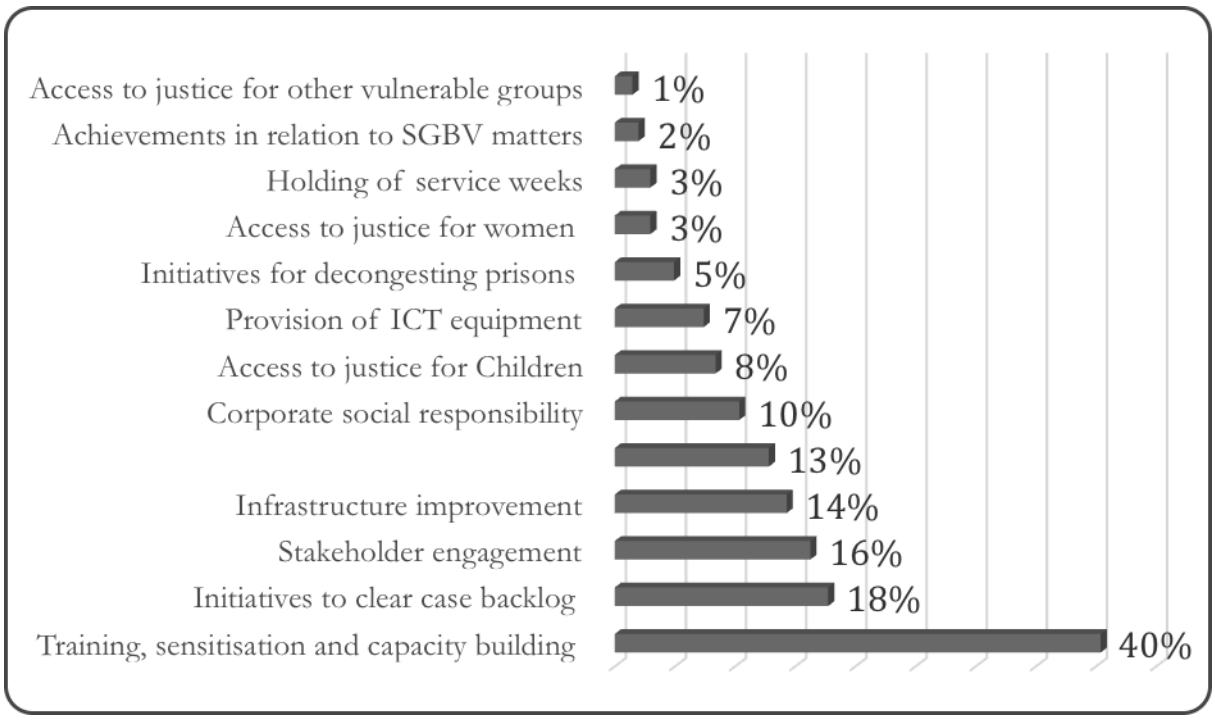
In Kangema, the need to strengthen the pro bono case committee was emphasized. The need to support ICT infrastructure for agencies other than the Judiciary was a focus area. There was a call to operationalize the Kenol Law Courts. The CUC members recommended training for mediators, especially for family-related disputes. There was a delay in the gazzettement of probate matters, and the members requested intervention to fast-track the process.

Various CUC actors, such as judicial officers and prosecutors, had been trained by their respective institutions to handle election disputes. Generally, there was a need to equip the police stations with more CPUs. Further, it was recommended that sign language interpreters be provided for important institutions such as the prison department to enhance communication with offenders. It was also noted that there were different CSO programs set up by the Probation and Aftercare Service, which required support from all actors. Regarding the uptake of AJS, there was a general appreciation of the importance of AJS, with CUCs members requesting training.

6.3 Achievements on Administration of Justice at Counties through CUCs

6.3.1 Summary on Key Achievements at County Level

The summary of cumulative achievements by the CUCs at county level is given in Figure 15.




*Source: NCAJ Analysis using CUCs minutes for the FY 2021/22*

Figure 14: Summary of achievements by CUCs, FY 2021/22

Most of the achievements were on training and sensitisation at 40 per cent, followed by initiatives to clear case backlog at 18 per cent. The least achievements were on the initiatives to enhance access to justice for the vulnerable groups and efforts to reduce SGBV. Further, it is apparent that courts were having difficulties holding service weeks due to cost implication.

6.3.2 Specific achievements at County Level

The section provides detailed and processed achievements and activities by CUCs in Counties. The achievements and activities are an accumulation of what all the CUCs in a given county accomplished. In general, most of the programs and activities that were carried out by the CUCs aimed at increasing efficiency in the administration of justice, addressing local service delivery challenges, preventing crime, improvement of offices and other physical amenities for justice sector players, training and sensitization, enhancing case clearances, corporate social responsibilities (CSR), among others.

*1. Mombasa County*

- Enhanced access to child justice, creating child-friendly courts.
- Increased reference to victim impact reports before bond/ bail is issued.
- Increased resolution of cases through diversion and mediation.

- Collaborated with non-State actors and mobilisation of resources for capacity building.
- Supported legal aid clinics and Children's Service weeks.
- Provided psychosocial support for victims.
- Increased interagency collaboration and information sharing.
- Held joint advocacy initiatives.
- Members of various CUCs received capacity building and training in diverse areas.

2. *Kwale County*

- Undertook capacity building for CUC members.
- Held service weeks for children.
- Trained on SGBV cases.
- Set up structures to facilitate ADR.
- Improved infrastructure of courts.

3. *Kilifi County*

- Conducted sensitisation forums and training for CUC members and the community on SGBV, court processes, traffic regulations.
- Supported victims of SGBV to attend courts.
- Provided legal aid in children's matters.
- Organized mass COVID-19 vaccination for inmates.

4. *Tana River County*

- Collaborated with stakeholders and facilitated the issuance of face masks to reduce the risk of contracting COVID 19.
- Commemorated the international day of girl child and international prisoners justice day.
- Trained CUC members on diversion, plea agreements, bail and bond, ACM, AJS and SGBV.

5. *Taita Taveta*

- Undertook prison decongestion and prison visits in various facilities.
- Undertook visits to courts within the county.
- Conducted successful decongestion at Wundanyi Main prison, leading to the release of 22 petty offenders.
- Set up Voi Court Children Court Users' Committee.

6. *Wajir*

- Collaborated with partners to realise unique interventions in Habaswein.
- Engaged in interventions to support children in conflict with the law.
- Sensitised the public on FGM and hunger safety.
- A GBV Complex in Habaswein was developed to enhance dignity of litigants.
- Coordinated mitigation of the drought and reached 1300 households at a total of KShs 9.7M in addition to distributing dignity packs and school fee subsidies.
- Engaged in CSR and provided 1,120 bales of livestock feeds in Habaswein.

7. *Mandera*

- Enhanced accused persons' right to a fair trial.
- Fast-tracked availing of witness statements and issuance of bond.
- Raised awareness to prevent the use of ADR in handling serious cases like defilement.
- Utilised local FM radio stations for community sensitisation.

8. *Isiolo County*

- Mobilised support to obtain motorbike that are used by the Council of Elders as they handle ADR matters.
- Enhanced access to justice by coordinating the establishment of two mobile Courts

9. *Meru County*

- Engaged in CSR at Meru Children Remand home.
- Engaged in prison decongestion.
- Trained members on diversion, plea agreements, bail & bond, ACM, and wildlife human conflict.

*10.* *Tharaka Nithi*

- Coordinated and organized provision of COVID-19 control masks vaccination of officers.
- Mobilised resources for the repair of the CPU in Marimanti.
- Increased uptake of diversion and plea bargaining to reduce case backlog.
- Lobbied for the construction of police station at Gatunga.
- Opened rescue centre at Kamarandi.
- Undertook CSR activities.
- Trained members on diversion, plea agreements, bail and bond, and ACM.

*11.* *Embu County*

- Enhanced collaboration amongst members
- Rolled out universal child benefit programme in Nthawa, Gitiburi, Thura and Riandu
- Re-unified children with families in instances where the mothers are in remand
- Sensitized Chiefs and Assistant Chiefs on succession matters

*12.* *Machakos County*

- Sensitised students on drugs abuse, sexual offences and career choices
- Increased uptake of virtual hearings
- Conducted training for CUC members

*13.* *Nyeri County*

- Opened an AJS register in Nyeri
- Held prison decongestion exercises
- Successfully trained actors on succession matters, SGBV, and mediation
- Donated ICT equipment to police stations and prison

*14.* *Kitui County*

- Trained village elders on the AJS policy and child rights
- Increased provision of *pro bono* services
- Enhanced compliance with Covid 19 protocols and guidelines
- Supported CPUs
- Resolved security issues for the court premises
- Reduced case backlog through RRIs

*15.* *Kirinyaga County*

- Secured support to assist children who appear before Court
- Trained CUC Members on elections preparedness
- Renovated court premises
- Trained CUC members on diversion, plea agreements, bail and bond and ACM

*16.* *Murang'a County*

- Reduced the number of children accompanying mothers to remand in prison
- Enhanced virtual hearings and mentions
- Undertook training and sensitisation forums
- Increased use of plea bargaining
- Applied favourable bail terms and solicited for feedback from the accused persons.
- Lobbied land for Kenol Law Courts, Murang'a Law Courts, and Gatanga Law Courts
- Established Muranga County ELC CUC

*17.* *Kiambu County*

- Completed the CPU in Gatundu and Thika courts
- Increased the use of virtual hearings

- Trained members on SGBV laws, ADR, witness protection and elections preparedness
- Enhanced efficiency in children matters through CCUCs and holding of service weeks
- Enhanced production of remandees in court
- Prepared a monthly schedule and duty allocation for the magistrates for efficiency
- A *pro bono* committee put in place to deal with diverse issues

*18. West Pokot County*

- Conducted sensitisation of local communities on FGM, child rights and education

*19. Elgeyo Marakwet*

- Coordinated vaccination of prisoners
- Sensitized members on human rights issues

*20. Nandi County*

- Enhanced infrstructure
- Secured donation of ICT equipment enabling remandees to participate in virtual hearings
- Trained CUC members

*21. Baringo County*

- Undertook CSR activity at Ravine Prison and mobilised bursaries for 92 children
- Held retargeting exercise for orphans, disabled and elderly persons

*22. Laikipia County*

- Coordinated rescue missions for minors and provided psychosocial support
- Coordinated mass vaccinations in prison
- Set up a registry for Court Annexed Mediation
- Efficiently coordinated virtual courts

*23. Turkana County*

- Conducted training for CUC members in Kakuma and Tukana Law Courts
- Improved interagency coordination and collaboration among stakeholders
- Dedicated a CPU at Kakuma Police Station

*24. Nyandarua County*

- Coordinated visits to the prison and provided donations to inmates
- Successfully deployed virtual hearings specifically for defence hearings
- Enhanced collaboration

*25. Nakuru County*

- Improved efficiency in handling *pro bono* matters
- Held prison visits
- Designed home-made solutions on access to justice were established in Nakuru
- Oversaw the operationalisation of the small claims court
- Supported the operationalisation of court annexed mediation in Naivasha
- Trained Naivasha CUC on diversion, plea agreements, bail and bond, and ACM

*26. Kajiado County*

- Operationalized AJS
- Visited 16 schools to raise awareness on children's matters
- Trained teachers in Loitoktok on child protection

*27. Narok County*

- Trained members of Narok CUC on diversion, plea agreements, bail and bond and ACM.

*28. Bomet County*

- Successfully sensitised members on plea bargaining guidelines and diversion policy

- Conducted a Children Service week

*29. Vihiga County*

- Enhanced stakeholders collaboration and coordination
- Mobilised support to train gender officers
- Mobilised support for children's service week and legal clinic
- Provided laptops and internet to Kisumu Maximum Prison
- Organised visits to courts by students of Vihiga Schools
- Secured funding from CDF Luanda and Emuhaya to purchase court construction land

*30. Bungoma County*

- Intervened to curb fraudsters within courts
- Enhanced uptake of virtual court
- Increased application of non-custodial sentences reduced prison congestion
- Held media outreach programmes

*31. Siaya County*

- Coordinated the eradication of illicit brew and counterfeit products

*32. Kisumu County*

- Trained members on diversion, plea agreements, bail and bond, and ACM
- Coordinated vaccination of staff
- Lobbied for the establishment of a police station at Tamu
- Trained police officers on SGBV

*33. Homa Bay County*

- Mobilised resources for community sensitization on region specific issues
- Undertook decongestion exercises
- Established *Pro Bono* committee of Ndhiwa CUC;
- Enhanced legal representation for Children and persons facing murder charges
- Secured resources for infrastructural improvement at Ndhiwa court
- Formed Anti- Corruption Liaison Committee to spearhead the fight against corruption
- Reduced civil case backlog
- Trained members on diversion, plea agreements, bail and bond, and ACM

*34. Migori County*

- Visit to children's home
- Collaborated with local administration to combat FGM

*35. Nairobi County*

- Coordinated visits to various prison
- Successfully held Criminal service weeks
- Established of *pro bono* case committees
- Increased uptake of virtual courts
- Trained CUCs on plea bargaining, restorative justice and ADR, E-filing

*36. Lamu County*

- Trained members in handling election-related matters
- Reduced complaints by remandees and litigants against criminal justice actors
- Coordinated COVID - 19 prevention programmes
- Put in measures to increase the production of police files in court
- Secured land to construct rescue centre
- Promoted ADR

*37.* *Kakamega County*

- Increased uptake of virtual courts
- Sensitised community on alcoholic- related offences through chief`s barazas
- Reduced sexual offences matters through sensitisation programme
- Enhanced departmental heads coordination across the justice chain
- Improved efficiency through timely bonding of witnesses and availability of police files
- Enhanced access to justice for children and other vulnerable groups through establishing playing facilities and gender desks for children

*38.* *Busia County*

- Efficiently handled SGBV cases.
- Trained CUC members on Diversion, Plea Agreements, Bail and Bond, and ACM

*39.* Trans Nzoia County

- Initiated programs to support children in conflict with the law in the County
- Streamlined coordination amongst stakeholders
- Initiated targeted interventions for the imprisoned
- Undertook tree planting with the ELC court
- Created awareness of court processes through radio shows

*40.* Samburu County

- Improved interagency coordination

*41.* Makueni County

- Efficient handling of traffic related matters due to improved collaboration
- Enhanced engagement in civil matters with the community
- Trained members on wildlife/environmental conservation and SGBV laws
- Improved infrastructure e.g. public toilets in Kilome Police Station and the room for virtual hearings at Makindu Remand Prison
- Improved stakeholder engagement and partnership resulting in efficient handling of matters

*42.* *Marsabit County*

- Improved delivery of prisoners and remandees to court by the prisons service
- Maintained low pending cases in the county

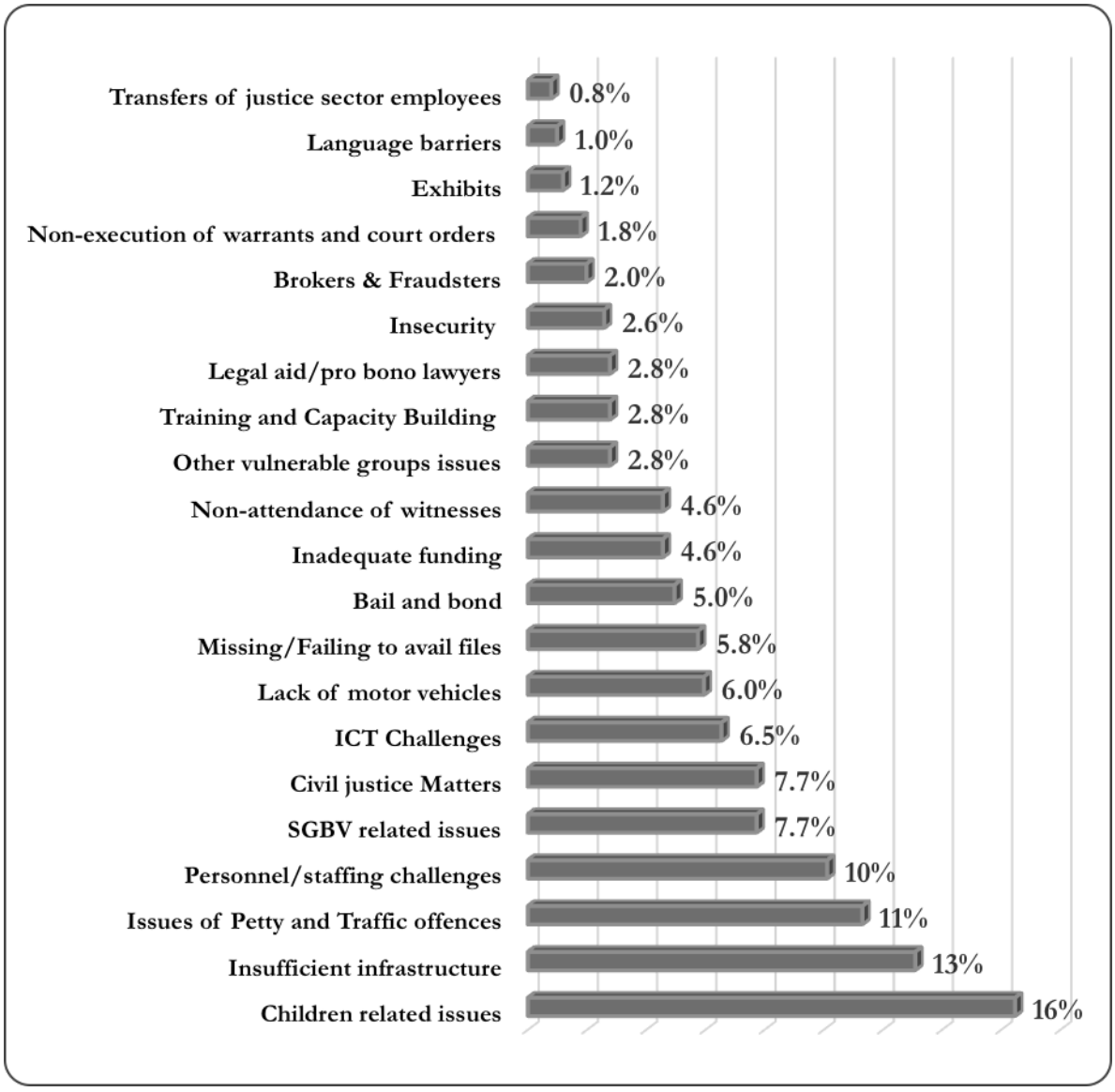
*43.* *Garissa County*

- Conducted trainings for CUC members
- Enhanced support for children's cases
- Increased uptake of CSO

6.4 Challenges Faced by CUCS on Effective Administration of Justice

6.4.1 Summary of Recurring Challenges Facing CUCs

During the period under review, CUCs faced a number of challenges while executing their mandate. The summary of the most recurrent challenges is provided in Figure 16.




