



# **Kariobangi Paralegal Network**

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**Memo to the Special Rapporteur on the  
independence of judges and lawyers for the  
following thematic report on safeguarding the  
independence of judicial systems in the face  
of contemporary challenges to democracy**

**Special Procedures for 56<sup>th</sup> session of the Human Rights Council.**

**By**

**Kariobangi Paralegal Network,**

**Nairobi Kenya**

**31<sup>st</sup> January 2024**

Dear Honorable Rapporteur,

- A. The Kariobangi Paralegal Network submit this memorandum to provide the United Nations special Rapporteur on the independence of judges and lawyers, (“the Rapporteur”) with relevant information about the status of compliance by the Republic of Kenya (“Kenya”) with its obligations on safeguarding the independence of judicial systems in the face of contemporary challenges to democracy in a bid to assist the special Rapporteur’s next thematic report for 56<sup>th</sup> session on Human Rights Council.
  
- B. Kariobangi Paralegal Network (KAPARANET is an independent, not for profit registered Community based organization (CBO) that promotes access to justice, through human rights education, legal education, legal aid /advice sessions, research and advocacy with the goal of engaging community members in sustained learning of legal processes, participation and understanding social justice so that to overcome vulnerabilities in line with the UN sustainable Development Goals and Kenya’s vision 2030.

## **BACKGROUND**

1. International human rights law in ratified treaties is directly incorporated into the Kenyan domestic legal system by virtue of Art. 2 (5) and (6)1 of the Kenyan Constitution. Kenya ratified the ICESCR and ICCPR in 1972. Consequently, by virtue of Article 2(6) of the Constitution of Kenya, the ICESCR forms part of the laws of Kenya. Kenya is therefore bound to respect, protect, and fulfill the rights in the ICCPR and ICESCR.
  
2. Kenya has also adopted a constitution that has a comprehensive Bill of Rights that recognizes the rights envisaged in the Covenant. However, there are

challenges in implementation of certain issues in the Covenant and in the Constitution.

### **3. Introduction -Community justice workers**

KAPARANET falls under the description of Community Justice workers and takes this chance to appreciate the Special Rapporteur for the independence of Judges and lawyers for the call of input of the Community Justice workers among other stakeholders. At the preliminary stages, KAPARANET notes that populism and democracy backsliding have become a common feature in Africa, particularly Kenya. The democratic tenets suffer missiles and intense attacks from the executive and their supporters or cheerleaders. This call for input would not have come at a more appropriate time than now. KAPARANET will respond to the Community Justice Workers as below.

#### **Thematic questions**

##### **4.1 Have community justice workers played an active role in safeguarding democracy and upholding fundamental democratic rights in your country?**

Yes. Community justice workers have played an active role in safeguarding democracy and fundamental democratic rights in Kenya. For this context, KAPARANET will highlight the role that it has played in safeguarding democracy and upholding fundamental democratic rights in Kenya.

###### **a) The right to vote**

1. Participated as voter educators during the 2022 elections after being recruited by the Independent Electoral and Boundaries Commission.
2. Monitoring electoral proceedings, including democracy-enhancing agencies like police, especially on public order management in 27 countries.

3. Monitoring post-election scenarios and organized peace dialogues and caravans that did promote cohesion and coexistence.
4. Monitoring the reaction of citizens after the presidential election petition Judgment.

**b) The right to picket and demonstrate**

1. Participated in public participation forums after the government attempted to amend the Public Order Management Act, which sought to impose punitive sanctions on organizers of demonstrations and picketing.
2. Monitoring the conduct of police in policing public order management by reporting excessive use of force

**c) Freedom and security of the person**

1. Monitoring and documenting cases of police excesses and enforced disappearance and demand accountability for police officers involved.

**d) Judicial independence**

1. Participated in media briefings castigating the executive for attempting to creep into the independence of the judiciary
2. Issued several media briefings protesting the executive's non-operationalization of the legal aid fund.

**e) Freedom of information and expression**

1. Advocated for the freedom of expression, and information including media freedom as a critical medium for informing in fostering democracy. Media impartiality promoted the levels participation of various candidates in amplifying their manifesto.

**4.2 Are community justice workers facing any obstacles, risks, or challenges in your country? If so, provide examples, and highlight if community justice workers face particular obstacles, risks, or challenges based on their gender, racial identity, or other characteristics protected by human rights law.**

Yes

**a) Obstacles**

1. Although the Legal Aid Act provides for legal aid funds, the same has never been budgeted or operationalized.
2. Slow manner of accepting the work done by community justice workers. They are often branded as busybodies by the police and sympathizers of criminals.
3. Legislative obstacles- Recently, the government introduced new requirements, which, in effect, seek to micromanage civil societies. For instance, the government is asking civil societies to file returns and ensure its mandates align with its agenda.
4. Some bodies, like the Law Society of Kenya, think that Community Justice workers are encroaching on their space. Law Society of Kenya has, for instance, noted that the paralegals should not draft affidavits because it is their preserve.
5. Aging factor- most paralegals and community justice workers are ageing. The youth do not want to join the collective teams of community justice workers. When they see a lack of funding. This has resulted in a lack of transition.
6. Restrictive policy on access to information included contractors and suppliers for electoral materials and other actors for open social audit contravenes principle of maximum disclosure of information.

