SITUATIONAL ANALYSIS ON INTERACTION OF THE POLICE AND MINORITY GROUPS IN KENYA
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EXECUTIVE SUMMARY

The report critically examines the relationship between the police and the minority groups, centering on women, youth, people living with disability, Muslims and Lesbians, Gays, bisexuals, Transgender, Intersexual (LGBTIQ), focusing majorly on their interaction with the aim to foster dialogue on non-discrimination and respect for human rights for this groups in Mombasa and Nairobi Counties.

The choice of the organization to work with this groups particularly the LGBTIQ is the cognizance that time has come for the Kenyan society to come out of denial for their existence and how government efforts particular on health can be undermined by shunning this unique but critical members of the Kenyan communities. The research also affirms the principle of each member of the Kenyan society enjoying equal treatment before the law devoid of their gender, sexual orientation, Religion, age or economic standing.

The report is a starting point for interrogating the resources allocated to police stations and their effectiveness in handling the minorities. The questions of collaborative approach in addressing crime and policing in the project areas especially the link between police and county law enforcement officers also came up with much confusion coming up on which authority to seek redress to among the minority groups in Mombasa and Nairobi given that County law enforcers have no cells of their own and depend on police stations cells to hold people they arrest in their operations.

The report seeks to inform and educate the minority groups, police as well as general citizenry about their rights and platforms for redress and establishing a critical mass of law enforcers able to address issues of the minorities in the respective counties. The report observes that minority groups’ interaction with the police across both counties has been hostile, with accusations that police have been keen to enforce the rights of the wealthy and influential individuals over those of the members of minority groups. While minorities in Kenya are increasingly recognized by state from an identity perspective, this recognition has yet to translate into real gains looking at the lack of minorities’ participation in public policy on matters to do with access to justice which translates into weak voice in public decision-making.

The report recommendations are a starting point in pushing for policy and administrative reforms in policing that is geared towards increased enjoyment of human rights and good governance by the target minority groups.
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ABBREVIATIONS AND ACCRONYMS

ACHPR  African Charter on Human and Peoples’ Rights
ATPU  Anti-Terror Police Unit
CBOS  Community Based Organizations
CRC   Convention on the Rights of the Child
CSO   Civil Society Organization
DPP   Director of Public Prosecution
FGDs  Focus Group Discussions
FSWs  Female Sex Workers
GSU   General Service Unit
HIV   Human Immunodeficiency Virus
HRDs  Human Rights Defenders
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
ICERD International Convention on the Elimination of All Forms of Racial Discrimination
IPOA  Independent Police Oversight Authority
KPS   Kenya Police Service
LGBTIQ Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
MDGs  Millennium Development Goals
MSM   Men having sex with men
MSWs  Male Sex Workers
NGO   Non-Governmental Organization
OCS   Officer Commanding Police Station
OCPD  Officer Commanding Police Division
PWDs  Persons with Disabilities
SDGs  Sustainable Development Goals
UN    United Nations
UNDM  UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
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CHAPTER 1

WHO ARE MINORITIES?

No legal definition of the term ‘minority’ has been agreed on in international law. Individual States recognize a wide range of groups domestically as minorities based on shared ethnic, cultural, religious and/or linguistic characteristics.

For the purpose of this baseline survey, one of the most widely cited definitions, the one proposed by Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities Francesco Capotorti, is the most describing. According to him, a minority is

A group, numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

Minority groups can therefore be considered to be divided into “negative” and “positive” minorities based on their motivation as a group, which can be reflected in the two definitions.

The “positive minorities” can be seen as a group with strong motivation and aim of pursuing shared interest, as an example the Swedish speaking minority group in the Finnish Åland islands who wish to preserve their own linguistic characteristics. They are already empowered to claim for their rights for equality, non-discrimination and linguistic identity.

The “negative minorities” on the other hand refer to groups in weaker position, who continue to be marginalized in the society and are trying to survive amongst the majority population. An example of such a group is the minority group of the Dalit in India, who cannot be considered to be “directed towards preserving” their minority identity, but who, because of historical, religious and cultural reasons, have been oppressed by the majority.