*Source: NCAJ Analysis using CUCs minutes for the FY 2021/22*

Figure 15: Recurrent challenges experienced by CUCs, FY 2021/22

6.4.2 Legal, Policy and Administrative Challenges

A. Policy challenges

- Lack of appropriate holding facilities for vulnerable groups (children, lactating mothers, PWDs, and intersex persons).
- Insufficient systems for verifycation of surety documents, including the inability to detect fake sureties or exaggerated valuations.
- Congestion of prisons and police cells by petty offenders.
- Aggrieved parties are required to pay for P3 forms.
- Limited legal representation for children appearing in Court.
- Gaps in the protection of victims who are at rescue centres and the process of post-hearing protection of victims after the perpetrators are acquitted.
- Inadequate skills/training of court users in virtual courts.
- Inadequate trained personnel and skills to handle persons with mental illness.
- Low staffing levels in justice sector institutions.
- Inadequate support for the mental and emotional wellbeing of justice sector actors/ officers.
- Weak structures in the management of exhibits, including labelling and chain of custody.

- Delay at the Government chemist in processing DNA samples, especially in defilement cases.
- Frequent power outages affecting virtual hearings.
- Insufficient ICT capacity of all actors to participate in virtual hearings.
- Case backlog and frequent case adjournments.
- Lack of legal representation in far-flung areas due to the low number of lawyers.
- Resource constraints.
- Some courts and police stations do not have titles to the land they occupy.

B. Administrative Challenges

- Services of the Witness Protection Agency have not cascaded to all parts of the country.
- The judiciary portal does not allow for inclusion of additional categories of cases.
- Inadequate training of lawyers on the pro bono Scheme.
- Gender desks are not enabled to handle intersex persons due to lack of gender markers.
- Delay in extracting court orders and typing court proceedings.
- Implementation of the Community Service Order is unclear to the public.
- Unsatisfactory customer service at justice sector offices.
- Inadequate office space.
- Limited understanding of court process by the local community.
- Delayed presentation of files and accused persons for plea taking.
- Inefficient court attendance by witnesses due to inadequate allocation for witness expenses.
- Delay at the Government chemist in processing DNA samples.
- Delay in gazzettement of succession matters.
- Witness intimidation and interference.
- Insufficient follow-up and management of Children who have P&C files.
- Non-cooperation by communities results in the prevalence of sexual offenses.
- Frequent power outages affecting virtual hearings.
- Petty offenders absconding bail or breaching of bond terms by accused persons in transit.
- Traumatization of vulnerable groups by justice sector institutions processes.
- Poor fit-for-purpose equipment for officers.
- Human-wildlife conflict and perceived inadequate compensation.
- Slow conclusion of land disputes and succession cases.
- Presence of persons masquerading as advocates in Courts.
- Recidivism, especially among petty offenders.
- P3 and PRC forms are not filled with sufficient details.
- The insecurity that hampers movement and access to justice sector institutions.
- Cultural practices violate rights, especially among vulnerable groups.
- Cultural and community norms that contribute to the prevalence of some offences, e.g., wildlife trafficking, domestic violence, and cruelty against animals.
- Challenge of age assessment of child offenders and child victims.
- Poor network coverage and lack of equipment affecting virtual hearings.
- Delay or failure to repatriate aliens.
- Delayed forwarding of appeals from Magistrate's courts to High Court.
- Long distances between Courts and holding facilities such as children's remand centres.
- Lack of halfway housed and sufficient reintegration programs post-incarceration.
- Delay in releasing payment for pauper briefs to the advocates.
- Delay in availing mental assessment reports to the courts.

- Inadequate funding for mobile courts.
- Increase in the number of sexual offences.

6.4.3 Challenges by Administration of Justice Themes

A. Criminal Justice

- Delay in date fixing where sometimes the file has not been brought to court in good time or due to missing police files.
- Delay in preparation of decrees and execution of warrants.
- Delay in registration of charge sheets.
- Alcohol menace in the sub-counties.
- Late registration of cases and plea taking occasioned by delay in the Case tracking system.
- Delayed submission of files to the court and failure to avail police files.
- Inefficiency in availing of exhibits to the court and missing exhibits.
- Instances of rejected charge sheets by prosecutors from the police.
- Failure to avail bonded witnesses leads to adjournment of cases.
- Delay in witness preparation leading to delays in proceedings.
- Unexecuted warrants of arrest.
- Lack of awareness on the issue of registration of an intersex person.
- Recidivism and reoffending after release through prison decongestion.
- Overcrowding in police cells and prison.
- Low literacy of some inmates and remandees.
- Increase in petty offenders.
- Witnesses intimidation and interference.
- An inefficient chain of custody of files leads to discrepancies.
- Some investigative officers fail to present themselves to court as witnesses.
- Delay in issuance of committal and remand warrants.
- Delayed government analyst reports creates a perception that police are underperforming.
- Increasing drug addiction among youth.

B. Civil Justice

- Lack of information on land matters.
- Rise in case backlog on land matters.
- Delay in finalizing succession matters, including delay in the gazetting of succession matters by the government printers.
- Unplanned developments without environmental impact assessments reports.
- Interference by chiefs and assistant chiefs in succession matters.
- Low uptake of AJS and ADR in resolving civil matters.

C. Access to Justice for the Vulnerable Groups

- Insufficient children rescue centres, protection units, and desks at justice sector institutions.
- Ineffective handling of children cases due to a lack of coordination among stakeholders and mixing up of matters.
- Some children's matters take long to be concluded and thus become expensive to the parties and lack witnesses.
- Delays at the government chemist to provide DNA and defilement results.
- Incidents of child marriages, SGBV cases to children, and FGM in some areas.
- High rate of increase of street children.
- Instances where the P3 and Police Control Room forms filled by the medics are not detailed enough and lack proper documentation such as treatment notes.
- Failure of medical officers to attend court to testify.
- Challenge in availing remanded children to court.
- Charging for the filling of P3 forms.

- Increased sexual offences in relationships between young boys and girls.
- High rate of sexual offences and victims not wanting the matters to proceed to court, including witness/victim interference.
- Handling of sexual offences in open court.
- Ineffective accommodation for mentally challenged victims.
- Lack of awareness on the issue of registration of an intersex person.

D. Capacity and Infrastructural Challenges

- Inadequate staffing in the justice sector institutions.
- Lack of adequate office space.
- Inadequate enablers like motor-vehicles.
- Short supply of police doctors.
- Insufficient employees in the justice sector agencies.
- Lack of representation by specific stakeholders in CUCs, e.g., County Medical Officer, Chief Officer lands, Chairman of Business Community, and Boda Boda representatives.
- Unscrupulous individuals masquerading as advocates.
- Delayed payment of pro bono advocates and lack of pro bono advocates providing legal services to capital offences and children cases.
- The covid-19 pandemic greatly affected the efficient administration of justice.
- Understaffing in the children's department.
- Lack of sufficient rescue centres/ holding facilities for children and other vulnerable groups.
- Inadequate budgetary allocation to justice actors.
- Lack of adequate space in police stations to handle the increased number of inmates.
- Inadequate vehicles to facilitate transport.
- Power surge and outrages hence the need for generators or solar panels.
- Inadequate funding for mobile courts.
- Difficulty in producing inmates due to lack of means of transport/ vehicles.
- Insufficient ablution blocks for the public.

E. ICT

- Institutional gap regarding ICT infrastructure amongst the stakeholders.
- Inadequate computers, printers, mobile phones, and other ICT gadgets to conduct virtual court sessions.
- Ineffective virtual court proceedings due to network challenges, congestion, lack of network, litigants who are not conversant with technology inhibiting online court sessions.
- Challenge on login to court proceedings.
- Fluctuating internet and cellular network connections make it difficult to use alternative internet backups.
- Breakdown of virtual courts hampering continuity of case hearing leading to congestion of remandees.

6.5 Proposals by CUCs on Efficient Administration of Justice at the Grassroots

Further to interventions that need to be made, or can be inferred from the enumerated challenges by CUCs in Section 6.4, the following are additional proposed solutions by the CUCs.

6.5.1 Proposed Legal, Policy and Administrative Interventions

A. Policy and Legal Reforms

- Enhance the Anti-touting law to respond to the prevalence.
- Encouraged the use of AJS and ADR to handle matters.
- Collaboration with County Government to build rescue centres and holding facilities in counties that do not have.
- Undertake regular decongestion exercises in prisons.
- Recruit additional staff.
- Issue guidelines and directives on efficient handling of P & C files.
- Traffic offenders to be brought directly to court as opposed to issuing notices to attend.
- Have proper handover when officers are transferred.

B. Administrative Reforms

- Provide virtual legal aid clinic to remandees.
- Train medical practitioners on making reports to ensure capturing information in detail and in a conclusive way.
- Heads of court stations and court administrators to emphasise the need for customer service to the staff at the station.
- Allocate appropriate holding cells for intersex persons at police stations and prisons.
- Procure microphones to enhance audibility in courts.
- Only complete files should be registered to avoid delays.
- Identify and initiate community service order projects.
- Sensitize the public on online filing and increase the use of case conferencing.
- Utilise community policing to track down those who are absconding while on bond.
- Continued stock-taking of pending arrest warrants to the court for directions.
- Have hybrid hearings to accommodate local contexts.
- Increase virtual hearings to respond to the challenge of transporting inmates to court.
- Take measures to expedite the hearing of SGBV cases.
- Make key legislation available to all actors.
- Conduct periodic RRI initiatives to clear cases, especially for petty offenses.
- Include the probation department in virtual mentions.
- Engage pro bono lawyers on legal assistance to children and set up their paid scheme.
- Enhance birth registration to reduce reliance on age assessment.
- Police file to be availed to ODPP in a timely manner before the day of the hearing.
- Allow expert witnesses to participate virtually and pre-allocate specific times to testify.
- Hold meetings with County leadership to resolve issues around land.

6.5.2 Proposed Interventions by Administration of Justice Themes

A. Criminal Justice Reforms/ Issues

- Prison officers facilitate offenders for appeals and review sentences.
- Consider the time given for pre-sentence reports to give officers time to interview offenders, victims, and family members before compiling their final pre-sentence reports.
- Complete investigations, including DNA samples, to be provided during the trial process.
- Utilise non-custodial sentences to help decongest the prisons.
- Enhance efficiency in the production of P3 forms and post-mortem forms.
- Enhance roll out of mobile courts.
- Medical practitioners conduct a thorough job when handling patients involved in sexual offences for positive convictions.
- Organize service weeks regularly, including decongestion exercises in prisons.
- Enhance the use of ADR mechanisms in disputes resolutions.
- Police officers to give files to the prosecution early enough to ensure that proceedings.
- Confirmation of community probation volunteers to assist probation officers in information gathering and verification.
- Appropriately supervise CSO work.
- Improve communication in the justice sector to facilitate speedy execution of justice.
- There is a need to fast-track and allocate time for old matters.
- Plea-taking to be done early for generation of court file numbers.
- Give reasonable cash bail and reduce huge fines to reduce the congestion in prisons.
- Police to investigate sexual offences cases thoroughly to ensure that justice is achieved.
- Remandees with terminal illnesses are to be considered for release on lenient bond terms.
- Grant favourable bail terms and non-custodial sentences.
- Judicial officers should consult and organise prison mentions and review bail terms for those who have overstayed in prison due to minor offences.

- Witness statements and charge sheets should be timely supplied to those in custody.
- Statements should be issued during the pre-trial stage rather than plea-taking to enhance efficiency.
- Defilement victims to timely testify to avoid interference.
- Police files should be timely available to ODPP before the hearing dates to allow the prosecutors ample time to go through the file.
- Upscale alternative sentencing methods to reduce prison congestion.
- Have measures for the relatives of mental ill offenders to be brought on board to ensure their safety and adherence to taking medications.
- Investigating Officers to ensure timely bonding of witnesses and inform them of hearing dates.
- Enforcement of no cost for filing P3 forms.
- Police to enhance exhibits preparation before bringing accused persons to court.
- For defilement and robbery cases, the witness statements should be supplied to the accused by the police on the day of plea-taking.
- Complete investigations, including DNA samples to be provided.
- Court registry to fast-track committal warrants for convicted persons.

B. Administration of justice for Vulnerable groups

- Open P & C files for the victims of defilement cases.
- Intensify SGBV sensitisation
- The Ministry of Health to ensure that P3 forms for SGBV are offered free of charge
- Resolve children's disputes for the interest of the child and use ADR where possible
- Increase pro bono lawyers for the minors
- Children's office to stand firm and ensure children's rights are protected.
- Ensure that perpetrators of early marriages face the law and upscale public against the vice.
- Have adequate holding facilities for minors in conflict with the law.
- Victims of GBV should be heard first before the accused is granted bond.
- Court and other stakeholders should prioritise all cases involving vulnerable groups.
- Children's office to stand firm and ensure children's rights are protected.
- Perpetrators of early marriages to face the law.
- Hold public sensitisation to discourage early marriages.
- The community should be sensitised on the need to bring-up children with good values.
- Availing of resources allocation for reconditioning of the existing child holding facilities.
- Have special cells for the intersex persons.
- Sensitise the community on the Sexual Offences Act, plea bargaining and diversion.
- Creating awareness on issues of sexual offences and gender-based violence.
- Sensitization of the community on children's issues and how to deal with children’s matters.
- Medical practitioners to thoroughly investigate cases of sexual offences.
- Enhanced provision of legal aid to the indigent.
- Train actors and staff on how to handle children in conflict and contact with the law.

C. Capacity and Infrastructure Improvement

- Sensitise the community on crime prevention.
- Conduct short training for chiefs and assistant chiefs.
- Train more officers to man the CPUs.
- Create public awareness of court processes and procedures.
- Recruit more judicial staff and medical staff to attend to court matters.
- Referrals for counselling to be done officially to the counselling department, and clients.
- Training on the virtual Court proceedings is to be done for all stakeholders involved.
- Sensitise the local Sheikhs on the importance of working closely with the Kadhi office.
- Undertake civic education to the public on children-related issues like neglect and abuse.

- Sensitise the public on virtual courts.
- Sensitise and create awareness on the conservation of forests.
- Transferred investigating officers be replaced immediately, and those on leave should appear in court for their matters.
- Conduct training for medical practitioners on how to fill and make reports.
- Conduct capacity building among all justice sectors on how to report SGBV cases.
- Provision of adequate information on the children victims who appear before the court.
- Enhance CUC kitty.

D. Civil Justice

- Title deeds deposited in court as securities to be thoroughly authenticated.
- There is a need for AJS to solve some civil cases effectively.

CHAPTER 7: JUSTICE SECTOR CAPACITY & SUSTAINABILITY

7.1 Introduction

The optimal functioning of public organisations is strongly linked to their internal capacity and that of partnering institutions. The capacity of public institutions refers to the crucial enablers without which, or with their limited magnitude, efficient service delivery would be adversely affected. In general, human resources, capital, and technology are key enablers for public organisations. Hence, organisations invest lot on securing and sustaining their human resource and supporting them with appropriate technology to enhance their productivity.

This chapter details two vital elements of capacity improvement, the Human Resource and Information Communication Technology (ICT), and their nexus with the administration of justice. The chapter has three main sections: NCAJ Secretariat capacity, justice sector human resource capacity, and enhancement of justice sector ICT capacity. The achievements, gaps, and challenges are highlighted in the three sections.

7.2 NCAJ Secretariat Resource Capacity

Human resource is a critical asset for the execution of NCAJ goals. Therefore, optimum staffing, management, placement and utilisation of human resource at the NCAJ secretariat is crucial. Enhancing the human resource capacity of NCAJ by equipping employees with the knowledge and experience to support the administration of justice is equally essential. The NCAJ Secretariat supports the coordination of the administration of justice and also spearheads the implementation of programmes in the Strategic Plan as guided by the Council. The Secretariat provides secretaries to the Working Committees and links them to the Council. Hence, optimum secretariat capacity is a crucial success factor in achieving the desired goals on coordinating the administration of justice and reforms for the justice sector. This section highlights the internal capacity of the Secretariat and how it has impacted the delivery of its mandate.

7.2.1 NCAJ Secretariat Staffing Level and Requirements

During the reporting period, the Judicial Service Commission (JSC) finalised the competitive recruitment process for the NCAJ Executive Director. Over the same period, the head of the human resource and administration department, two drivers, an office administrator, an accounts assistant, and a supply chains officer were deployed to the Secretariat from the Judiciary. While the Secretariat began the financial year with only seven staff, there were 15 staff members at the end of the review period. Further, NCAJ secretariat staff requirements was analysed and submitted to the JSC for consideration. The details are given in Table 15.

Table 15: Required NCAJ Secretariat staff

| NCAJ Office and/or Department | Establishment | In post | Gap | % Gap |
|---|---|---|---|---|
| Office of the Executive Director | | | | |
| Executive Director | 1 | 1 | 0 | 0% |
| Partnership & Stakeholder Engagement Officer | 1 | 1 | 0 | 0% |
| Office Adminstrator | 1 | 1 | 0 | 0% |
| Driver | 1 | 1 | 0 | 0% |
| Criminal Justice Reforms Department | 3 | 0* | 3 | 100% |
| Access to Justice for vulnerable groups Department | 3 | 0* | 3 | 100% |
| Council Coordination and Support | 3 | 0* | 3 | 100% |
| Civil Justice Reforms Department | 3 | 0 | 3 | 100% |
| Strategy, Monitoring and Evaluation Department | 3 | 0 | 3 | 100% |
| Court User Committees Department | 3 | 1 | 2 | 67% |
| Human Resource and Administration Department | | | | |
| Head of Department | 1 | 1 | 0 | 0% |
| HR and Administration Officer | 1 | 0 | 1 | 100% |
| Driver | 1 | 1 | 0 | 0% |
| Office Assistant | 1 | 1 | 0 | 0% |
| Communication Officer | 1 | 0 | 1 | 100% |
| ICT Officer | 1 | 0 | 1 | 100% |
| Finance and Accounts Department | 2 | 2 | 0 | 0% |
| Supplies Chain Unit | 2 | 1 | 1 | 50% |
| | 32 | 11 | 21 | 66% |

**Despite the in-post being 0, these departments had staff embedded by development partners on a contractual basis. The zero, therefore, depicts absence of a staff employed by the JSC*

From Table 15, the NCAJ Secretariat had a staffing gap of 66 per cent at the end of the period under review. Out of the 15 NCAJ secretariat staff, three had been directly recruited by the JSC, eight deployed by the Judiciary, and development partners engaged the remaining four on a contractual

basis *(The three departments marked* in Table 15 and one rule of law advisor to OCJ/NCAJ)*. The variance between the required establishment and the in-post has put considerable pressure on the Secretariat's ability to effectively deliver on its mandate. The percentage distribution of NCAJ staff by gender is presented in Figure 16.