**b) Risks**

1. Threat to the lives of Community Justice Workers (both by the state and non-state workers)
2. Threat to the properties of Community justice workers, especially during the electioneering period. For instance, the Nyando community justice workers' office was burnt down during the 2022 elections, while the Kibera office was broken into.
3. Freezing of the accounts of community justice workers by the government in the disguise of fighting terrorism and money laundering, such as Muslims for Human Rights (MUHURI) and Haki Africa, Kenya Human Rights Commission and Africog.
4. Risk of being deregistered by the government like it happened to IFES in 2017
5. Profiling of Community justice workers as troublemakers and sympathetic to criminals
6. Tapping of communication gadgets by state security systems in the disguise of security surveillance
7. Administration risk of not meeting financial requirements like audited accounts for the last two years and referees for the community justice workers to get funding.

### **c) Challenges**

1. High educational requirements for one to train as a paralegal by the Council for Legal Education
2. Profiling of community justice workers by politicians who prefer uneducated voters
3. Delayed processing of recognition and accreditation of community justice workers
4. Low trust levels from the communities in which the community justice workers operate like families of victims of violations claiming that community justice workers use the documented cases for fundraising.
5. Weak financial base for community justice workers as they lack funding for sustaining the programs to promote and strengthen democracy

6. Police brutality that targets the community justice workers or those defended by the community justice workers.
7. Denied right to assembly by the police which make sometime victimize the community justice workers for causing inconvenience and violating rights of other citizens.

#### **Based on any prohibited ground**

1. Ethnicity- In Kenya, it is difficult for community justice workers to work in certain areas. For example, if you come from the upcountry and you want to practice on the coastal region, people from the coastal region feel like one is taking their job opportunities.
2. Gender- Mostly female community justice workers face sexual harassment while delivering their mandate.
3. Sexual orientation - Community justice workers who are part of the LGBTQ community are threatened and have to seek protection from the police now and then.

### **4.3 Are there any policies or institutional arrangements in place to limit the role of community justice workers in safeguarding democracy?**

#### **a) Accreditation**

The Election Act provides that only the Independent Electoral and Boundaries Commission can accredit a voter educator. The electoral body only accredits voter educators when elections are months away. This is despite the constitutional requirement that voter education and registration be continuous.

- b. Policy to file returns** - could make most of Community Justice workers organization be deregistered as the social and gender development officers have not rolled out sensitization programs on the community Registered groups Act 2022.

**c. Statutory requirements on the right to recall and register as a voter.**

1. Section 45 of the Elections Act provides for the procedure of recalling a member of parliament. However, the Act makes the right to recall moribund by providing for unachievable tests to recall a member of parliament. For instance, a voter cannot recall a member of parliament or County Assembly.
2. The Kenya Elections Act 2011 in section 5 states that voter registration shall be at all times, however, we confirm that since the commissioners at electoral body are not in office and new ones have not been appointed, voter registration and civic education in person nor electronic media is not happening since July 2022.

**4.4 What are the approaches taken to protect community justice workers in this role?**

1. Joining the membership of the Paralegals Society of Kenya and paralegal society of Kenya for the annual paralegals Awards in recognizing exemplary paralegal services. This motivates community justice workers and make them feel appreciated.
2. Engaging in continuous capacity development training to confirm to emerging trends in the space like negotiated democracy that is gaining traction in the Kenya.
3. Partnering with the Witness Protection Agency on protection of key witnesses under threat be they community justice workers or their clients.
4. Collaborate with the Defenders Coalition, which assists community justice workers when arrested by the police with litigation and protection.
5. Partnering with other CSOs to collectively push for an agenda like Police Reforms Working group Kenya pushing for democratic policing. For example, since inception Police Reforms Working Group Kenya in collaboration with IPOA Kenya has enabled IPOA to receive and process 19490 complaints,



concluded 3022 investigations and secured 12 convictions while 98 filed are before courts by 2022 as IPOA strives to curb police excessive use of lethal force.

6. Media engagement to highlight risks and challenges for the community Justice workers and amplifying other economic, social, cultural, political and climate related rights.
7. Attending court users committee sessions, a forum that addresses challenges that impede the delivery of justice.

#### **4.5 Are there any additional issues you wish to raise with the Special Rapporteur in this context?**

1. The Special Rapporteur should have a session with the community justice workers. The Special Rapporteur had a similar session with judges last year in 2023.
2. The Special Rapporteur to implore the Kenyan government to have budgets for community justice workers, such as budgeting for the legal aid fund.
3. The Special Rapporteur should implore the Kenyan government to roll out legal aid centers nationwide, not only in specific towns where the National Legal Aid service has presence and thin spread.

#### **Conclusion**

With the normalization of populism and attacks on democratic tenets, the call for input came at a better time. We hope that our views will be taken into consideration. Once again, we are grateful for this opportunity.