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Even if both types of minority groups are reaching to same goals of fairness, enjoyment of freedom and fundamental equality, the differences driving for these motivations cannot be overlooked, since the emphasis might be crucial in regard the amount of their protection. For instance, the definition might have an influence in the extent of protection of minorities in cases where it is important whether the minority group is seen more in a role of a victim or as a group with strong potential. Undervaluing the potential of the participation of a minority group might harm the minorities and make the process itself weak, then again seeing negative minorities as coherent group with strong motivation might ignore the special needs of the group. Therefore, it would be important that the minorities are defined and discussed properly to be able to take into account their potential to the whole realization of their rights.

There are potential divergences between how countries define minorities, how international standards define minorities and how minorities define themselves. Groups that self-identify as minorities with a view to accessing minority protection offered at the international level may be confronted with difficulties when claiming rights as minorities per se domestically.

Diversity within Minority Groups:
Minorities are not internally homogenous communities. Several groups may be marginalized within minority communities including women, children, the elderly, persons with disabilities, sexual minorities and persons living with HIV. These groups will experience multiple forms of exclusion and intersecting discrimination.

It is important to note that individuals have the right not to self-identify with a minority group to avoid discrimination. For some, internal discrimination within the minority community may involuntarily push them out. For others, the social stigma and discrimination that comes with being a minority may prompt them to disassociate from this community. In the latter case, it is important to respect the right of self-identification of the individual while simultaneously working against social and political factors that devalue the minority identity.

Women and girls from minority groups experience multiple forms of discrimination based on both their minority status and their gender. Such multidimensional discrimination may make them particularly vulnerable to violations and a denial of their rights in both public and private life. Minority women often find themselves marginalized and face exclusion within their own communities and in the society alike. They might have unequal opportunities for political participation.
MINORITIES IN DEVELOPMENT

Globally, minorities have been the targets of long-standing discrimination, exclusion and sometimes violence. Thus, the poorest communities in almost any region tend to be minority communities. As a result, they face a lot of challenges that hinder them from participation in development. These are as follows:

Challenges that face Minorities Globally

Political Participation of Minorities

The participation of minorities in governance processes is often very weak at all levels. Minorities, especially minority women, frequently lack representation in government, both at the local and national level. Therefore, minorities have fewer opportunities and little control to make decisions that affect them. Lacking a voice in shaping their own circumstances makes minorities to be vulnerable to neglect.

Discrimination against minorities can inhibit electoral participation. Institutional trust can be very low where groups have experienced sustained exclusion and weak access to justice, prompting a de facto disenfranchisement. Where fluency in an official language is a precondition to running for election, this may discriminate against linguistic minorities. Some minorities are even prevented from obtaining citizenship because of requirements like language levels or citizenship laws based on descent. This in turn means they cannot participate on an equal basis in elections and they can have difficulties in accessing social security benefits.

Minorities also face significant barriers in getting elected. This usually stems from discrimination within political parties and from lack of resources to run for office.

Minority groups are more likely to be viewed by some governments as potential political challengers than other groups. Ethnic, religious and linguistic minorities, for example, commonly form political parties, whereas women, persons with disabilities or people living with HIV do not.

Access to Justice

Minorities often lack access to justice when their rights have been violated. This is especially present where non-discrimination legislation exists. Discrimination can occur in the various stages of law enforcement, from interaction with police, to presentation of court cases and sentencing, and at higher levels of legislative drafting.
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Minorities are more vulnerable to arbitrary arrests and are less likely to receive a fair trial due to discrimination, under-representation in legal services, higher levels of social exclusion and language barriers.

Policing

In many societies, minorities may have a negative relationship with the police. This may be due to discriminatory practices by the police, such as racial profiling, low representation of minorities among the police force, failure of the police to investigate crimes committed against minorities and in some cases violence by the police against minorities. The cumulative effect results in the trust and cooperation between the police and minority groups to be very low.

Minorities may not be able to access the judicial system because of discrimination, language barriers, low confidence in the process, financial barriers and the lack of judicial facilities in regions where they live. Some minority groups may also prefer to use traditional justice systems to resolve disputes.