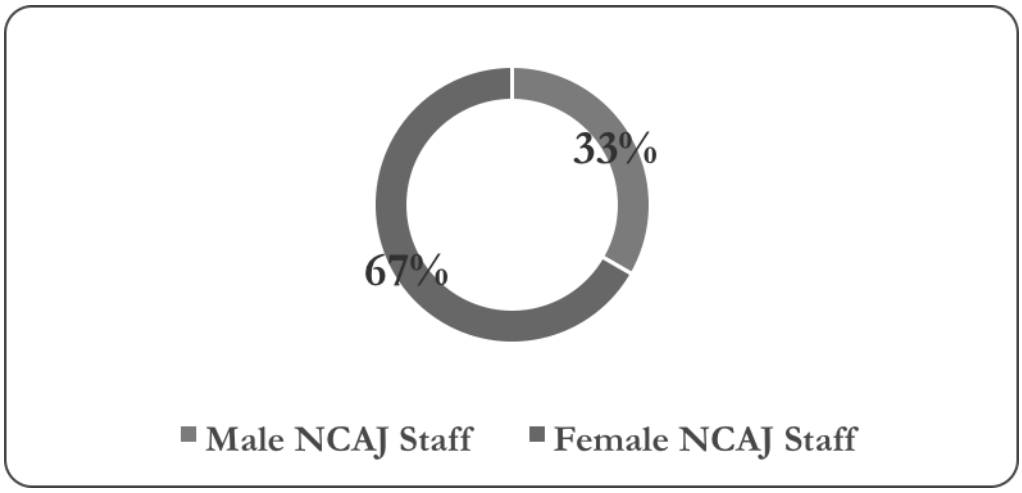



Figure 16: Percentage distribution of NCAJ Staff by gender, 30th June 2022

7.2.2 Skills Development at NCAJ Secretariat

Training and capacity-building programs provide diverse benefits to the institutions, and enhances employee productivity. To ensure that the Secretariat effectively coordinates the work of the Council, working committees and CUCs, it is prudent that staff are trained and equipped with relevant and unique skills. During the review period, training gaps were analysed and the relevant training will be prioritised in FY 2022/23.

7.2.3 Internship and Attachment at NCAJ

The NCAJ recognises internship and attachment as an essential part of career preparation to help young professionals gain experience in a real work environment. The placements are for three months non-paid and may be renewable once on a need basis. Interested candidates are selected based on formal applications, relevant qualifications and the availability of vacancies. During the reporting period, eight students were taken up for internship and attached to various departments.

7.2.4 Enhancing Internal Policy Environment at NCAJ

To ensure efficient and effective day-to-day operations and coordination, the secretariat identified the internal policies, procedures and guidelines to be developed. These are: Human Resource Policies and Procedures Manual, The Finance Policy and Procedures Manual, The Supply Chain Management Policy and Procedures Manual, The Internship Policy, Sectoral Monitoring and Evaluation Policy Guidelines, and the Performance Management Policy.

7.2.5 Performance Management

The Secretariat continued to institutionalize performance management through target setting and evaluation exercises. Performance appraisal of individual employees was also undertaken. The Secretariat performance management design will be enhanced in the next reporting period.

*Review of Quarterly performance by NCAJ Secretariat Staff, April 2022*

7.2.6 Improvement of NCAJ Work Environment

The Secretariat undertook diverse activities to enhance staff productivity and motivation and ensure alignment with the changing working conditions. For instance, cleaning services for the NCAJ Secretariat offices were procured, including the increased provision of other office supplies. The NCAJ staff participated in a team-building retreat that covered wellness sessions.

*Work Environment and Team building for NCAJ Secretariat*

To enhance the mobility of the Council, Secretariat and Working Committees, NCAJ acquired a bus through the support of UNODC under the European Union PLEAD partnership. A motorbike was also procured through GOK funds to enhance ease of communication and delivery of mail to NCAJ agencies within Nairobi. The Judiciary also provided one vehicle to the NCAJ, yielding a fleet capacity of one bus, one motor vehicle, and a motorcycle. At the end of the period under review, there was a fleet gap of 4 vehicles.

*The Hon Chief Justice and Chairperson- NCAJ, joined by the Hon CRJ and Secretary-NCAJ, Deputy CRJ, the Executive Director –NCAJ and the NCAJ staff, flags-off a new NCAJ bus and a Motorbike at the Supreme Court building on 24th June 2022.*

7.3 Justice Sector Human Resource Capacity

Adequate and trained human resource capacity in the justice sector is crucial for supporting the efficient administration of justice. Recruiting the right persons and ensuring that they are correctly placed enhances job satisfaction and morale and ensures that the sector is well equipped to administer justice effectively.

7.3.1 Staff Requirements and Recruitment in the Justice Sector

The Justice Sector institutions faced employee understaffing challenges hampering their ability to timely and effectively deliver on their mandate. Table 16 highlights the number and the gap of employees in select NCAJ Agencies.

Table 16: Number of employees in NCAJ Agencies, FY 2021/22

| Agency | Approved Establishment | Total employee complement (In-Post) | | | | | PLWDs | % Staffing Gap |
|---|---|---|---|---|---|---|---|---|
| | | Female | Male | Intersex | Total | Gap | | |
| 1. Judiciary | 9,417 | 0 | 0 | 0 | 6,182 | 3235 | 102 | 34% |
| 2. OAG&DOJ | 1,659 | 644 | 430 | 0 | 1,074 | 585 | 2 | 35% |
| 3. ODPP | 2,276 | 663 | 572 | 0 | 1,235 | 1,041 | 12 | 46% |
| 4. NPS* | - | 15,351 | 86,671 | 0 | 102,022 | - | 443 | - |
| 5. KPS | 37,868 | 6,125 | 21,622 | 0 | 27,747 | 10,121 | 91 | 27% |
| 6. NPS | 104,900 | 15,351 | 58,351 | - | 73,702 | 31,198 | 443 | 30% |
| 7. LSK* | - | - | - | - | - | - | - | - |
| 8. PACS | 1,874 | 667 | 610 | 0 | 1277 | 597 | 40 | 30% |
| 9. CAJ | 292 | 44 | 51 | 0 | 95 | 197 | 2 | 67% |
| 10. EACC | 1,508 | 305 | 469 | 0 | 774 | 734 | 4 | 49% |
| 11. KNCHR | - | 55 | 64 | 2 | 121 | - | 2 | - |
| 12. IPOA | 326 | 88 | 136 | 0 | 224 | 102 | 5 | 31% |
| 13. NCLR | 163 | 44 | 28 | 0 | 72 | 91 | 2 | 56% |
| 14. KLRC | 222 | 33 | 34 | 0 | 67 | 155 | 1 | 70% |
| 15. CLE | 67 | 19 | 20 | 0 | 39 | 28 | 1 | 42% |
| 16. NCRC | 214 | 12 | 15 | 0 | 27 | 187 | 0 | 87% |
| Total | 160,786 | 39,401 | 169,073 | 2 | 214,658 | 48,271 | 1,150 | 30% |

*Source: NCAJ Agencies, *Extracted from published Economic Survey 2022*

From Table 16, NCAJ agencies had an employee gap of 30 per cent for the considered institutions. To fill the employee gap, recruitments and appointments were undertaken in various justice sector agencies. Table 17 gives the number of employees recruited and appointed in select NCAJ Agencies during the reporting period.

Table 17: Employee recruitment and appointments, FY 2021/22

| Institution/Agency | Female | Male | Total | PWD |
|---|---|---|---|---|
| 1. Judiciary | - | - | 1,109 | - |
| 2. OAG&DOJ | 23 | 27 | 50 | - |
| 3. ODPP | 64 | 98 | 162 | 3 |
| 4. NPS | 669 | 4,680 | 5,349 | - |
| 5. KPS | 1,267 | 2,755 | 4,022 | 0 |
| 6. LSK | - | - | - | - |
| 7. PACS | 287 | 246 | 533 | 5 |
| 8. CAJ | 12 | 10 | 22 | 1 |
| 9. EACC | 13 | 13 | 26 | 0 |
| 10. KNCHR | 8 | 8 | 16 | 0 |
| 11. IPOA | 5 | 9 | 14 | 0 |
| 12. NCLR | 1 | 1 | 2 | 0 |
| 13. KLRC | 3 | 4 | 7 | 0 |
| 14. CLE | 2 | 2 | 4 | 0 |
| 15. NCRC | 0 | 0 | 0 | 0 |
| 16. WPA | 1 | 0 | 1 | 0 |
| Total employees recruited | 2,355 | 7,853 | 10,208 | 9 |

*Source: NCAJ Agencies*

7.3.2 Age of Employees in the Justice Sector

Profiling employees in an institution by age assist in succession and retirement planning. It also provides the institutions with information on initiatives that encourage work-life balance to suit the needs of their employees. As demonstrated in Table 18, most of the staff in the justice sector institutions were between 30 and 39 years old during the reporting period.

Table 18: NCAJ Agencies employees by age, FY 2021/22

| Institution/Agency | Total | 18-29 years | 30-39 years | 40-49 years | 50 years and above |
|---|---|---|---|---|---|
| 1. Judiciary | 9,417 | - | - | - | - |
| 2. OAG&DOJ | 1,074 | 89 | 430 | 293 | 262 |
| 3. ODPP | 1,235 | 152 | 709 | 266 | 108 |
| 4. KPS | 27,747 | 6,872 | 10,671 | 5,496 | 4,708 |
| 5. NPS | 102,022 | 21,509 | 44,926 | 21,036 | 14,551 |
| 6. LSK | - | - | - | - | - |
| 7. PACs | 1,277 | 239 | 620 | 201 | 217 |
| 8. CAJ | 95 | 2 | 48 | 39 | 6 |
| 9. EACC | 774 | 19 | 382 | 267 | 106 |
| 10. KNCHR | 98 | 8 | 30 | 60 | - |
| 11. IPOA | 217 | 17 | 123 | 68 | 9 |
| 12. NCLR | 72 | 3 | 32 | 33 | 4 |
| 13. KLRC | 69 | 2 | 36 | 12 | 19 |
| 14. CLE | 39 | 1 | 17 | 16 | 5 |
| 15. NCRC | 27 | 0 | 13 | 7 | 7 |
| Total | 144,163 | 28,913 | 58,037 | 27,794 | 20,002 |

*Source: NCAJ Agencies*

7.3.3 Exit from Service of Employees in the Justice Sector

Tracking the reasons for employees' exit from service is crucial to addressing any impending concerns that may adversely affect the administration of justice. Table 19 illustrates the number of employees who exited NCAJ institutions for various reasons.

Table 19: Exit from service for the NCAJ Agencies employees, FY 2021/22

| Agency | Mandatory age | 50 year Rule | End of contract | Death | Resignation | Dismissal | Transfer | Total |
|---|---|---|---|---|---|---|---|---|
| 1. Judiciary | 60 | 0 | 20 | 19 | 30 | 36 | 0 | 165 |
| 2. OAG&DOJ | 27 | 1 | 0 | 0 | 3 | 0 | 0 | 31 |
| 3. ODPP | 6 | 1 | 1 | 5 | 4 | 0 | 12 | 29 |
| 4. KPS | 149 | 68 | 3 | 111 | 7 | 101 | 16 | 455 |
| 5. NPS | 1,333 | 34 | 0 | 335 | 56 | 115 | 72 | 1,945 |
| 6. LSK | - | - | - | - | - | - | - | - |
| 7. PACs | 23 | 0 | 0 | 5 | 3 | 0 | 11 | 42 |
| 8. CAJ | 0 | 2 | 1 | 0 | 3 | 0 | 0 | 6 |
| 9. EACC | 4 | 0 | 1 | 1 | 5 | 1 | 0 | 12 |
| 10. KNCHR | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 2 |
| 11. IPOA | 1 | 0 | 1 | 1 | 10 | 0 | 0 | 13 |
| 12. NCLR | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 3 |
| 13. KLRC | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| 14. CLE | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| 15. NCRC | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 3 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 16. WPA | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 2 |
| Total | 1,607 | 106 | 30 | 479 | 126 | 253 | 111 | 2,712 |

*Source: NCAJ Agencies*

Most staff exited institutions having attained the mandatory age. Therefore, continuous recruitment of staff for the NCAJ agencies need to address this drop over and above aiming at reaching the required threshold.

7.3.4 Justice Sector Human Capacity Challenges and Recommendations

The following are some of the HR challenges that were experienced in the Justice Sector during the reporting period:

i. Inadequate employees to fully deliver on the institutional and sectoral mandate.

ii. Improper utilisation of internal skills and capacity or even skill improvement.

iii. The staff remunerations have not been reviewed for a very long period.

iv. Inappropriate distribution of work, skills and capabilities.

v. Stagnation of staff within salary bands leading to low staff morale.

vi. Mis-match of resources to the amount of workload.

vii. Lean budget and personnel emoluments.

viii. Weak talent retention due to restrictive organisational structure.

ix. Weak succession planning strategies and a policy to reward and recognise employees.

The recommendations that were made to enhance the human resource capacity include:

i. Improvement of the remuneration of staff.

ii. Provision of adequate office space, utilities, equipment and vehicles.

iii. Institutionalise and implement robust organizational structures to promote career development and upskilling.

iv. Effective and efficient implementation of the organisational structure.

v. The recruitment of adequate technical officers.

7.4 Enhancement of the Justice Sector ICT Capacity

The ICT is considered one of the enabler for efficient administration of justice. The ICT provides operational support to NCAJ institutions, enabling them to deal better with the complexities of their mandates. Technology speeds up the execution of routine tasks and increases the amount of useful information available on the administration of justice. The availability of internet services, enhancing the legal environment for the ICT, adequate ICT hardware and software, and interlinked systems for the NCAJ agencies constitute some of the strategic requirements.

7.4.1 Leveraging on ICT at the Secretariat

During the reporting period, modems were procured providing support to the online engagement, including virtual meetings with various committees and stakeholders. To reach out to the various target groups, NCAJ increased its visibility in the social media space by revamping its website and updating its Twitter, Facebook, YouTube, and Instagram pages.

7.4.2 Formation of NCAJ Working Committee on ICT

In April 2022, 18 members of the NCAJ working committee on ICT were gazetted under the Chairmanship of Hon. Justice Isaac Lenaola, Judge of the Supreme Court of Kenya. The committee is tasked with, among other things: Identifying legal, institutional, administrative and financial barriers that impede ICT uptake within the justice sector and making recommendations to the Council; Assessing and advising the Council on the ICT infrastructure required in Kenya for the effective and efficient administration of justice; and Identifying and advising the Council on the progressive attainment of seamless inter-agency linkages on administration and access to justice through technology. The committee is scheduled to begin its work in the next financial year.

7.4.3 Holding of ICT Conference

During the period under review, the NCAJ hosted a conference with Rwanda on Automation of Criminal Cases. The conference also allowed Kenyan justice actors to interact and share information with regional counterparts on best practices. The conference focused on progress, gaps, and solutions from legislative, policy, and institutional contexts. The conference provided a platform for deliberating on experiences and challenges in administering justice in automated criminal justice processes while protecting human rights. The UNODC supported the conference under PLEAD.

*NCAJ ICT Conference; Left to Right - Mr Noordin Haji, the DPP and Deputy Chairperson NCAJ, Hon. Justice Martha K. Koome - Chief Justice and Chairperson of NCAJ, Hon, Justice Isaac Lenaola, Chairperson - NCAJ ICT Committee, Neil Walsh, UNODC, and the EU Ambassador H.E. Henriette Geiger participating virtually*

The key recommendations and resolutions of the conference were:-

i. Renewed commitment to establish a forum for continued multi-lateral dialogue on automation in the criminal justice sector.

ii. Technological growth requires commensurate legal reforms to support it. The reforms would target revising some procedural laws and policies.

iii. Commitment from all NCAJ agencies on supporting technological initiatives, including joint training to accommodate cross-cutting issues on the administration of justice.

iv. Technological interventions to enhance access to justice for vulnerable groups.

v. Enhanced inter-agency data integration, information sharing among agencies, and upscaling of e-justice programs and integrated case management systems.

vi. Standardization of ICT processes and approaches in the justice sector.

vii. The NCAJ to coordinate the development of policies that cut across institutions and ensure that the discussion on integration continues.

7.4.4 Acquisition of ICT Hardware in the Justice Sector

Most NCAJ agencies acquired a few laptops, desktops, scanners and printers. Some agencies had power supplies and installed generators and power backup supply units, especially in their ICT servers' rooms and headquarters. However, sufficient ICT hardware could not be procured due to inadequate budget allocations

To reduce the ICT resource gap, at a function presided over by the EU Deputy Head of Delegation to Kenya H.E. Katrin Hagemann, EU funded Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD) donated 444 laptops, 166 printers, 37 scanners and 12 video-conferencing devices to NCAJ agencies. The donation went to the Judiciary, the Office of the Director of Public Prosecutions, the Witness Protection Agency, the Probation and Aftercare Service and the National Police Service. The donation aimed at digitalizing the justice system.

*Deputy EU Ambassador, H.E. Ms. Katrin Hagemann donating ICT items to NCAJ Agencies*

*UNODC through EU funded PLEAD Programme installing video conferencing equipment in 12 prisons in Kenya to support virtual hearings*

In February 2022, NCAJ received refurbished laptops from CEFA, an Italian NGO and distributed them to child-holding institutions.

7.4.5 Acquisition and Development of ICT Software and Systems in the Justice Sector

During the reporting period:

i. The Office of the Attorney General embraced virtual court hearings and meetings, installed an open-source ICT helpdesk system for capturing data, and developed an in-house case management system with data of all cases and parties.

ii. The ODPP developed and utilised the Uadilifu case management system, enhancing prosecution services and interlinkages with other criminal justice institutions. Further, and through the support of IJM, ODPP developed Learning Management Software aimed at streamlining ODPP's continuous learning and set up a mobile application for Decision to Charge Guidelines, which aims to create ease of access to the ODPP forms and guidelines.

iii. The Judiciary sustained an e-filing system that includes e-case registration and automated fee assessment. Further, the Judiciary developed the Judiciary Advocates Management Systems (JAMS) to enhance efficiency in the admission of advocates. Through Google Kenya's support to the Ministry of ICT, the Judiciary embarked on digital migration of courts across the country. The ICJ Kenya supported the Judiciary with capacity building towards increased knowledge when assessing the merit of legal challenges around the use of election technology, and supported the training of Judges and magistrates.

iv. The DCI rolled out and operationalised the *fichua kwa DCI* hotline and developed the Laboratory Management System (LMS). This is a hotline call centre with a toll-free number-0800 722 203- where informers across the Kenyan borders will make confidential reports with 100 per cent anonymity.

v. The Witness Protection Agency incorporated teleconferencing technology in its business processes and witness management.

vi. The Commission on Administrative Justice upgraded and rolled out its complaint management system to increase the efficiency of handling and managing complaints.

vii. The Council of Legal Education and the Kenya Law Reforms Commission developed and rolled out Enterprise Resource Planning systems.

viii. The Independent Policing Oversight Authority enhanced its enterprise content management (ECM) system, which is used for case management enhancement, and acquired an Enterprise Resource Planning solution.

ix. The EACC acquired an electronic Document Management System (EDMS).

x. The Directorate of Children Services developed software to enable children officers and child protection volunteers to report child violence using mobile phones.

Agencies undertook the following ICT initiatives to integrate the Systems with other Justice Sectors actors.

i. The ODPP integrated the e-filing module in their Uadilifu case management with the Judiciary through API, enabling the ODPP to file electronically to the Judiciary System.

ii. The Judiciary is leveraging on Huduma Centre's and constituency innovation hubs to mitigate the potential of digital exclusion.

iii. The EACC, in conjunction with other agencies, initiated the development of an integrated Public Complaints Referral Mechanism (e-IPCRM) to enable the real-time referral of complaints to the agency.

iv. The NPS commenced the development of an integrated information system within the digital occurrence book.

7.4.6 Technical ICT Staff in the Justice Sector Agencies

The number of ICT technical staff in the NCAJ institutions is limited. The low number was reported to hamper the speed at which agencies adopted and implemented ICT initiatives. Detailed information on the number of ICT staff in select NCAJ agencies is shown in Table 20.

Table 20: Technical ICT employees in NCAJ Agencies, FY 2021/22

| Institution | Male | Female | Intersex | Total |
|---|---|---|---|---|
| 1. Judiciary | - | - | - | 104 |
| 2. Office of the Attorney General | 2 | 3 | 0 | 5 |
| 3. Office of the Director of Public Prosecution | 7 | 4 | 0 | 11 |
| 4. Commission on Administration of Justice | 2 | 1 | 0 | 3 |
| 5. Ethic and Anti-corruption Commission | 10 | 1 | 0 | 11 |
| 6. Council of Legal Education | 2 | 0 | 0 | 2 |
| 7. Kenya Law Reform Commission | 2 | 0 | 0 | 2 |
| 8. Witness Protection Agency | 0 | 0 | 0 | 0 |
| 9. Independent Policing Oversight Authority | 4 | 0 | 0 | 4 |
| 10. National Council of Law Reporting | 5 | 1 | 0 | 6 |
| 11. National Crime Research Centre | 0 | 2 | 0 | 2 |
| 12. Kenya Prisons Service | 54 | 27 | 0 | 81 |
| 13. Kenya Police Service | 7 | 2 | 0 | 9 |
| 14. Kenya National Commission of Human Rights | 3 | 1 | 0 | 4 |
| 15. Kenya Law Reform Commission | 2 | 0 | 0 | 2 |
| 16. Directorate of Children Services | 6 | 1 | 0 | 7 |
| Total | 106 | 43 | 0 | 253 |

*Source: NCAJ Agencies*

The percentage ICT Officers by gender is given in Figure 17.

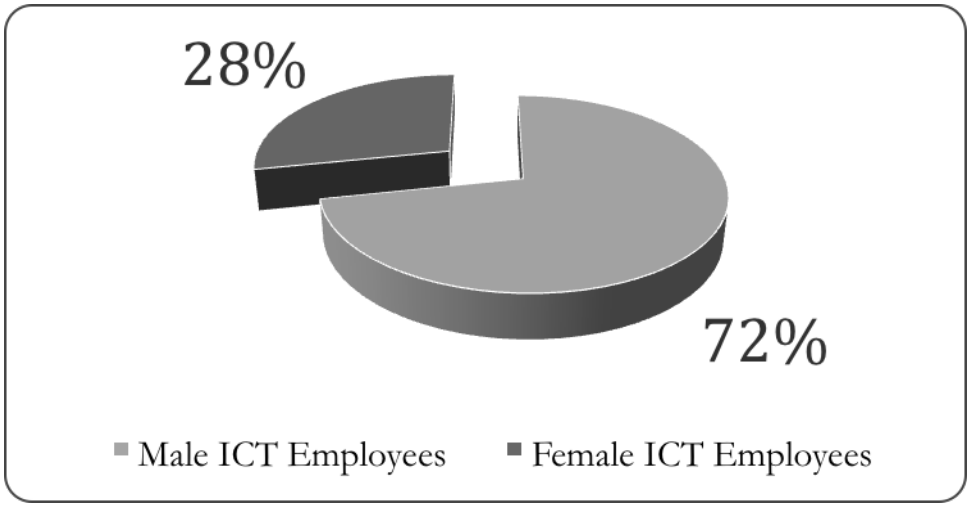



Figure 17: Percentage ICT officers by gender in NCAJ Agencies

7.4.7 ICT Challenges in the Justice Sector and Recommendations

The following ICT-related challenges were experienced during the period under review concerning the efficient administration of justice in Kenya.

i. Inadequate ICT equipment and delays in the acquisition of necessary ICT equipment.

ii. Limited legal provision and policy guidelines to enhance acceptable use of ICT projects.

iii. Limited technical persons, especially programmers, database experts, and audio-visual experts, to adequately handle all the systems being developed

iv. Inadequate ICT officers across the justice sector institutions.

v. Lack of repair parts for spoiled ICT equipment

vi. Obsolete ICT equipment that needs to be replaced with faster and modern ones.

vii. Fast changing technological dynamics.

viii. Inadequate data and information to enhance integrated planning and implementation of ICT programmes.

ix. Inadequate financial resources to implement ICT projects.

To address the aforementioned challenges, the following recommendations are proposed.

i. Identify and address legal, institutional, administrative and financial barriers that impede ICT uptake within the justice sector.

ii. Assess the justice sector ICT needs for the effective and efficient administration of justice

iii. Source adequate funding to implement ICT projects covering acquisition of hardware and software materials, and ensuring agencies have robust and interlinked systems.

iv. Review and amend ICT laws and formulate justice sector ICT policy and guidelines.

v. Hire and retain adequate ICT personnel in the justice sector.

vi. Adequately train ICT staff including joint trainings the interlinked systems.

vii. Undertake studies to advise the efficient use of technology in the administration of justice

## CHAPTER 8: NCAJ FINANCIAL RESOURCES AND UTILISATION

### 8.1 Introduction

Adequate financial resources are a prerequisite to attaining high efficiency in the administration of justice. The carrying out of myriad programs envisaged in the NCAJ Strategic Plan 2021-2026 requires sufficiency and stability of financial capital. In addition, for the NCAJ agencies to execute their legal mandates, optimal financial capital is crucial for producing public goods, in this case, the provision of justice as a public service. As highlighted in the other chapters, especially on the challenges experienced in the administration of justice, inadequate financial resources affected service delivery during the period under review. Therefore, this Chapter presents the status of the NCAJ financial resources and utilisation for FY 2021/22. The Chapter foremost highlights the financing of the NCAJ Secretariat, followed by that of the wider justice sector, and culminates by highlighting the financing challenges faced and some proposed solutions.

### 8.2 Institutional Setting and NCAJ Financing

The status of financial resources and their utilisation by the NCAJ and its agencies form a critical agenda for the Council, especially on its nexus with fostering efficient administration of justice. Primarily, the bulk of funding to the NCAJ and its state agencies is by the National Exchequer through funds appropriated by the National Assembly. The NCAJ actors are provided for under Section 34 of the Judicial Service Act, 2011. Additional agencies have been co-opted to strengthen the NCAJ coordination and reform agenda. Most of these agencies have their primary mandate highly anchored on the administration of justice, while others have limited anchorage but play facilitative roles at various points in the justice chain.

Therefore, and to a large extent, this report has focused on the financial resources of the state agencies whose mandate has a significant nexus with the administration of justice and are funded by the Government of Kenya (GOK). Thirty three out of 42 NCAJ agencies are state actors funded annually by the GOK. This report has covered eighteen of these agencies, with more to be covered in the next reporting period.

The Government usually clusters the Ministries, Departments and Agencies (MDAs) performing closely related functions. This is in line with the UN Classification of the functions of Government (COFOG). Specifically, the MDAs are mapped into sectors for the budgeting process, with most of the NCAJ member agencies being classified under the Governance, Justice, Law and Order (GJLO) sector.

### 8.3 NCAJ Financial Resources and Utilization

This section presents NCAJ funding sources, financial resource requirements, allocation and gap, and budget utilisation. The NCAJ budget is channelled through the Secretariat budget.

#### 8.3.1 NCAJ Budget Preparation and Funding Sources

During the period under review, the NCAJ operated as a spending unit under the Judiciary. Hence, the NCAJ budget preparation process was guided by the Judiciary's budget calendar. The NCAJ Secretariat participated in Judiciary budget preparation consultative forums, which began with workshops to identify resource requirements, followed by prioritising within the available budget ceilings and culminated in submitting a work plan and procurement plan for the FY 2022/23. The funded priorities were derived from the NCAJ's Strategic Plan 2021-2026. Notably, NCAJ was primarily funded by GOK through the Judiciary but partnered with development partners, CSOs and private sector entities to supplement the funding of some programmes.

#### 8.3.2 NCAJ Resource Requirement and Funding Gap

To fully implement its programs in FY 2021/22, NCAJ required a budget of KSh 512 million. However, the allocated funds amounted to only KSh 50.3 million, translating to a resource gap of KSh 461.7 million. The funding gap adversely affected the realisation of the envisaged engagements of the Council, its subcommittees, Working Committees, the Secretariat and CUCs. A comparison of the resource requirements and the Judiciary's allocation to NCAJ is presented in Figure 18.

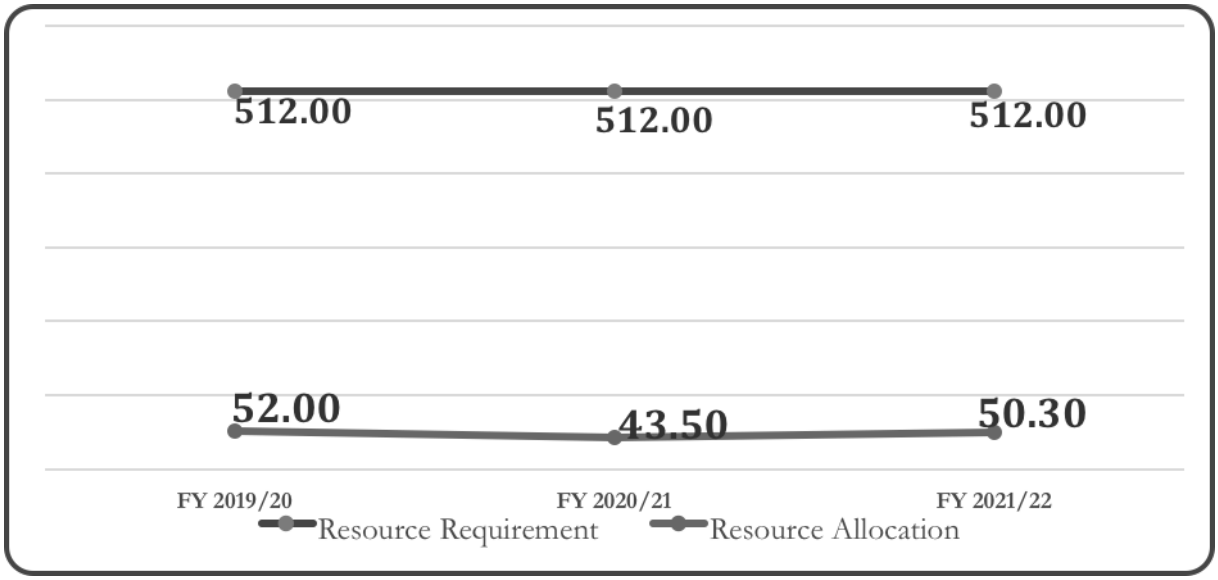



Figure 18: Resource requirements and allocation for NCAJ (KSh Millions)

From Figure 18, NCAJ had an average annual budget deficit of 90 per cent. However, some of the NCAJ operations were financed through partnerships and support from development partners, CSOs and the private sector at an estimated cost of KSh 40 million. Further, all the personnel emoluments for the NCAJ staff who are JSC employees were directly financed by the Judiciary. The UNODC, UNICEF and IDLO remunerated the embedded staff.

8.3.3 NCAJ Budget Utilisation

During the period under review, the NCAJ budget allocation was KSh 50.3 million and the total expenditure during the same period was KSh 44.5 million translating to absorption of 88 per cent. The expenditure comprised office rent of KSh 8.2 million, NCAJ Secretariat office operations and maintenance of KSh 11.1 million, and direct disbursement to CUCs of KSh 25.2 million. The CUC funds are meant to finance quarterly meetings. A summary of the approved NCAJ budget versus the actual expenditure for FY 2021/22 is presented in Table 21.

Table 21: Analysis of expenditure by NCAJ for FY 2021/22 (KSh Millions)

| Item | Approved Budget | Actual Expenditure | Absorption in % |
|---|---|---|---|
| CUC Disbursements | 30 | 25.2 | 84% |
| Operations & Maintenance | 12 | 11.1 | 93% |
| Office Rent | 8.3 | 8.2 | 99% |
| TOTAL | 50.3 | 44.5 | 88% |

8.4 NCAJ Agencies Financial Resources and Utilisation

This section covers the budget resources and utilisation by the NCAJ State Agencies during the FY 2021/22 and the medium term. The Justice sector is essentially a service sector offering justice services. Consequently, revenue generation is not a priority for the NCAJ agencies though it occurs in limited instances as agencies undertake their mandates. The primary source of funding for NCAJ state actors is the GOK.

8.4.1 Agencies Resource Requirements, Allocations and Funding Gap

Resource Requirements

The funding requirement for the listed GOK-funded NCAJ agencies was KSh 253 billion in FY 2021/22. The requirement comprised KSh 38 billion (15%) for development activities and KSh 215 billion (85%) for recurrent expenditure. The National Police Service required the highest funding of KSh 139 billion (55% of the listed agencies' requirements), while the Victims Protection Board had the lowest budgetary requirement of KSh 23 million (0.01%) of the listed agencies' total budgetary requirement. The resource requirements by recurrent and development expenditure during FY 2021/22 are provided in Table 22.

Table 22: Financial requirements by NCAJ Agencies, FY 2021/22 (KSh Millions)

| No | Institution | Recurrent | Development | Total |
|---|---|---|---|---|
| 1. | The Judiciary | 28,293 | 7,086 | 35,379 |
| 2. | Office of the Director Public Prosecutions | 4,452 | 504 | 4,956 |
| 3. | National Police Service | 116,032 | 23,252 | 139,284 |
| 4. | Ethics and Anti-Corruption Commission | 5,502 | 971 | 6,473 |
| 5. | Kenya Prisons Service | 41,406 | 2,940 | 44,346 |
| 6. | Probation & Aftercare Department | 3,583 | 253 | 3,836 |
| 7. | Witness Protection Agency | 632 | - | 632 |
| 8. | Office of the Attorney General | 3,466 | 210 | 3,676 |
| 9. | Kenya Law Reform Commission | 275 | - | 275 |
| 10. | Victim Protection Board | 23 | - | 23 |
| 11. | National Council for Law Reporting | 325 | - | 325 |
| 12. | Council for Legal Education | 368 | - | 368 |
| 13. | Independent Police Oversight Authority | 1,536 | - | 1,536 |

| | | | | |
|---|---|---|---|---|
| 14. | Kenya National Commission on Human Rights | 600 | - | 600 |
| 15. | National Land Commission | 4113 | 1740 | 5,853 |
| 16. | Commission on Administrative Justice | 1,200 | - | 1,200 |
| 17. | National Transport and Safety Authority | 2,484 | 1,470 | 3,954 |
| 18. | National Crime Research Centre | 636 | - | 636 |
| | Total | 214,926 | 38,426 | 253,352 |

*Source: National Treasury Sector Budget Proposal Reports, October 2020*

Resource Allocation

The budgetary allocation to the listed NCAJ agencies and institutions in FY 2021/22 was KSh 166.1 billion. The allocation comprised KSh 6.5 billion (4%) for development activities and KSh 159.6 billion (96%) for recurrent expenditure. Since the justice sector is a service sector, most expenditure is recurrent. The National Police Services received the highest budgetary allocation of KSh 100 billion (60%) of the listed agencies' budget), while the Victims Protection Board had the lowest budgetary allocation of KSh 32 Million (0.02%). The funds allocated to select NCAJ agencies to implement priority programmes are presented in Table 23.