Other challenges faced by minorities include:

Minorities are often denied equal access to quality education. As a result, many minorities are forced to take up manual low income wage jobs as a means to earn a living, including sex work. Minorities therefore to a large extent form the low income population of a state. Racist notions in the wider community may also limit their employment possibilities to the most low-waged options.

Minorities might be poorly represented in other institutions like trade unions or the academic sphere. This exclusion may be due to several factors, including discrimination, poverty, low institutional trust, lack of capacity, language barriers, weak access to media outlets or public information, or living in remote areas.

When disasters strike, these communities are most likely to be at the back of the line for humanitarian assistance, if not totally forgotten.

SUSTAINABLE DEVELOPMENT GOALS

The sustainable development goals (SDGs) are a new, universal set of goals, targets and indicators that UN member states will be expected to use to frame their agendas and political policies over the next fifteen years. The SDGs follow, and expand on, the millennium development goals (MDGs), which were agreed by governments in the year 2000, and are due to expire at the end of 2015.
The new UN Post 2015 Agenda replacing the MDGs after 2015 have given more consideration to human rights aspects. According to the UN Secretary-General, special protection to the vulnerable groups will be given, better inclusion of different groups, including minorities will be protected and more attention to inequalities will be addressed.

**How Are Minority Issues Important For Sustainable Development?**

Government efforts to improve sustainable human development and promote inclusion can be complemented and strengthened if better attention is given to improving the situation of minorities, and with the participation of minorities in such efforts. The marginalization of minorities has a significant detrimental impact on sustainable development, democratic governance, conflict prevention.

Overcoming the marginalization of minorities has direct benefits for national development processes and the achievement of inclusive growth. For example:

- **Discrimination against minorities is a major factor in poverty and inequality.** Addressing discrimination can make sustainable development strategies more effective. Knowledge among government actors of the negative effects of discrimination on development can better equip them to create more flexible, effective and well-informed strategies for sustainable development.

- **To achieve the Sustainable Development Goals (SDGs), greater efforts are needed to address the most excluded groups like most minority groups.** If these groups are left behind by the SDGs, inequality will increase undermining the sustainability of development achievements.

- **Enabling political participation by minority groups will strengthen accountability and help to achieve good democratic governance.** In addition, fair political representation of minorities can stimulate broad-appeal policies that maximize development potential.

- **Access to justice for minorities will strengthen the rule of law and help to reduce inter-communal tensions resulting in maintaining stability for development.**

**Conclusion**

Persons belonging to minority groups have the potential to make fundamental contributions to sustainable development efforts as strategic partners and as actors of change. Minorities have different perspectives that enrich the analysis of development, ensure ownership and help find sustainable and effective solutions to development challenges.

Governments cannot be said to be effective at working towards development and ensuring equality without special protection for minorities. Any initiative to improve development and good governance should be cognizant of the access and participation barriers that minorities may
face and work to overcome these barriers. Governments could be supported to create an environment where minorities can participate on an equal basis in political processes, including strengthening institutions for political freedom so that minority groups may form their own (political) associations.

More coordinated efforts and targeted strategies are required that address directly the plight of disadvantaged minorities. To address the development situation of minorities requires holistic and sustained approaches that recognize their rights as individuals and distinct minority communities. Such approaches must start from an understanding of the impact of discrimination on minority groups and effective methods to achieve equality. There must be recognition that the human development of every sector of society benefits all and promotes prosperity and stability for all.
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CHAPTER 2

OVERVIEW OF THE LEGAL FRAMEWORK GUARANTEEING THE HUMAN RIGHTS OF MINORITIES IN KENYA

Protection of minority rights in Kenya is guaranteed by both international human rights treaties and conventions, and domestic laws. All these laws are interdependent but they are all guided by the Constitution.