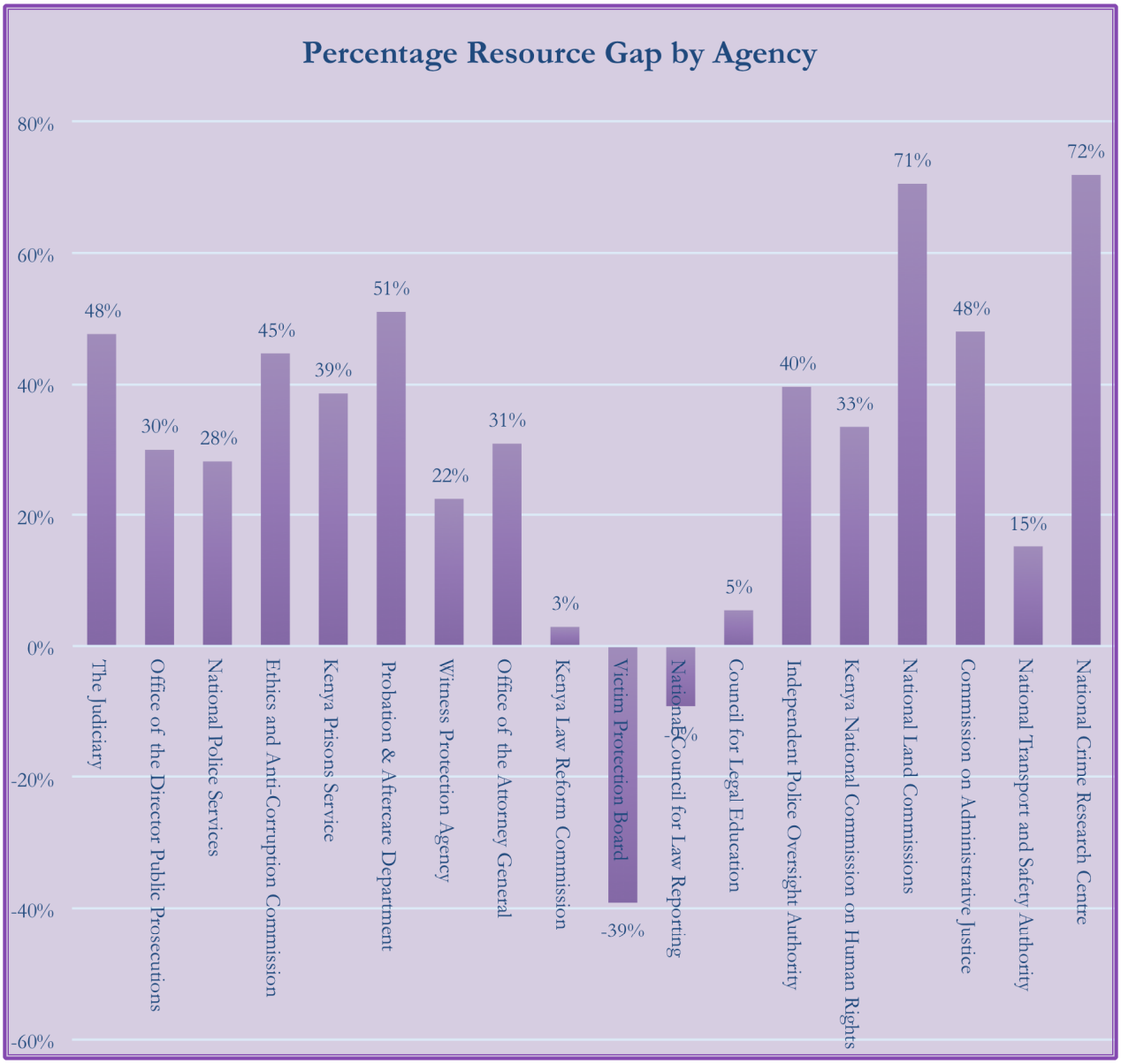
Table 23: Approved budget allocation to the NCAJ Agencies, FY 2021/22 (KSh Millions)

| No | Institution | Recurrent | Development | Total |
|---|---|---|---|---|
| 1. | The Judiciary | 15,968 | 2,592 | 18,560 |
| 2. | Office of the Director Public Prosecutions | 3,326 | 150 | 3,476 |
| 3. | National Police Services | 98,177 | 1,949 | 100,126 |
| 4. | Ethics and Anti-Corruption Commission | 3,519 | 67 | 3,586 |
| 5. | Kenya Prisons Service | 26,735 | 533 | 27,268 |
| 6. | Probation & Aftercare Department | 1,786 | 97 | 1,883 |
| 7. | Witness Protection Agency | 490 | - | 490 |
| 8. | Office of the Attorney General | 2,451 | 93 | 2,544 |
| 9. | Kenya Law Reform Commission | 267 | - | 267 |
| 10. | Victim Protection Board | 32 | - | 32 |
| 11. | National Council for Law Reporting | 355 | - | 355 |
| 12. | Council for Legal Education | 348 | - | 348 |
| 13. | Independent Police Oversight Authority | 929 | - | 929 |
| 14. | Kenya National Commission on Human Rights | 400 | - | 400 |
| 15. | National Land Commissions | 1,687 | 39 | 1,726 |
| 16. | Commission on Administrative Justice | 625 | - | 625 |
| 17. | National Transport and Safety Authority | 2,334 | 1,021 | 3,355 |
| 18. | National Crime Research Centre | 179 | - | 179 |
| | Total | 159,608 | 6,541 | 166,149 |

*Source: COB Budget Implementation Review Report FY 2021/22*

Resource Gap

The cumulative funding gap in FY 2021/22 for the listed NCAJ agencies was KSh. 87 billion. The NPS had the highest resource gap of KSh 39 billion. Among the respective agencies, those with the highest percentage of unmet funding requirements are the National Crime Research Centre at 72 per cent deficit, the National Land Commission at 71 per cent, Probation and Aftercare Services at 51 per cent, followed by Judiciary and the Commission on Administrative Justice both at 48 per cent deficit. Hence, the optimal resource requirement for the NCAJ agencies was not met during the period under review. The gap had an adverse effect on the institutions' operations, slowing down service delivery and hindering the efficient administration of justice. The funding gap for the NCAJ agencies as a percentage of the respective resource requirement is analysed and presented in Figure 19.




*Source: NCAJ analysis*

Figure 19: Percentage funding gap for NCAJ agencies

8.4.2 Budget Utilisation by NCAJ Agencies

The NCAJ agencies' budget allocations in FY 2021/22 totalled KSh 166 billion, and the expenditure during the same period was KSh 158 billion, translating to an absorption rate of 95 per cent. Table 24 summarises the approved budget versus the actual expenditure.

Table 24: Analysis of expenditure by NCAJ Agencies FY 2021/22 (KSh Millions)

| Institution | | Approved Budget | Actual Expenditure | Absorption in % |
|---|---|---|---|---|
| 1. | The Judiciary | 18,560 | 16,870 | 91% |
| 2. | Office of the Director Public Prosecutions | 3,476 | 3,425 | 99% |
| 3. | National Police Services | 100,126 | 100,116 | 100% |
| 4. | Ethics and Anti-Corruption Commission | 3,586 | 3,536 | 99% |
| 5. | Kenya Prisons Service | 27,268 | 22,940 | 84% |
| 6. | Probation & Aftercare Department | 1,883 | 1,400 | 74% |
| 7. | Witness Protection Agency | 490 | 489 | 100% |
| 8. | Office of the Attorney General | 2,544 | 2,532 | 100% |
| 9. | Kenya Law Reform Commission | 267 | 267 | 100% |
| 10. | Victim Protection Board | 32 | 32 | 100% |
| 11. | National Council for Law Reporting | 355 | 340 | 96% |
| 12. | Council for Legal Education | 348 | 323 | 93% |
| 13. | Independent Police Oversight Authority | 929 | 880 | 95% |
| 14. | Kenya National Commission on Human Rights | 400 | 396 | 99% |
| 15. | National Land Commissions | 1,726 | 1,726 | 100% |
| 16. | Commission on Administrative Justice | 625 | 565 | 90% |
| 17. | National Transport and Safety Authority | 3,355 | 2,441 | 73% |
| 18. | National Crime Research Centre | 179 | 174 | 97% |
| Total | | 166,149 | 158,452 | 95% |

*Source: National Treasury GJLOs Sector report October 2020 & Controller of budget Report, September 2022*

Often, NCAJ agencies cite inadequate financial resources as a recurring challenge that hinders the efficient administration of justice. From Table 25, most agencies spent most of their allocated budgets. Drawing from the resource gap shown in Figure 19, and as read with the absorption rate in Table 24, it's clear that despite the agencies being resource constrained, they have the potential and pre-conditions to absorb more budget for programmes. To bridge the funding gap and ensure that the provision of administration of justice services is not adversely affected, NCAJ has been collaborating with development partners, CSOs and the private sector to supplement the financial resources.

8.5 Financial Challenges and Recommendations

8.5.1 Challenges

During the period under review, NCAJ experienced financial resource constraints. The limited funds allocated to NCAJ and its agencies against the high demand for the efficient administration of justice and timely provision of justice sector services adversely affected performance. For instance, inadequate funding of the NCAJ and its agencies negatively affected the decentralisation of services to the county and sub-county levels. Additionally, the lack of a funding framework for NCAJ agencies to support NCAJ, especially on cross-cutting programmes and activities, affects the operationalisation of joint financing.

8.5.2 Recommendations

To ensure that the administration of justice in Kenya is well and adequately coordinated and that the earmarked reforms are pursued, increasing funding to NCAJ is crucial. An increase in the financing from the Judiciary, where the current GOK funding is domiciled, would be pivotal. Further, NCAJ agencies' financial contribution to the Secretariat through a workable framework, especially on cross-cutting reform agenda, would be ideal. Continued partnership and support from the development partners, CSOs and private sector is crucial for the sustenance and undertaking of priority programmes for the NCAJ. In the long term, it is paramount that NCAJ is issued with a budget vote to allow annual budget appropriations by the National Assembly to support sector-wide activities.

9.1

CHAPTER 9: PRIORITY PROGRAMMES AND ACTIVITIES ON ADMINISTRATION OF JUSTICE FOR FY 2022/23

9.1 Introduction

This Chapter provides an overview of the priority programs and activities to be undertaken by NCAJ in FY 2022/23. Through the leadership of the Council, the programmes and activities will be spearheaded by the Secretariat, Working Committees, and the Court Users Committees (CUCs). Further, other programmes will be directly undertaken by Agencies as part of their mandate but through the coordination of NCAJ owing to their crossing-cutting nature. The priority areas, which build on the achievements, progress, and lessons learnt in FY 2021/22, cover the Key Result Areas (KRAs) spelt out in the NCAJ Strategic Plan 2021-2026.

For the policy, legal, and administrative reforms, draft reform instruments will be prepared by either the Working Committees or the Secretariat and then presented to the Council for deliberation, guidance, or adoption. Once the reform instruments are adopted and published, dissemination to the duty bearers will be done for implementation.

9.2 Programmes and Activities on Council Coordination and Leadership

The programmes and activities relating to Council coordination and leadership, which are lined up to be undertaken in the FY 2022/23, are as follows:

- Finalise the development of the NCAJ Bill
- Address emerging challenges and inter-agency disputes that may arise
- Hold the statutory Council meetings and operationalize the Council's sub-committees
- Enhance communication and publicity of NCAJ, including the development of communication strategy, and the dissemination of IEC materials for public engagement
- Gazette the working committees and sensitize them on the expected deliverables

- Undertake post-election debriefing
- Engage JLAC in enhancing the efficiency of legal reforms in the justice sector
- Engage the Council of Governors on areas of collaboration at the grassroots
- Hold a workshop with CSOs/NGOs dealing with matters of administration of justice

9.3 Programmes and Activities on Criminal Justice Reforms

In the FY 2022/23, the following programmes and activities for enhancing the efficient administration of criminal justice will be prioritised;

- Increase sector-wide application of alternative and efficient forms of disputes resolution
- Fast-track the review of the Prisons Act, Cap 90 and Borstal Act CAP 92 of Laws of Kenya
- Fast-track the amendment of the Penal Code and Criminal Procedure Code
- Coordinate justice sector response to corruption, including, among others, the development guidelines to expedite hearing of corruption and economic crime cases and mobilising support for anti-corruption measures
- Oversee the development of the Grey Book of legislation and policies on anti-corruption
- Coordinate the review of Sentencing Policy Guidelines
- Enhance provision of legal aid and holding of the legal aid clinics
- Coordinate the implementation of measures to decongest prisons
- Enhance access to mental health services for CJS employees, victims, accused and convicts
- Train actors on cross-cutting criminal justice reform policies and laws, observance of human rights, the decision to charge and diversion and CSO programme
- Coordinate and guide on the issuance of instant fines and processing of traffic cases virtually
- Develop a training manual on handling of youth in the criminal justice system

9.4 Programmes and Activities on Civil Justice Reforms

Reforms in civil justice are crucial for the efficient administration of justice. The priority programs and activities for the FY 2022/23 will be;

- Document the broad and specific areas of the required reforms in the civil justice
- Develop a detailed plan of action on reform priorities for the civil justice sector
- Initiate legal, policy and administrative reforms concerning the broad areas of civil justice notably land justice, different legal regimes for the succession cases, among other areas
- Organise and hold a national land justice conference
- Organise and hold commercial justice conference
- Coordinate the processing, publication and dissemination of legal information.

9.5 Programmes and Activities for Strengthening CUCs

In the FY 2022/23, the NCAJ will target to undertake these programs;

- Monitor the administration of justice through CUCs and address local challenges
- Develop and roll out CUCs monitoring system and train users
- Facilitate training and workshops for CUCs on diverse issues in the administration of justice
- Develop and disseminate CUCs guidelines on commercial justice, children justice, environment and land justice, SGBV and gender policy

9.6 Programmes and Activities for Enhancing Access to Justice for Vulnerable Groups

The under-listed programmes were earmarked as priorities to enhance the administration of justice for vulnerable groups in FY 2022/23;

- Raise awareness of vulnerable groups amongst the NCAJ actors
- Strengthen the provision of pro-bono services for vulnerable groups in the justice system
- Launch and disseminate the Curriculum on Investigation and Prosecution of OCSEA, Justice for Children Strategy, Report on Budgeting for Children in the Justice System, Throughcare and Aftercare Procedures for Children and the Children Court User Committee Guidelines
- Coordinate sector-wide training on the Children Act, 2022 and policies, reports, guidelines and procedures touching on vulnerable groups
- Develop and gazette rules and regulations emanating from the Children Act 2022
- Develop an implementation plan for strengthening diversion in Kenya
- Develop guidelines on the examination of children in the justice system
- Coordinate the development of a Case Digest for children cases
- Hold the annual child justice month and summit

- Commence the review of the Sexual Offences Act and laws on SGBV
- Hold national coordination meetings with on SGBV matters.
- Standardize sensitization material on SGBV in Kenya
- Coordinate the establishment of safe houses for victims of SGBV in the justice system

9.7 Programmes and Activities on Justice Sector Monitoring and Evaluation

The under-listed programs and activities will be targeted in FY 2022/23;

- Develop robust planning, monitoring and evaluation framework and system for the sector
- Develop sectoral performance indicators and the accompanying monitoring tools
- Develop and implement NCAJ Workplan, including work plans for all working committees
- Research on diverse areas/issues in the administration of justice
- Monitor the administration of justice services

9.8 Programmes and Activities on Capacity Improvement in the Justice Sector

In the quest to continuously enhance the work environment for the NCAJ agencies to support efficient administration of justice, diverse programmes will be prioritised as follows:

- Enhance the staff capacity and work environment of the NCAJ secretariat, including the provision of ICT equipment, software and training
- Develop NCAJ operational policies and strategy documents. These include, among others, communication strategy, resource mobilisation strategy, policies on human resource management, finance, supply chain management, performance management and internship.
- Revitalise and undertake performance management for the NCAJ Secretariat
- Collaborate with NCAJ Agencies' on the training of sectoral emerging issues
- Coordinate the application of technology within the justice sector
- Undertake an audit of the existing sectoral ICT systems
- Initiate the development of a Digital Evidence Management System in the justice sector to secure evidence and enhance storage and transmission
- Assess the integration of ICT systems for the justice sector institutions

9.9 Programmes and Activities for Enhancing the NCAJ and Justice Sector Financial Resources

The under-listed measures to enhance finances will be implemented to ensure efficient administration of justice.

- Engage JLAC and National Treasury to secure adequate funding for the NCAJ and its institutions
- Assess the optimal financial requirements and shortfall for the justice sector
- Engage development partners, private sector, CSOs and NGOs in programmatic and financial partnership

APPENDICES

Appendix 1: Highlights of Terms of Reference for the NCAJ Working Committees

1) Highlights of TORs for the Civil Justice Reforms Committee

a) Identify, review, and formulate policy, legal and institutional recommendations necessary for better functioning of the civil justice system in Kenya;

b) Establish and design mechanisms to ensure that Kenya's civil justice system operates in a manner consistent and compliant with the provision of the Constitution;

c) Identify legal, institutional, administrative, and financial barriers that impede the efficient functioning of the civil justice system and recommend interventions;

d) Formulate and review laws on efficient administration of civil justice;

e) Enhance inter-agency collaboration on the efficient administration of civil justice and ensure its effectiveness in serving the Kenyan public;

f) Oversee the implementation of the recommendations of various strategic publications by NCAJ on Civil Justice Sector reforms;

g) Oversee the undertaking of studies to deepen, expand, and advise the efficient administration of civil justice; AND

h) Sensitize relevant stakeholders and engage the public on civil justice reforms.

2) Highlights of TORs for the Committee on Review of Laws and policies on SGBV

a) Review of the Sexual Offences Act (SOA) and other laws on sexual and gender-based violence (SGBV);

b) Review of the Sexual Offences Act (SOA) and other laws on SGBV.

c) Review and oversee the implementation of policies, guidelines, rules, and strategies related to the efficient administration of justice for the SGBV;

d) Engage all relevant actors in the development of laws, policies, guidelines, and strategies on sexual offenses and gender-based violence;

e) Develop rules on victim protection under SGBV for the efficient administration of justice;

f) Identify areas of inter-agency collaboration and cooperation that would make lead to efficient operationalization of the Sexual Offences Act, policies, and guidelines for effective service to the public;

g) Monitor the prevalence of SGBV and the effectiveness of the control measures and advice the Council;

h) Disseminate information to relevant institutions through the Council for action, including the public; AND

i) Oversee and standardize the sensitization and training programmes related to the SOA and other laws on SGBV, and the sexual offences policies and guidelines.