(1) International Conventions and Treaties

Internationally, several general human rights treaties provide important standards for the protection of the rights of persons belonging to minority groups. These are:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Rights of the Child (CRC)
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD)
- International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICRMW)

The Article 27 of the International Covenant on Civil and Political Rights (ICCPR)\(^2\) is still the only legally binding article explicitly targeted to rights of the minorities. The Article 27 sets out a universal application of minority rights protection and provides as follows:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

1. The rights protected under Article 27 can be considered as the most influential, even if sometimes inadequate, protection for the particularities of minorities. The article grants persons belonging to minorities the right to a national, ethnic, religious or linguistic identity, or a combination thereof, and to preserve the characteristics they wish to maintain and develop. Although the article refers to the rights of minorities in those States in which they exist, its applicability is not subject to official recognition of a minority by a State. States that have ratified the ICCPR, such as Kenya, are obliged to ensure that all individuals under their jurisdiction enjoy their rights; this may require specific action to correct inequalities to which minorities are subjected.

The Convention on the Rights of the Child (CRC) provides a similar standard for minority children. Article 30 states that,

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

The CRC rights are not limited to children who are citizens of a State party and must be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness. This is of particular relevance to minority children who may be stateless or lack registration documents, which can increase their vulnerability to abuse, trafficking, child labour and other forms of exploitation.

Given the wide ratification of the ICCPR and the CRC, almost every State in the world has a legally-binding obligation to protect minority rights based on its voluntary commitments under international law.

Article 27 of ICCPR provides basis for the UN Declaration on Minorities. Most importantly the influence of the Article shows in the non-binding Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration) which in 1992 was the first UN document actually detailed the rights of persons belonging to minorities by containing provisions protecting and promoting minority participation in the political and economic life.

The Minorities Declaration which later advanced Article 27 has been interpreted to include also reference to “cultural” identity therefore having advancing also the scope of the people falling under “minorities”. Also, the terminology regarding ethnicity and race, have also been argued to be interchangeable in the UN instruments over time and therefore, for instance the cultural characteristics can be considered to be covered by the concepts of ethnicity, religion and language.
(2) The Constitution of Kenya

Article 2(6) of the new Constitution provides that International Conventions that have been ratified by Kenya automatically become domesticated. Thus, the government of Kenya is obligated to ensure that minority groups are guaranteed the rights that are provided by such conventions.

Kenya’s 2010 Constitution protects the rights of minorities in three ways. First, it makes substantive provision to address specific concerns of these communities. Second, it mainstreams concerns of minorities into institutions of government including political parties. Last, it creates institutions and mechanisms that, if effectively implemented, could empower minorities and other groups.

The Constitution accords protection to ‘minorities’, ‘marginalized communities’ and ‘marginalized groups’, and often uses these terms interchangeably.

Article 260 of the Constitution, when describing marginalized communities and marginalized groups, does not define the term ‘minority’, perhaps because of the lack of an internationally accepted definition of the latter term. In seeking to identify these disadvantaged groups, the Constitution relies on objective rather than subjective criteria, in a manner quite consistent with international standards.

The Constitution defines a marginalized community as: a community which, by reason of its size or otherwise, has been unable to participate in public life in Kenya; an indigenous community that has retained and maintained a traditional livelihood based on a hunter or gatherer economy; nomadic or sedentary pastoralists; and groups which are geographically isolated.

A marginalized group, in contrast, is defined so as to capture a very broad class of socially excluded persons: ‘Who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4)’, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, language or birth.

By providing for present and future protection of groups suffering unfair disadvantages in law or in practice, the Constitution demonstrates an important understanding of the dynamic nature of the forces of exclusion in the country. However, the expanded definition of marginalized groups implies that many may seek protection as marginalized groups making the definition either redundant or ineffectual for protecting ‘real’ minorities in the Kenyan context.
Non-discrimination

Article 27(4) prohibits discrimination on the basis of ethnic or social origin, religion, conscience, belief, culture, dress or language. Article 27(6) further calls on the state to undertake, ‘legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination’. This article prohibits both direct and indirect discrimination.

Direct discrimination consists of measures adopted by a state that intentionally disadvantage an individual or group on the basis of a prohibited ground, such as race or nationality. Indirect discrimination occurs when a seemingly neutral provision or practice disproportionately impacts a particular group, without objective and reasonable justification. This means that, in assessing the existence or otherwise of discriminatory treatment, courts will not only look at conduct or policy that differentiates groups and result in disadvantage. It will also explore conduct and policy which may not appear discriminatory on paper but which, when applied, create disproportionate disadvantage for some groups more than others.

Even though the 2010 Kenyan Constitution prohibits discrimination, it also recognizes the existence of past discrimination. To address this, the Constitution recognizes the need for affirmative action programmes and policies in order to redress any past disadvantages caused by state policy or practice, an experience which many minorities have gone through.

Access to Justice

The new Constitution under Article 48 states that the State is obliged to ensure access to justice for every citizen. Access to justice includes the recognition of rights, awareness, understanding and knowledge of the law, protection of those rights, equal access for all to judicial mechanisms for such protection; the respectful, fair, impartial and expeditious adjudication of claims within the judicial mechanism; easy availability of information pertinent to one’s rights; equal right to the protection of one’s rights by the legal enforcement agencies; easy entry into the judicial justice system; easy availability of physical legal infrastructure; affordability of the adjudication engagement; respect for cultural rights and the intent to provide a conducive environment within which the judicial system can operate.

Article 22, the enforcement of the bill of rights, accords every individual the right to institute court proceedings. Article 22(2)(b) goes further to allow a person to institute proceedings either as a member of or in the interest of a group or class of persons, while Article 22(2)(c) allows for proceedings by persons acting in the public interest. This is particularly important for the enforcement of minority rights.
This position is further enforced by Article 22(3), which calls for the formalities associated with court proceedings to be minimized and, where necessary, for informal documentation be accepted. Article 22 states that no fee should be charged for commencing such proceedings and the court should not to be unreasonably restricted by procedural technicalities.

Table 1 below summarizes the extent to which the new Kenyan Constitutions protects minority rights

Table 1: Summary of Protection of Minority Rights by the New Kenyan Constitution

<table>
<thead>
<tr>
<th>Issue of concern to minorities</th>
<th>New Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-discrimination</td>
<td>The prohibited classes in relation to discrimination are expanded to include marital status, health status, disability, dress, culture, etc. (Article 27(4))</td>
</tr>
<tr>
<td>Recognition of Identity</td>
<td>Recognition of collective rights, right to culture and diversity signals strong appreciation of identity Definitions of marginalized communities and marginalized groups in Article 260 identify groups that could benefit from affirmative action under Article 56</td>
</tr>
<tr>
<td>Political participation</td>
<td>New Constitution emphasizes participation of all citizens in public processes. Article 100 requires parliament to legislate to facilitate participation of minorities in the senate and national assembly. Article 177 also requires that minorities be represented in county assemblies</td>
</tr>
<tr>
<td>Revenue allocation</td>
<td>Article 204 earmarks 0.5% of annual state revenue for the development of marginalized areas in addition to 15% of national revenue being allocated for direct transfers to county governments</td>
</tr>
<tr>
<td>Affirmative action to address historical wrongs</td>
<td>Affirmative action for minorities (Article 56), persons with disabilities (54(2)), youth (Article 55) entrenched in the Constitution.</td>
</tr>
<tr>
<td>Gender issues</td>
<td>State mandated to ensure through legislation that no elective and appointive body has more than 67% of one gender (Article. 27(8)). No specific safeguards for women from minority groups in this gender quota</td>
</tr>
</tbody>
</table>
CHAPTER 3

KENYAN LAW ENFORCEMENT AGENCIES

Law enforcement in Kenya takes place at the national level and the county level.

The National Police Service has jurisdiction throughout all of Kenya. The creation of the National Police Service is provided for by the Constitution, the National Police Service Act 2011 and the National Police Service Commission Act 2011. In accordance with the provisions, the National Police Service consists of:

1. The Kenya Police Service responsible for general public security;
2. The Administrative Police Service responsible for securing state institutions; and
3. The Directorate Criminal Investigation.

All branches are responsible for enforcing the Penal Code, and are guided by the Criminal Procedure Code.

The National Police Service is under the independent command of the Inspector General of Police. The Kenya Police Service (KPS), the Administrative Police Service (APS) and the Directorate of Criminal Investigation (DCI) are each headed by a Deputy Inspector General.

These services are organized at the county level, with county commandants responding to the Deputy Inspector Generals of the Kenya Police and the Administration Police, and the Director of the Directorate of Criminal Investigations, in Nairobi.