3) Highlights of TORs for the NCAJ Committee on ICT

a) Identify legal, institutional, administrative, and financial barriers that impede ICT uptake within the justice sector and make recommendations to the Council;

b) Assess and advise the Council on the ICT infrastructure required in Kenya for the effective and efficient administration of justice;

c) Identify and advise the Council on the progressive attainment of seamless interagency linkages on administration and access to justice through technology;

d) Oversee and guide joint and justice agency-specific capacity building on ICT;

e) Oversee compliance with ICT guidelines in the justice sector;

f) Oversee the implementation of the recommendations of various strategic publications by NCAJ on justice sector ICT needs in Kenya;

g) Conduct continuous audits of ICT capabilities within the different NCAJ agencies and make recommendations to the Council;

h) Oversee the undertaking of studies to deepen, expand, and advise the efficient use of technology in the administration of justice;

i) Ensure that ICT systems being developed from time to time by NCAJ agencies interlink, and that no Agency is left far behind in embracing the use of technology; AND

j) Carry out such functions as may be assigned by the NCAJ.

4) Highlights of TORs for the NCAJ Committee on Criminal Justice Reforms

a) Identify and formulate policy, legal and institutional recommendations necessary for better functioning of the criminal justice system in Kenya;

b) Establish and design mechanisms to ensure that Kenya's criminal justice system operates in a manner consistent and compliant with the provisions of the Constitution;

c) Identify legal, institutional, administrative, and financial barriers that impede the efficient functioning of the criminal justice system and recommend interventions;

d) Support inter-agency collaboration and cooperation to make the criminal justice system effective in serving the Kenyan public;

e) Review laws and policies that criminalize petty offences and make recommendations on their decriminalization and reclassification;

f) Formulate and review laws that would render efficient administration of criminal justice in compliance with the provisions of the Constitution;

g) Oversee the implementation of the recommendations of various strategic publications by NCAJ on Criminal Justice Sector reforms;

h) Enhance administration and access to criminal justice;

i) Oversee the undertaking of studies to deepen, expand, and advise the efficient administration of criminal justice; AND

j) Sensitize stakeholders and the public on the criminal justice reforms.

5) Highlights of TORs for the NCAJ Committee on Child Justice

a) Formulate and review laws and policies relating to the efficient administration of justice for children;

b) Implement, monitor, evaluate and review strategies for the administration of justice for children matters;

c) Establish and promote inter-agency collaboration and co-operation on efficient administration of child justice;

d) Identify legal, institutional, administrative, and financial barriers that impede the efficient administration of child justice and make recommendations to the Council;

e) Promote social transformation through access to justice for children;

f) Initiate and oversee the implementation of standards on the quality of child care and infrastructure;

g) Mobilize resources for the efficient administration of justice for children;

h) Organize and engage stakeholders on emerging issues relating to child justice;

i) Oversee the implementation of the recommendations of various strategic publications by NCAJ on issues relating to child justice;

j) Oversee the undertaking of studies to deepen, expand and advice the efficient administration of justice for children; AND

k) Carry out such other functions as may be assigned by the Council.

6) Highlights of TORs for the NCAJ Committee on CUCs

a) Establish and promote inter-agency collaboration and co-operation at the grassroots through CUCs;

b) Identify legal, institutional, administrative, and financial barriers that impede the efficient functioning of the CUCs and make recommendations to the Council for consideration;

c) Promote best practices on the functioning of CUCs;

d) Prepare, review and ensure compliance with CUCs guidelines;

e) Monitor and review the programmes, activities and reports of the CUCs and make recommendations to the Council;

f) Mobilize resources to undertake CUCs programs and activities efficiently;

g) To coordinate interventions to enhance the efficiency of CUCs;

h) Enhance administration and access to justice through CUCs;

i) Oversee the undertaking of studies to deepen, expand, and advise the efficient operations of CUCs; AND

j) To carry out such other functions as may be assigned by the Council.

7) Highlights of TORs for the NCAJ Committee on Traffic Issues

a) Advice and make proposals on efficient administration of justice on traffic offenses

b) Explore and advice on the reclassification and decriminalisation of minor traffic offences.

c) Review traffic the laws and guidelines, and develop traffic information handbook

d) Prepare guidelines on the use of technology in the management of traffic offenses

e) Enhance information sharing of traffic offenders among the justice sector actors

8) Highlights of TORs for the NCAJ Committee on Anti-Corruption

a) Review previous reports on anti-corruption in the criminal justice sector and make recommendations as appropriate

b) Identify the challenges in the fight against corruption and make recommendations.

c) Propose mechanisms for efficient and effective investigations, prosecution, and adjudication of corruption cases

d) Recommend prioritized thematic approaches in the fight against corruption

Appendix 2: Number of CUC Meetings Held

| Law Court | Number of Meetings Held |
|---|---|
| 1. Baricho Law Courts | 2 |
| 2. Bomet Law Courts | 4 |
| 3. Bondo Law Courts | 2 |
| 4. Bungoma Law Courts | 2 |
| 5. Busia Law Courts | 3 |
| 6. Butali Law Courts | 2 |
| 7. Butere Law Courts | 4 |
| 8. Chuka Law Courts | 8 |
| 9. City Law Courts | 1 |
| 10. Dadaab Law Courts | 1 |
| 11. Eldama – Ravine Law Courts | 2 |
| 12. Eldoret Law Courts | |
| 13. Embu Law Courts | |
| 14. Engineer Law Courts | 4 |
| 15. Garissa Law Courts | 1 |
| 16. Garsen Law Courts | 4 |
| 17. Gatundu Law Courts | 4 |
| 18. Gichugu Law Courts | 2 |
| 19. Githongo Law Courts | 3 |
| 20. Githunguri Law | 3 |
| 21. Hamisi Law Courts | 2 |
| 22. Hola Law Courts | 2 |
| 23. Homa - Bay Courts | |
| 24. Isiolo Law Courts | 2 |
| 25. Iten Law Courts | 4 |
| 26. Jkia Law Courts | |
| 27. Kabarnet Law Courts | |
| 28. Kahawa Law Courts | 4 |
| 29. Kajiado Law Courts | 1 |
| 30. Kakamega Law | |
| 31. Kakuma Law Courts | 3 |
| 32. Kaloleni Law Courts | 2 |
| 33. Kandara Law Courts | 2 |
| 34. Kangema Law Courts | 4 |
| 35. Kangundo Law | 4 |
| 36. Kapenguria Law | |

| Law Court | | Number of Meetings Held |
|---|---|---|
| 37. | Kapsabet Law Courts | 4 |
| 38. | Karatina Law Courts | 2 |
| 39. | Kehancha Law Courts | 3 |
| 40. | Kericho Law Courts | 5 |
| 41. | Keroka Law Courts | |
| 42. | Kerugoya Law Courts | |
| 43. | Kiambu Law Courts | 3 |
| 44. | Kibera Law Courts | 4 |
| 45. | Kigumo Law Courts | 2 |
| 46. | Kikuyu Law Courts | 4 |
| 47. | Kilgoris Law Courts | |
| 48. | Kilifi Law Courts | 1 |
| 49. | Kilungu Law Courts | 2 |
| 50. | Kimilili Law Courts | 4 |
| 51. | Kisii Law Courts | 3 |
| 52. | Kisumu Law Courts | 4 |
| 53. | Kitale Law Courts | 4 |
| 54. | Kithimani Law Courts | |
| 55. | Kitui Law Courts | 2 |
| 56. | Kwale Law Courts | 3 |
| 57. | Kyuso Law Courts | 2 |
| 58. | Lamu Law Courts | 4 |
| 59. | Limuru Law Courts | 4 |
| 60. | Lodwar Law Courts | |
| 61. | Loitoktok Law Courts | 2 |
| 62. | Machakos Law | 4 |
| 63. | Makadara Law | 3 |
| 64. | Makindu Law Courts | 4 |
| 65. | Makueni Law Courts | 4 |
| 66. | Malindi Law Courts | |
| 67. | Mandera Law Court | 3 |
| 68. | Maralal Law Courts | 2 |
| 69. | Mariakani Law Courts | 4 |
| 70. | Marimanti Law | 2 |
| 71. | Marsabit Law Courts | |
| 72. | Maseno Law Courts | |
| 73. | Maua Law Courts | 4 |
| 74. | Mavoko Law Courts | 4 |
| 75. | Mbita Law Courts | 1 |
| 76. | Meru Law Courts | 2 |
| 77. | Migori Law Courts | 3 |
| 78. | Milimani Commercial Courts | 3 |
| 79. | Milimani Law Courts | 3 |
| 80. | Mlimani Anti Corruption Courts | |
| 81. | Molo Law Courts | 4 |
| 82. | Mombasa Law Courts | 6 |
| 83. | Moyale Law Courts | 4 |
| 84. | Mpeketoni Law Courts | |
| 85. | Msambweni Law Courts | 1 |
| 86. | Mukurweini Law Court | 5 |
| 87. | Mumias Law Courts | 1 |
| 88. | Murang'a Law Courts | 4 |
| 89. | Mutomo Law Courts | 2 |
| 90. | Mwingi Law Courts | 3 |
| 91. | Naivasha Law Courts | 4 |
| 92. | Nakuru Law Courts | 1 |
| 93. | Nanyuki Law Courts | 3 |
| 94. | Narok Law Courts | 3 |
| 95. | Ndhiwa Law Courts | 4 |
| 96. | Ngong Law Courts | 4 |
| 97. | Nkubu Law Courts | 4 |
| 98. | Nyahururu Law | 3 |
| 99. | Nyamira Law Courts | |
| 100. | Nyando Law Courts | 1 |
| 101. | Nyeri Law Courts | 4 |
| 102. | Ogembo Law Courts | - |
| 103. | Othaya Law Courts | 4 |
| 104. | Oyugis Law Courts | 4 |
| 105. | Rongo Law Courts | 4 |
| 106. | Ruiru Law Courts | 2 |
| 107. | Runyenjes Law Courts | 2 |
| 108. | Shanzu Law Courts | 4 |
| 109. | Siakago Law Courts | 3 |

| Law Court | | Number of Meetings Held |
|---|---|---|
| 110. | Siaya Law Courts | - |
| 111. | Sirisia Law Courts | 2 |
| 112. | Sotik Law Courts | 2 |
| 113. | Tamu Law Courts | 2 |
| 114. | Taveta Law Courts | 4 |
| 115. | Tawa Law Courts | - |
| 116. | Thika Law Courts | 2 |
| 117. | Tigania Law Courts | 1 |
| 118. | Ukwala Law Courts | 4 |
| 119. | Vihiga Law Courts | 4 |
| 120. | Voi Law Courts | 4 |
| 121. | Wajir Law Courts | 4 |
| 122. | Wang'uru Law | 3 |
| 123. | Webuye Law Courts | 3 |
| 124. | Winam Law Courts | - |
| 125. | Wundanyi Law Courts | 4 |
| Child Justice CUCS* | | |
| 1. | Milimani Children's Court | 4 |
| 2. | Tononoka Children's Court | 4 |
| Kadhis' CUCS | | |
| 1. | Habasweni Kadhi Court | 4 |
| 2. | Bute Kadhi Court | 3 |
| 3. | Merti Kadhi Court | 4 |
| 4. | Witu Kadhi Court | 1 |
| Environment and Land Justice CUCs | | |
| 1. | Chuka | 1 |
| 2. | Makueni | 1 |
| 3. | Kajiado | 2 |
| 4. | Kakamega | 1 |
| 5. | Muranga | 1 |
| 6. | Nairobi Milimani | 1 |
| 7. | Narok | 1 |
| 8. | Nyamira | 2 |
| 9. | Machakos | 4 |
| 10. | Thika | 1 |
| 11. | Kisumu | 2 |
| Total Number of CUC meetings | | 350 |

*Other courts also form ad-hoc CCUCs to discuss the child justice issues as need be

Appendix 3: Detailed Achievements and Activities of CUCs at sub-county level

1. MOMBASA COUNTY

*Mombasa Law Courts CUC*

- Fast-tracked children's matters
- Availed pre-bail reports in a timely manner assisting the court in decision making
- Increased use of victim impact reports before issuance of bond/bail terms

*Shanzu Law Courts CUC*

- Trained the duty-bearers on SGBV
- Enhanced collaboration amongst the various stakeholders
- Prioritised children's matters

*Tononoka Law Courts CUC*

- Resolved cases through diversion and mediation
- Conducted legal aid clinics and children's service weeks and provided psychosocial support
- Built child-friendly court spaces.
- Increased uptake of virtual courts that aided in clearance of cases
- Enhanced information sharing between stakeholders

2. KWALE COUNTY

*Kwale Law Court CUC*

- Trained inmates at Kwale Main Prison and Kwale Women's Prison on plea bargaining
- Made donations to Kwale Women's prison

- Trained investigating and medical officers on evidence collection, handling and presentation
- Trained Chiefs and Assistant Chiefs on SGBV
- Set up a subcommittee to champion ADR

*Msambweni Law Court CUC*

- Undertook children service week
- Increased use of ICT infrastructure/ utilization of video link to access remandees
- Increased prison mentions
- Constructed modern remandees holding cells at the court premises
- Sensitised 100 *boda boda* leaders on traffic and SGBV laws

3. KILIFI COUNTY

*Kaloleni Law Court CUC*

- Conducted community engagement on GBV, court process and sentencing of offenders.
- Assisted the less fortunate with transport costs to ease their burden
- Identified and reported 45 GBV cases
- Trained paralegals and champions of SGBV rights.
- Sensitised children on reproductive choices

*Mariakani Law Court CUC*

- Constructed a waiting bay for clients
- Trained members on psychosocial support and trauma case
- Reduced case backlog due to enhanced stakeholder collaboration and partnership

*Kilifi Law Courts CUC*

- Engaged stakeholders on the draft CUC Gender Policy
- Sensitised *Boda Boda* riders on GBV, Traffic regulations and community policing
- Reviewed and adopted SOPs on Gender Based Violence for Kilifi County
- Held Children Service Week
- Upscaled legal aid (*pro bono* legal services) to children in conflict with law

4. TANA RIVER COUNTY

*Garsen Law Courts*

- Purchased and issued laptops to Malindi prison or virtual court sessions
- Trained paralegals within the community
- Trained the community on AJS
- Conducted Children's Service Week

*Hola Law Courts*

- Issued facemasks to the court to combat Covid-19
- Trained officers on crime scenes management
- Undertook prison visit
- Conducted peace meetings in various areas.
- Sensitised law enforcement officers on reporting and referral pathways for victims of SGBV

5. LAMU COUNTY

*Lamu Law Courts CUC*

- Trained Lamu Court members on how to handle election-related matters
- Coordinated the destruction of narcotic exhibits.
- Reduced complains by remandees and litigants against police and criminal justice actors.
- Coordinated quarantine processes in relation to COVID - 19 pandemic

- Ensured regular production of police files in court
- Supplied of statements to accused persons in good time
- Promoted ADR System

*Mpeketoni Law Courts CUC*

- Lobbied for granting of land by the archdiocese of Malindi for construction of a children's rescue centre at Baharini Catholic Church in collaboration with the Mpeketoni CUC.
- Secured land to construct a girl's rescue centre
- Ensured vibrant ADR in conjuction with the legal aid centre
- Provided desktops by Kiunga Youth Bunge for use in ADR

6. TAITA TAVETA COUNTY

*Taita Taveta Law Court CUC*

- Enhanced inter-agency collaboration
- Conducted successful RRI on illicit brews

*Voi Law Court CUC*

- Visited Manyani, Voi and Wundanyi Prisons
- Introduced women empowerment project at Wundanyi Women Prison.
- Conducted prison decongestion and released 22 petty offenders at Wundanyi Main Prison
- Formed a CCUC

*Wundanyi Law Court CUC*

- Conducted a prison decongestion exercise
- Conducted a CSR in a children's home
- Sensitised members of the public on court processes and procedures.
- Eased getting expert witnesses such as doctors and government analyst
- Improved favourable and efficient working conditions

7. GARISSA COUNTY

*Dadaab Law Court CUC*

- Conducted two trainings for members
- Enhanced efficiency due to improved stakeholder engagement
- Enhanced support to children's cases
- Increased uptake of CSO

8. WAJIR COUNTY

*Habaswein Kadhi Court CUC*

- Attained a GBV complex which enhanced the confidence and dignity of litigants
- Coordinated mitigation of the drought and reached 1300 households at a total of KShs. 9.7M and distributed dignity packs, school fee subsidies, and other unique interventions
- Distributed 1,120 bales of livestock feeds

*Wajir Law Court CUC*

- Engaged SUPKEM on deterrence of children from engaging in criminal activities
- Increased uptake of ADR mechanisms
- Sensitised the public on female genital mutilation

9. MANDERA COUNTY

*Mandera Law COURTS CUC*

- Efficient issuance of witness statements to offenders
- Improved issuance of bonds terms
- Created awareness on ADR and its application

10. MARSABIT COUNTY.

*Moyale Law courts CUC*

- Improved delivery of prisoners and remandees to court by the Kenya Prisons service
- Retained very low pending cases in the county

11. ISIOLO COUNTY

*Isiolo Law Courts CUC*

- Sourced motorbike for easy movement by the council of elders to handle ADR matters
- Held an open day targeting members of the public

*Merti Kadhi Court*

- Established mobile courts in two centres
- Adopted the use ADR mechanism
- Sustained effective coordination and collaboration between the staff and stakeholders

12. MERU COUNTY

*Githongo Law Courts CUC*

- Improved presentation of court files after introducing a liaison officer between police and prosecution offices
- Increased cohesion, consultation and problem solving outside of the CUC meetings
- Improved engagement with the local business community
- Reduced instances of breach of laws/regulations relating business premises

*Meru Law Courts CUC*

- Conducted civil education to reduce human and wildlife conflict
- Improved engagement with the local business community

*Maua Law Courts CUC*

- Undertook a decongestion exercise at the Kangeta prison
- Undertook a CSR activity at the Kangeta Prison
- Trained members on Wildlife-Human Conflict and election preparedness
- Built a new holding block in Kangeta prison which reduced congestion

*Nkubu Law Courts CUC*

- Improved service delivery due to timely bonding of witnesses and reduced adjournments
- Operationalized a *pro bono* case committee
- Trained members on bail and bond administration, ACM, plea bargaining and diversion
- Conducted a CSR activity at the Meru Children Remand Home
- Initiated CSO projects including a fish pond and banana farm projects

13. THARAKA-NITHI COUNTY

*Chuka Law Courts CUC*

- Conducted training for Chiefs and assistant Chiefs on AJS
- Conducted training for Chiefs and assistant Chiefs on Succession law

*Marimanti Law Courts CUC*

- Trained police officers on investigation, evidence gathering and presentation in the court
- Fully operationalized virtual proceedings
- Timely addressed land issues and disputes
- Repaired the CPU at Marimanti Police Station
- Conducted a stakeholder's sensitisation on child protection
- Mobilised blankets for the CPU
- Implemented diversion and plea bargaining policies
- Opened a rescue centre at Kamarandi
- Donated foodstuffs and toiletries to Marimanti Prison

14. EMBU COUNTY

*Runyenjes Law Court CUC*

- Put in measures to sustain good court performance

*Siakago Law Court CUC*

- Initiated Universal Child Benefit, which was piloted in Nthawa, Gitiburi, Thura and Riandu
- Reunited children in need of care and protection with relatives as their mothers awaited their case to be heard
- Sensitised Chiefs and Assistant Chiefs on the writing of succession in line with the Succession Act

15. KITUI COUNTY

*Kyuso Law Court CUC*

- Received an additional Prosecution Counsel thus, improving efficiency in service delivery
- Trained members on ADR
- Reduced case adjournment through co-operation with the different agencies
- Reduced case backlog through continuous RRI exercises

*Mutomo Law Court CUC*

- Increased prison visits and donations by members
- Increased the uptake of AJS with 31 cases referred
- Conducted training in AJS
- Acquired container from World Vision to act as CPU
- Increased provision of *pro bono* services with 11 cases in progress
- Increased the uptake of virtual court sessions in prisons
- Provided masks by Ikutha Vocational Training to criminal justice actors

*Mwingi Law Court CUC*

- Equipped CPU
- Resolved security challenges for the court premises

16. MACHAKOS COUNTY

*Kagundo Law Courts CUC*

- Sensitised students in two schools on drugs abuse, sexual offences and career choices
- Participated in the day of the African child
- Build a children cell at Kangundo Police Station

*Machakos Law Courts CUC*

- Publicized the Small Claim Courts in the region.