The Internal Affairs Unit has the mandate of overseeing internal accountability within the National Police Service through redressing receiving and investigating complaints against the members of the service and taking disciplinary measures. The Internal Affairs Unit also liaises with the IPOA. Further, the National Police Service Act provides for the establishment of Community Policing Forums and Committees and the County Policing Authorities.

At the devolved level, each county government recruits and trains its own county law enforcement officers, who form an institution entirely distinct from the Kenya Police. These county law enforcement officials – popularly referred to as *makanjoo* - are responsible for enforcing sets of county bylaws, passed by county legislative assemblies.
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Kenya's National Police Service (NPS) consists of Kenya Police Service (KPS), the Administration Police Service (APS), and the Directorate of Criminal Investigations (DCI). These entities are further divided into subunits and formations, such as GSU and RSU - within the KPS and APS, respectively. The police are overseen by external oversight bodies - the NPS Commission and the ICPAO - as well as by the judiciary and human rights commissions that oversee the entire state machinery. The Internal Affairs Unit (IAU) of the NPS is responsible for internal oversight of the service. Generally, all complaints against the police filed in police stations are addressed by the IAU.

County Law Enforcement

Enforcement of county-level law enforcement is a responsibility of county law enforcement officers, or malakos (also known as police). They are recruited by and serve within county governments, led by the county governor, who is directly elected by citizens. They are directly subordinate to county inspectors general. Malakos are not the police, but their legal status is not defined in law, making it difficult to determine their exact powers and the legal limits of their functions. County law enforcement services were created and evolved prior to the new 2010 Constitution, raising concerns about constitutionality of these institutions. At the moment, the county secretary and county attorney receive complaints from the public in the service of and enforcement by malakos.
CHAPTER 4

SUMMARY OF FINDINGS

This chapter summarizes the findings of the data collected from research conducted in Nairobi and Mombasa Counties on the interaction of minority groups with the police.

In Mombasa, five focus group discussions were conducted consisting of 8 participants each. Each of the participants was from different sub-counties. The focus group discussions consisted of homogeneous groups of women and child based organization representatives, LGBTIQ persons, sex workers and members of the Muslim community. These were the minority groups that were identified as dominant in Mombasa. Key informant interviews were also conducted with persons with disabilities and five police officers.

In Nairobi County, key informant interviews were conducted with police officers, a Muslim leader, a police officer and human rights defenders. Desk top research was also utilized to collect information on how city council *askaris* interact with street hawkers and sex workers.

The issues that were identified by the different focus groups are as follows:

1. WOMEN AND CHILDREN

   **Knowledge of Human Rights**
   Participants from women and child based organizations were well versed on their rights regarding access to justice and easily cited these rights. This high level of awareness was largely attributed to participation of the women and men in capacity building programs that have been conducted by various human rights based NGOs on the same. Despite this knowledge, participants shared that they still experienced difficulties in accessing justice, right from reporting cases at the police station. This is as follows:

   **Level of engagement experienced by Women and Children in their interaction with the Police**

   **a) Women**
   Police officers steer away from investigating and filling cases involving couples, whether married or dating. They consider such cases to be personal affairs and thus do not want to pursue investigating such cases. This is prevalent in domestic violence cases. In many instances, the police officers tend to side with the male culprit who more often than not are usually financially better off, and can afford to offer monetary bribes to the police officers for the case to be dismissed.
Women respondents complained that police officers still lack sensitivity when handling sexual offence cases. Women who had reported such cases shared that they were asked inhumane questions such as, “Ulisikia ajie?” (How did you feel?)

In some instances, police officers were reported not to respect the dignity of the victim while handling the case. One respondent shared that as she was at the reporting desk to report a rape case, a police officer shouted to another colleague who was across the room that, “We mama kuja hapa uandikishe kesi ya rape”. (You come and record this statement, it’s a rape case).

This increases the stigma felt by victims of rape who opt not to report such cases at the police station out of fear of such stigmatization.

Respondents from the informal settlements of Nairobi reported that police officers normally patrol their areas of residence in private cars in the evenings. Here, they pick up young women who are later allegedly sexually violated. Women respondents confirmed this allegation and reiterated that reporting cases of violations that have been committed by police officers was a challenge. This was because no police officer is willing to take on a case where his/her colleague is the alleged suspect. Thus, such cases are rarely reported and investigated.