*Mavoko Law Courts CUC*

- Conducted training for CUC members
- Discussed and addressed challenges on land justice affecting their jurisdiction, including the nexus between land disputes and crime in the area.
- Sensitised members on succession matters
- Trained staff on expeditious delivery of justice and gender- based violence

17. MAKUENI COUNTY

*Kilungu Law Court CUC*

- Efficiently handled traffic-related matters due to improved collaboration
- Engaged Kilungu clan elders through community outreach on land matters
- Engaged stakeholders in a reduction of defilement cases
- Raised awareness to Bar Owners Association on the relevant laws
- Engaged Makueni Sand Conservation and Utilization Authority on licensing and regulation of sand harvesting activities leading to increased awareness and compliance
- Constructed Kilome Police Station public toilets using CSO services

*Makindu Law Courts CUC*

- Enhanced timely issuance of witness statements
- Trained members on wildlife and environmental conservation
- Constructed a room to conduct virtual hearings and mentions at Makindu Remand Prison
- Enhanced CUC membership and communication amongst stakeholders

*Makueni Law Courts CUC*

- Improved on the number of witnesses attending court matters.

*Tawa Law Courts CUC*

- Trained some members on SGBV laws
- Improved stakeholder engagement and partnership
- Enhanced uptake of virtual court proceedings
- Improved access to information and feedback for litigants and the public.
- Addressed disconnect among the key players in the criminal justice and especially between the prosecution, investigating officers and station commanders, the prison service and the national police service in the transportation of remands.

18. NYANDARUA COUNTY

*Engineer Law Court CUC*

- Visited prison and provided donations
- Trained stakeholders on e-filing and case tracking
- Held hearings through virtual platforms
- Visited MwendaAndu secondary school for mentorship on children in conflict with the law

19. NYERI COUNTY

*Mukurwe-ini Law Court CUC*

- Sensitised the assistant chiefs on their roles of succession cases in Mukurweini
- Visited Mukurweini schools to create awareness on issues of sexual offences
- Donated a computer to the Mukurweini Police Station.
- Sensitised the public on the community probation volunteers programme

*Nyeri Law Court CUC*

- Conducted training for CUCs members
- Rolled out AJS program
- Nyeri Police Station acquired a separate desk for children's matters while Kiganjo station made a separate arrangements for reporting
- An AJS register was opened and at least 9 cases had been registered
- Trained on ADR, Sexual Offences Act and diversion

*Othaya Law Court CUC*

- Approved Court Annexed Mediation and sensitised elders on mediation
- Conducted decongestion of prison and released 20 convicts
- Embraced virtual systems to carry out court sessions which led to reduced movement and interactions hence containing the Covid-19 virus
- Trained members on AJS, motivational interviewing, risk and needs assessment and sentencing planning
- Donated laptops and printers to Nyeri Women's Prison

20. KIRINYAGA COUNTY

*Baricho Law Court CUC*

- Trained members on Diversion, Plea Agreements, Bail and Bond, and ACM
- Enhanced communication between the court and the stakeholders
- Increased clearance of case backlog
- Renovated and improved the courts

*Wanguru law Court CUC*

- Offered assistance to children attending court
- Undertook capacity building of members on election preparedness and human rights issues

21. MURANG'A COUNTY

*Kandara Law Courts CUC*

- Sensitised members on ADR, especially when it comes to family-related disputes
- Improved service delivery due to enhanced coordination amongst stakeholders
- Enhanced access to justice through enforcement of no fees for P3 Forms and efficient issuance of witness statements

*Kangema Law Courts CUC*

- Enhanced virtual proceedings which worked well, particularly for mentions
- Conducted sensitisation on Community Probation Volunteers
- Streamlined the administration of justice by collating views and recommendations from stakeholders
- Expedited hearing of cases by involving key stakeholders
- Promoted ADR/AJS by sensitizing the public on the benefits
- Fast-tracked the succession and children's matters pending in court by involving chiefs to identify dependants in the villages
- Minimised adjournment of cases

*Kigumo Law Courts CUC*

- Enhanced cooperation between the Court and key stakeholders in the justice sector.
- Increased prison visits and collaboration
- Improved execution of warrants and bonding of witnesses
- Promoted AJS leading to improve out of court settlements

*Murang'a Law Courts CUC*

- Efficiently allocated mention and hearing dates
- Increased uptake of plea bargaining
- Reduced bail terms and used other prison decongestion measures
- Reduced the number of children accompanying mothers prison
- Application of bail/bonds terms relating to minors
- Processed land ownership documents for courts within the county
- Pursued land for Gatanga Law Courts
- Improved regular updates on prisons and juvenile remands

22. KIAMBU COUNTY

*Gatundu Law Court CUC*

- Completed CPU project in Gatundu Police station
- Initiated School Mentorship programs in four schools
- Engaged in CSR at KYCTC by donating 49 mattresses
- Sensitised members on SGBV
- Improved security and lighting around the court compound

*Kahawa Law Court CUC*

- Developed draft court practice guidelines
- Attended training on the Active Case Management
- Reduced adjournments of matters and finalized a large number of pending cases
- Engaged court progression officer to enhance communication on court attendance
- Adopted plea bargaining guidelines

*Kiambu Law Court CUC*

- Members were sensitized on elections preparedness by IEBC officials

- Coordinated prior issue of production order to enhance production of remandees
- Prepared a monthly schedule and duty allocation for the magistrates for efficiency
- A pro bono committee put in place to deal with children and robbery matters
- Sensitized members on witness protection
- Commenced lobbying for land to construct a court

*Kikuyu Law Court CUC*

- Trained chiefs and investigation officers on child protection
- Formed a CCUC

*Limuru Law Court CUC*

- Held an open day to senistise the public on the importance of ADR within the community
- Reduced case backlog due to improved efficiency amongst stakeholders
- Undertook CSR activities in three children's homes

*Ruiru Law Court CUC*

- Improved level of coordination, collaboration and cohesion among stakeholder and staff

*Thika Law Courts CUC*

- Reduced backlog due to enhanced stakeholder engagement
- Constructed and operationalised CPU at Thika Police station
- Acquired children's holding unit at the Court
- Acquired 100 iron sheets towards fencing court compound
- Increased the use of Small Claims Court due to continued sensitisation

23. TURKANA COUNTY

*Kakuma Law Courts CUC*

- Trained members on Diversion, Plea Agreements, Bail and Bond, and ACM

*Lodwar Law Courts CUC*

- Construction of toilets and latrines at Lodwar Law Court by UNHCR
- Trained members on Diversion, Plea Agreements, Bail and Bond, and ACM
- Lobbied for land allocation at Lokichar for prison services

24. WEST POKOT COUNTY

*Kapenguria Law Courts CUC*

- Sensitised the community on children's rights and eradication of FGM
- Visited the proposed Sigor Law Courts

25. SAMBURU COUNTY

*Maralal Law Court CUC*

- Improved interagency coordination

26. ELGEYO MARAKWET COUNTY

*Iten Law Court CUC*

- Organized for vaccination of prisoners against Covid-19
- Conducted sensitisation on the human rights issues affecting PLHIV & TB-affected communities, KPS and vulnerable populations.

27. NANDI COUNTY

*Kapsabet Law Court CUC*

- Constructed public toilets
- Donated two laptops, a TV and a phone to facilitate virtual court attendance by remandees
- Sensitised the public on Mediation during the launch of the Court-annexed mediation
- Visited Kabiyet Law Court
- Formed Kabiyet, Kabujoi, Songhor/Tinderet, and hall refurbishment sub-committees
- Established exhibits management and storage mechanisms

- Created distinguishing codes for all sub-stations

28. BARINGO COUNTY

*Eldama Ravine Law Court CUC*

- Undertook CSR at ravine prison during the commemoration of the International Prisoners' Justice Day
- Completed the retargeting exercise for orphans, disabled and elderly persons

29. LAIKIPIA COUNTY

*Nanyuki Law Courts CUC*

- Efficiently conducted virtual proceedings
- Conducted successful rescue mission for minors
- Conducted training of members on Court Annexed Mediation
- Conducted prison de-congestion
- Opened a Court Annexed Mediation registry

*Nyahuhuru Law Courts CUC*

- Coordinated mass vaccinations in prison

30. NAKURU COUNTY

*Eldama Ravine Law Court CUC*

- Trained chiefs on ADR reducing petty offences in court
- Reduced cases of illicit brew due to enhanced efforts by CUC members
- Sustained virtual court proceedings and sensitized stakeholders
- Improved execution of warrants of arrests by the police reducing crime rate in the region
- Enhanced the enforcement of the liquor licensing guidelines

*Molo Law Court CUC*

- Visited the Nakuru Women Prison

*Naivasha Law Court CUC*

- Improved stakeholders' engagement and communication
- Upscaled the usage and uptake of ICT
- Supported the operationalisation of the Small Claims Court and Court Annexed Mediation
- Enhanced timely submission of committal warrants to police liaison officers
- Enhanced witness summons follow ups through phone calls
- Heightened *Pro bono* briefs for capital offences and paid *Pro bono* advocates in time

*Nakuru Law Court CUC*

- Conducted a prison visit and made donations
- Conducted training for service providers on childcare

31. NAROK COUNTY

*Narok*

- Trained members on diversion, plea agreements, bail and bond, and ACM

32. KAJIADO COUNTY

*Loitoktok Law Court CUC*

- Visited 16 schools to create awareness of AAC
- Trained teachers on child protection and reporting of matters affecting children in schools in Imbirikani ward facilitated by Big Life

*Ngong Law Court CUC*

- Increased application of diversion
- Improved stakeholder engagement contributing to improved service delivery
- Sustained virtual court sessions with the support of the stakeholders
- Equipped Court with wide screen equipment improving virtual court experience
- Operationalised AJS and CAM and trained members

- Sensitised police investigators on investigating and handling cases involving children

33. BOMET COUNTY

*Bomet Law Court CUC*

- Successfully sensitised members on plea bargaining guidelines and diversion policy
- Held service week to fast-track clearing pending children matters
- Sensitised members on wildlife crimes and strengthening of law enforcement initiatives to combat wildlife crimes and cross border/transnational crimes
- Successfully rolled out court annexed mediation
- Conducted sensitisation worKShop on Legal Aid Regulations 2022

*Sotik Law Courts CUC*

- Reduced adjournment of cases due to stakeholder engagement
- Embraced ADR
- Reduced child neglect cases
- Enlightened stakeholders on digitisation of court processes
- Reduced bureaucracy in stakeholder- office processes leading to faster service delivery

34. KAKAMEGA COURT

*Butali Law Court CUC*

- Sensitised community on various offences via chief barazas leading to reduction in offences
- Reduced sexual offences matters through sensation programme
- Timely bonded witnesses and ensured availability of police files
- Established of children playing facilities

*Butere Law Court CUC*

- Increased number of children officers
- Chiefs and Assistant Chiefs sensitised on succession matters
- Sensitisation of *boda boda* operators on road safety
- Undertook mentorship in two high schools and a polytechnic

*Hamisi Law Courts CUC*

- Trained members on CUC guidelines and other court procedures
- Improved virtual court proceedings for remandees
- Fast tracked the establishment of children and gender based desks in police stations
- Guided OCSs on strengthening of the criminal justice system
- Mobilised funds for training of Children Court Users Committees

*Mumias Law Courts CUC*

- Reduced case backlog through enhanced stakeholder engagement
- Increased uptake of ADR
- Introduced identification tags for stakeholders in court
- Enhanced the liaison with administration units to identify stakeholders in succession cases

35. VIHIGA COUNTY

*Vihiga Law Court CUC*

- Trained CUC members on matters of children and gender-based violence
- Held the Children's Service Week
- Donated 2 laptops and an internet connection to Kisumu maximum prison
- Held a legal clinic
- Visited the Kisumu Juvenile remand home
- Conduced a successful sensitisation program for *boda boda* operators
- Hosted students from various schools to learn about court processes

- Lobbied for purchase of Mwironje land was bought by CDF Luanda and Emuhaya CDF for the construction of the court

36. BUNGOMA COUNTY

*Bungoma Law Courts CUC*

- Coordnated the arrest of brokers and fraudsters around the court jurisdiction
- Lobbied for increased efficiency in the Bungoma Lands Registry resulting in availing of certified copies of land transfer documents between 2015 and 2018
- Improved efficiency in the community service orders worksite visitations and follow ups
- Secured a laptop for the Bungoma prison to ease congestion through virtual court hearings
- Trained paralegals to assist members of the public
- Enhanced partnerships between justice actors

*Kimilili Law Court CUC*

- Conducted training on handling of SGBV cases
- Increased uptake of virtual sessions
- Embraced the use of non-custodial measures as a sentencing option to curb the transmission of COVID 19
- Coordinated mass vaccination of prisoners

*Sirisia Law Courts CUC*

- Improved stakeholder engagement hence improving administration of justice
- Constituted CCUC
- Ensured smooth virtual court proceedings
- Improved prison de-congestion and case backlog reduction

*Webuye Law Court CUC*

- Partnered with Sema Radio to create awareness on criminal justice systems
- Conducted a sensitisation exercise of traffic rules
- Trained members on SGBV and GBV
- Fundraised from CDF office to construct a children holding cells at Webuye Police Station

37. BUSIA COUNTY

*Busia Law Court CUC*

- Efficiently handled Sexual and Gender-based violence offenses
- Improved interagency collaboration
- Trained members on diversion, bail and bond, plea bargaining, and ACM

38. SIAYA COUNTY

*Bondo Law Court CUC*

- Coordinated the eradication of illicit brew and counterfeit products within the sub-county.

39. KISUMU COUNTY

*Kisumu Law Court CUC*

- Established Legal Aid Centre
- Donated virtual screens for Maseno and Winam Courts
- Trained security apparatus on election offences
- Sustained decongestion exercise of prisons and police cells

*Nyando Law Court CUC*

- Enhanced efforts to combat COVID 19

*Tamu Law Court CUC*

- Facilitated access to justice through collaborative efforts to supply witness statements to accused persons prior to the hearing date
- Trained stakeholders on diversion which contributed to reduction in case backlog
- Trained investigating officers on SGBV leading to better response on SGBV cases and improved quality of evidence presented in court

- Enhanced coordinated virtual hearings leading to improved case clearance rate
- Achieved inclusivity of all heirs in succession cases due to collaboration with Chiefs

*Winam Law Courts CUC*

- Visited juvenile remand home
- Held active CCUC meetings
- Adopted hearing of sexual offences cases on the plea day

40. HOMABAY COUNTY

*Ndhiwa Law Court CUC*

- Conducted decongestion exercise
- Established *pro bono* committee and advocates were appointed to handle matters
- Sensitised members on women, land and property rights
- Lobbied Ndhiwa CDF to construct toilet in the courts.
- Formed Anti-Corruption Liaison Committee to spearhead the fight against corruption
- Conducted training for election dispute resolution

*Mbita Law Court CUC*

- Conducted prison decongestion exercise
- Increased the use of community service orders
- Gender desk established at chief's offices

41. MIGORI COUNTY

*Kehancha Law Courts CUC*

- Visited Komotobo children's home
- Reduced FGM cases due to efforts by office of ACC/ DCC

*Rongo Law Courts CUC*

- Collaborated to reduce traffic related offences

42. TRANS NZOIA

*Kitale Law Courts CUC*

- Initiated feeding and wardrobe program for children in conflict with the law
- Streamlined the co-ordination between police, prosecution and court in circulating files
- Conducted prisons visits and reduced remand periods
- Undertook tree planting with the ELC court users.
- Participated in radio shows on the proceedings in court

43. NAIROBI COUNTY

*City Law Court CUC*

- Visited Nairobi West and Lang'ata prisons

*JKIA Law Court CUC*

- Improved ferrying of remandees to and from prisons
- Increased uptake of ICT and virtual court enabling remandees' cases be mentioned virtually
- Trained members on Refugee Law
- Put in measures to shorten verification of surety documents

*Kibera Law Court CUC*

- Undertook capacity building of members on GBV laws and AJS framework
- Developed strategies to handle case backlog

*Makadara Law Court CUC*

- Conducted prison decongestion in Nairobi Remand

*Milimani Children Law Court CUC*

- Held service week to fast-track cases

- Trained 20 CUC members on Children's Court Users Guidelines
- Trained on Pre-Bargaining, restorative justice, ADR and e-filing

*Milimani Commercial Law Courts CUC*

- Streamlined the functioning of the date's section to enable cases in the daily case list
- Increased efficiency in accessing physical files due to improved physical infrastructure
- Minimised mentions and prioritising hearings to expedite justice
- Streamlined registry processes notably the entry of interlocutory judgments, certificates of urgency, publishing ready documents including decrees, notices and warrants.
- Conducted periodic (quarterly) service weeks
- Increased number of days for the signing of summons hence reducing complaints
- Enhanced efficiency by posting proceedings, decrees, rulings, judgments, notices, warrants on the Kenya Law Report Portal

*Milimani Criminal Law Courts CUC*

- Trained members on diversion, plea bargaining, and ADR
- Sensitised members on E-filing
- Constituted a *Pro bono* case committee
- Conducted capacity building on efficient handling of SGBV cases

Appendix 4: Additional Support to CUCs

| County | | CUCs Supported | Partner |
|---|---|---|---|
| 1. | Mombasa | Mombasa Law Courts<br>Shanzu Law Courts | FIDA Kenya<br>Legal Resource Foundation Trust |
| 2. | Kwale | Msambweni Law Courts | International Justice Mission<br>Equality Now |
| 3. | Kilifi | Kaloleni Law Courts<br><br>Kilifi Law Courts | Master Card Foundation<br>Centre for Rights Education and Awareness Deutsche Stiftung Weitbevoikerung<br>IDLO |
| 4. | Tana River | Hola Law Courts | Maendeleo ya Wanawake<br>FIDA Kenya<br>World Bank |
| 5. | Lamu | Lamu Law Courts | United Nations Office on Drugs and Crime |
| 6. | Taita- Taveta | Taita-Taveta Law Courts | African Wildlife Foundation |
| 7. | Garissa | Daadab Law Courts | Refugee Consortium of Kenya |
| 8. | Wajir | Habaswein Kadhi Courts | National Drought Management Authority<br>World Vision Kenya |
| 9. | Meru | Nkubu Law Courts<br>Meru Law Courts | United States Department of Justice<br>Ripples International |
| 10. | Tharaka-Nithi | Marimanti Law Courts<br>Chuka Law Courts | Ripples International<br>KNCHR |
| 11. | Kitui | Kyuso Law Courts<br><br>Mwingi Law Courts<br>Mutomo Law Courts | World Vision<br>Legal Resource Foundation Trust<br>Law Society of Kenya<br>World Vision |
| 12. | Makueni | Makindu Law Courts<br><br><br>Makueni Law Courts<br>Kilungu Law Courts<br><br>Tawa Law Courts | Africa Wildlife Foundation<br>MAPACA Trust<br>Equality Now<br>Equality Now<br>IDLO<br>MAPACA Trust<br>Equality Now |
| 13. | Nyeri | Mukurwe-Ini Law Courts<br><br>Othaya Law Courts | Independent Medico-Legal Unit<br>FIDA Kenya<br>Swedish Prison and Probation Service.<br>FIDA Kenya |
| 14. | Kirinyaga | Wang'uru Law Courts | Kenya National Commission on Human Rights |
| 15. | Kiambu | Kikuyu Law Courts<br>Ruiru Law Courts<br>Kahawa Law Courts<br><br><br>Thika Law Courts | Legal Resource Foundation Trust<br>Legal Resource Foundation Trust<br>United States Department of Justice<br>British High Commission<br>Delmonte (K) Limited<br>Thika Business Community |
| 16. | Turkana | Kakuma Law Courts<br><br><br><br><br>Lodwar Law Courts | United States Department of Justice)<br>Refugee Consortium of Kenya (RCK)<br>United Nations Children's Fund (UNICEF)<br>United Nations High Commissioner for Refugees (UNHCR)<br>United States Department of Justice (USDOJ) |

| County | CUCs Supported | Partner |
|---|---|---|
| 17. Elgeyo-Marakwet | Iten Law Courts | Neighbours in Action Kenya |
| 18. Narok | Narok Law Courts | Centre for Rights Education and Awareness<br>United States Department of Justice<br>Equality Now |
| 19. Kajiado | Loitoktok Law Courts<br>Ngong Law Courts<br>Kajiado Law Courts | Big Life Foundation<br>Equality Now<br>Legal Resource Foundation Trust<br>United Nations Office on Drugs and Crime |
| 20. Kakamega | Butali Law Courts | World Vision Kenya<br>Kenya National Commission on Human Rights |
| 21. Vihiga | Vihiga Law Courts | MWENDO program<br>FIDA Kenya<br>Constituency Development Funds (CDF) |
| 22. Bungoma | Webuye Law Courts | Sema Radio<br>International Association of Women Judges-Kenya |
| | Bungoma Law Courts | Catholic Justice & Peace Commission) |
| 23. Busia | Busia Law Courts | United States Department of Justice<br>Equality Now |
| 24. Siaya | Siaya Law Courts | Siaya Muungano Network |
| 25. Kisumu | Tamu Law Courts<br>Maseno Law Courts<br>Kisumu Law Courts | FIDA Kenya<br>United Nations Office on Drug and Crime<br>United Nations Development Program<br>CSO Network |
| 26. Homa Bay | Mbita Law Courts<br>Ndhiwa Law Courts | Mildmay International<br>Ndhiwa NG-CDF |
| 27. Nairobi | Kibera Law Courts | FIDA Kenya<br>World Vision Kenya |
| | Milimani Children's Courts | World Vision<br>Legal Resource Foundation Trust<br>United States Department of Justice (USDOJ)<br>United Nations Office on Drug and Crime |
| | Milimani Criminal Courts | Refugee Consortium of Kenya<br>FIDA Kenya<br>United Nations Office on Drug and Crime |
| 28. Machakos | Mavoko Law Courts | International Development Law Organisation |

Appendix 5: List of Delegates in the 2nd National Criminal Justice Conference

| *Name of the Participant* | *Institution* |
|---|---|
| 1. Hon. Justice Martha K. Koome, EGH | The Hon. Chief Justice & President of the Supreme Court of Kenya & Chairperson, NCAJ |
| 2. Mr. Noordin Haji, CBS, OGW | Office of the Director of Public Prosecutions - Director of Public Prosecutions & Vice Chairperson, NCAJ |
| 3. Dr. Fred Matiang'i, EGH | Cabinet Secretary – Ministry of Interior and Coordination of National Government |
| 4. Mr. Hilary Nzioki Mutyambai | Inspector General, National Police Service |
| 5. Brig. (Rtd) John Kebaso Warioba, | Commissioner General, Kenya Prisons Service |
| 6. Mr. Wafula Chebukati | Chairperson, IEBC |
| 7. Hon. Lady Justice Grace Ngenye | Judge of the Court of Appeal & Chairperson of the NCAJ Committee on Criminal Justice Reforms (NCCJR) |
| 8. Hon. Anne A. Amadi | The Chief Registrar of the Judiciary & Secretary NCAJ |
| 9. Dr. Moses M. Marang'a | Executive Director, NCAJ |
| 10. Mr. Twalib Mbarak | CEO, Ethics and Anti-Corruption Commission |
| 11. Mr. George M. Kinoti | Director of Criminal Investigation |
| 12. H.E. Henriette Geiger | European Union Ambassador |
| 13. Ms. Anne Makori | Chairperson, Independent Police Oversight Authority |
| 14. Mrs Mary Mbau, HSC | Secretary, Probation & Aftercare Service |
| 15. Ms. Jedidah Wakonyo Waruhiu | Witness Protection Agency |
| 16. Mr. Eric Theuri | President, Law Society of Kenya |
| 17. Mr. Irungu Houghton | Amnesty International |
| 18. Ms. Renee Ngamau | Clean Start |
| 19. Ms. Teresa Njoroge | Clean Start |
| 20. Comm. Lucy Ndung'u | Commission on Administrative Justice |
| 21. Dr. Mary Kimari | Commission on Administrative Justice |
| 22. Hon. Lady Justice Cecilia Githua | Community Service Orders Programme |
| 23. Hon. Momanyi Ocharo | Community Service Orders Programme |
| 24. Mr. Gerald Muka | Council of Governors |
| 25. Ms. Irine Ogamba | Council of Governors |
| 26. Mr. Peter Ouko | Crime si Poa |
| 27. Mr. Shem Nyakutu | Directorate of Children Services |
| 28. Ms. Linner Too | Directorate of Children Services |
| 29. Mr. Peter Kabuagi | Directorate of Children Services |
| 30. Ms. Anne Thiong'o | Directorate of Children Services |
| 31. Ms. Marygorret Mogaka, HSC | Directorate of Children Services |

| *Name of the Participant* | | *Institution* |
|---|---|---|
| 32. | Ms. Periz Chebet | Directorate of Criminal investigations |
| 33. | Mr. Augustine Kitonyi | Directorate of Criminal investigations |
| 34. | Ms. Faiza Mohammed | Equality Now |
| 35. | Ms. Judy Gitau | Equality Now |
| 36. | Mr. Abdi Mohamud, MBS | Ethics and Anti-Corruption Commission |
| 37. | Ms. Regina Muriuki | Ethics and Anti-Corruption Commission |
| 38. | Ms. Line Urban | European Union |
| 39. | Mr. Morris Kaburu | Executive Office of the President |
| 40. | Ms. Christine Kungu | FIDA Kenya |
| 41. | Ms. Eva Macharia | FIDA Kenya |
| 42. | Ms. Sophie Kaiberia | FIDA Kenya |
| 43. | Ms. Irene Boke Mwita | GIZ |
| 44. | Ms. Elsy Sainna | ICJ-Kenya |
| 45. | Ms. Julie Matheka Wayua | ICJ-Kenya |
| 46. | Mr. Festus Kinoti | Independent Policing Oversight Authority |
| 47. | Ms. Tabitha Kimotho | Independent Policing Oversight Authority |
| 48. | Ms. Teresa Mugadza | IDLO |
| 49. | Ms. Lorraine Ochiel | IDLO |
| 50. | Mr. Edwin Matonda | IDLO |
| 51. | Mr. Benson Shamalla | International Justice Mission |
| 52. | Mr. Ian Chelal | International Justice Mission |
| 53. | Hon. Justice Isaac Lenaola, FCIArb, MBS, SCJ | Judge of the Supreme Court of Kenya |
| 54. | Hon. Lady Justice Njoki Ndung'u, CBS, SCJ | Judge of the Supreme Court of Kenya |
| 55. | Hon. Justice David Musinga | Judge of the Court of Appeal |
| 56. | Hon. Justice Luka Kimaru | Judge of the Court of Appeal of Kenya |
| 57. | Hon. Lady Justice Mumbi Ngugi | Judge of the Court of Appeal of Kenya |
| 58. | Hon. Justice George Odunga | Judge of the High Court of Kenya |
| 59. | Hon. Justice Prof. Joel Ngugi | Judge of the High Court of Kenya & Chairperson of the National Steering Committee on AJS Policy |
| 60. | Hon. Lady Justice Teresia M. Matheka | Judge of the High Court of Kenya & Chairperson of the NCAJ Standing Committee on Children Matters |
| 61. | Hon. Lady Justice Rachel Ng'etich | Judge of the High Court of Kenya |
| 62. | Hon. Justice Martin Picton | Judge, United Kingdom |
| 63. | AIG Lazarus Opicho | Judiciary |
| 64. | Mr. Steve Kamau | Judiciary |
| 65. | Ms. Abigail Odhiambo | Judiciary |
| 66. | Mr. Edigah Kavuravu | Justice Defenders |
| 67. | Mr. Brian Osoro | Justice Defenders |
| 68. | Prof. John Ambani | Kabarak University |
| 69. | Mr. Elisha Ongoya | Kabarak University |
| 70. | Ms. Loraine Koskei | Kabarak University |
| 71. | Ms. Marion Joy | Kabarak University |
| 72. | Ms. Sidney Tambasi | Kabarak University |
| 73. | Ms. Phyllis Wakiaga | Kenya Association of Manufacturers |
| 74. | Brig. Yvonne Kirui | Kenya Defence Forces |
| 75. | Col. Julius Ngatia | Kenya Defence Forces |
| 76. | Mr. Davis Malombe | Kenya Human Rights Commission |
| 77. | Mr. Derrick Kuto | Kenya Judges and Magistrates Association |
| 78. | Dr. Steve Ouma | Kenya Judiciary Academy |
| 79. | Ms. Mercy Muthuri | Kenya Law Reform Commission |
| 80. | Dr. Bernard Mogesa | Kenya National Commission on Human Rights |
| 81. | Ms. Veronica Mwangi | Kenya National Commission on Human Rights |
| 82. | Mr. Brian Kituyi | Kenya National Commission on Human Rights |
| 83. | Ms. Florence Omundi | Kenya Prison Service |
| 84. | Dr. Miriam Nyamwamu | Kenya Prison Service |
| 85. | Ms. Carole Kariuki | Kenya Private Sector Alliance |
| 86. | Dr. Boniface Chitayi | Kenya Psychiatrists Association |
| 87. | Ms. Martha Ogutu | Kituo Cha Sheria |
| 88. | Mr. Kioko Kilukimi SC | Law Society of Kenya |
| 89. | Mr. Wilfred Nderitu SC | Law Society of Kenya |
| 90. | Prof. Kimani Njogu | Legal Resources Foundation |
| 91. | Mr. Lenson Njogu | Legal Resources Foundation |
| 92. | Mr. Paul Kauku | Legal Resources Foundation |
| 93. | Hon. Francis W. Andayi | Magistrate, Judiciary |
| 94. | Hon. Elizabeth Tanui, HSC | Magistrate, Judiciary |
| 95. | Hon. Christine Njagi | Magistrate, Judiciary |
| 96. | Dr. Lawrence Nderi | Mathari National Treatment and Referral Hospital |
| 97. | Lt. General Mohamed Badi | Nairobi Metropolitan Services |
| 98. | Dr. Samuel Kobia | National Cohesion and Integration Commission |
| 99. | Prof. Jack Mwimali | National Council for Law Reporting |
| 100. | Mr. Andrew Halonyere | National Council on Law Reporting |
| 101. | Mr. Teddy Musinga | National Council on Law Reporting |

| *Name of the Participant* | *Institution* |
|---|---|
| 102. Ms. Sylvia K. Yiantet | National Council on the Administration of Justice |
| 103. Ms. Patricia Nyaundi SC | National Council on the Administration of Justice |
| 104. Ms. Irene Omari | National Council on the Administration of Justice |
| 105. Ms. Susan Jean Ouko | National Council on the Administration of Justice |
| 106. Ms. Roselyne Kabata | National Council on the Administration of Justice |
| 107. Ms. Jackie Mulwa | National Council on the Administration of Justice |
| 108. Ms. Emily Maranya | National Council on the Administration of Justice |
| 109. Ms. Wendy Wairimu | National Council on the Administration of Justice |
| 110. Ms. Angelica Omondi | National Council on the Administration of Justice |
| 111. Mr. John Ogola | National Council on the Administration of Justice |
| 112. Mr. Samson Achola | National Council on the Administration of Justice |
| 113. Ms. Iddah M. Mwita | National Council on the Administration of Justice |
| 114. Ms. Merioth Ndumu | National Council on the Administration of Justice |
| 115. Mr. Blair Angima | National Council on the Administration of Justice |
| 116. Mr. Vincent Opondo | National Crime Research Centre |
| 117. Dr. Joyce M. Mutinda | National Gender Equality Commission |
| 118. Ms. Desie Nyamwea | National Gender Equality Commission |
| 119. Ms. Josephine Mwatibo | National Gender Equality Commission |
| 120. Ms. Grace Thuku | National Legal Aid Service |
| 121. Ms. Faith Siteyia | National Legal Aid Service |
| 122. Ms. Rosemary Mugito | National Legal Aid Service |
| 123. Mr. Josphat Langat | National Police Service |
| 124. Ms. Jemima Aluda | National AJS Committee |
| 125. Mr. George Njao | National Transport and Safety Authority |
| 126. Ms. Judith Opili | National Transport and Safety Authority |
| 127. Ms. Mary Kitegi | Office of the Attorney General |
| 128. Ms. Rose Wachuka | Office of the Chief Justice |
| 129. Dr. Kizzie Shako | Office of the Chief Justice |
| 130. Hon. Esther Nyaiyaki | Office of the Chief Justice |
| 131. Mr. Anthony Sissey | Office of the Chief Justice |
| 132. Mr. Longet Terer | Office of the Chief Justice |
| 133. Mr. Michael Mumo | Office of the Chief Justice |
| 134. Mr. Zakheem Rajan | Office of the Chief Justice |
| 135. Ms. Muthoni Njunge | Office of the Chief Justice |
| 136. Ms. Olivia Ndururu | Office of the Chief Justice |
| 137. Mr. Ken Ogutu | Office of the Chief Registrar of the Judiciary |
| 138. Ms. Dorcas Oduor SC, EBS | Office of the Director of Public Prosecutions |
| 139. Ms. Jacinta Nyamosi, OGW | Office of the Director of Public Prosecutions |
| 140. Mr. Alloys Kemo | Office of the Director of Public Prosecutions |
| 141. Ms. Judith Chepchirchir | Office of the Director of Public Prosecutions |
| 142. Ms. Lilian Obuo | Office of the Director of Public Prosecutions |
| 143. Mr. Aja Imagoro | Power of Mercy Advisory Committee |
| 144. Mr. Clement Okech, OGW | Probation and Aftercare Service |
| 145. Ms. Shirley Amayo | Reprieve |
| 146. Ms. Winnie Syombua | Reprieve |
| 147. Ms. Mary Njoki | Sign Language Interpreters Association |
| 148. Ms .Leonida Kaula | Sign Language Interpreters Association |
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| 151. Mr. Michael Wesonga | The Cradle |
| 152. Ms. Sheila Masinde | Transparency International |
| 153. Ms. Lilian Gathua | Transparency International |
| 154. Mr. Neil Walsh | United Nations Office on Drugs and Crime |
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| 156. Ms. Maria Temesvari | United Nations Office on Drugs and Crime |
| 157. Mr. Titus Muthoka | United Nations Office on Drugs and Crime |
| 158. Mr. William Mathenge | United Nations Office on Drugs and Crime |
| 159. Ms. Sharon Kinyanjui | United Nations Office on Drugs and Crime |
| 160. Dr. Sarah Kinyanjui | University of Nairobi, Mombasa Campus |
| 161. Mr. Mary Wairagu Ngocho | Victim Protection Board |
| 162. Mr. Kennedy Mutiso | Victim Protection Board |
| 163. Mr. Malcom Kijirah | Victor Lee Advocates |
| 164. Mr. Armstrong Rotich | Witness Protection Agency |

Dated the 5th December, 2022.

HON. JUSTICE MARTHA K. KOOME,
*Chief Justice and President of the Supreme Court of Kenya and Chairperson, National Council on the Administration of Justice.*

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