Another major challenge that women face is delays in carrying out investigations and undertaking arrests of the suspects related to the cases that they have reported. In some instances, women complainants are asked to pay several visits to the police station to follow up on their cases without receiving any positive feedback. This demoralizes many women who opt not to report any case in future as they assume that it will be a time wasting exercise that will not translate to justice.

However, participants noted that cases that are reported to the police as a group (for example, where members of a registered women group escort a complainant to report a case) are usually expedited and handled with the urgency that the case deserves. It should be noted that not all women belong to self-help groups. Thus, women who go to report cases as individuals may not be enjoying their right to access justice as they lack the necessary support to push for their cases to be investigated and arrests to be done.

Respondents identified a big challenge where women who do not know their rights tend to get exploited at the police station. An example was given of a woman who went to report a defilement case of her child. She was asked to pay one thousand shillings (Kshs. 1,000) so as to be given a P3 form. Since the women did not have any money, she left the station and never followed up on the case. Such cases tend to be prevalent as once again, they rarely go reported.
b) Children
Participants generally acknowledged that great efforts have been put towards handling cases that concern children. However, certain challenges still persist. These were shared as follows:

For defilement cases, police officers tend to assume that female victims are of age and thus were in a position to give informed consent. The major assumption that some police officers have is that the complainants usually pretend to be under-age so as to get monetary compensation from the alleged suspect. There is also the assumption that girls become sexually active once they reach teenage age. Thus, many of the defilement cases involving teenage girls go unrecorded.

Secondly, many parents and guardians delay to report cases to do with children, especially those that concern defilement. By the time a case is reported at the police station, it is sometimes too late to collect evidence that can be used to prosecute. This jeopardizes the ability of the case to go through to court.

Paralegals were also credited for being active in defending children’s’ rights. However, many paralegals expressed concern as to the hostile reception they normally receive when they go to report cases at the police station. One paralegal shared that upon being seen with a fellow paralegal at a certain police station, the police officer at the reporting desk retorted,

“Hawa wamama hawana kitu kingine cha kufanya ila kuzunguka tu mtaani wakitafuta kesi?” (These women have nothing better to do than to go round the community looking for cases?)

In Mathare and Huruma informal settlements in Nairobi County, it was reported that the police were allegedly involved in false accusations of male children aged between fourteen and seventeen years. Human Rights Defenders (HRDs) from the area alleged that police officers usually take photos of male children of this age who reside in the area and display them at the local police stations. Whenever a case is reported, the police then coach witnesses to say that one of the boys committed the crime. Soon after, the identified boy then gets killed by the police. Such profiling is done to give an impression that the police are fighting crime. The police also take advantage and extort money from the parents of the profiled children.

2. LGBTIQ

Knowledge of Human Rights
Participants who represented the LGBTIQ minority groups were well versed on their rights as enshrined in the new Constitution of Kenya. Many felt that the Constitution protected their rights to a large extent. For example, a young lady acknowledged that,
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“It is comforting to know that I cannot be arrested because of who I am, that is a lesbian. One can only be arrested and charged of committing an offence if caught in the (sexual) act. However since such matters are private, I feel guaranteed that my rights of being a lesbian have been respected.”

Though many participants agreed that the Bill of Rights to a large extent was comprehensive in guaranteeing their rights, the practices on the ground were not reflective of this reality. The LGBTIQ community faces a lot of hostility from community members who have little knowledge and understanding of whom the LGBTIQ are. Some of these malpractices include:

- Many members have been chased away by their families once they discovered that they were members of the LGBTIQ community. As a result, many LGBTIQ have not completed school and thus resort to sex work to earn a living.
- Being harassed and sometimes even physically assaulted by community members
- Forced evictions from one’s home by neighbours or landlord/lady
- Other members have had their homes burnt and possessions destroyed
- Being forced to alight from public transport by other passengers. This vice even extends to the ferry where some LGBTIQ have received threats that they will be thrown overboard
- Community members falsely accuse the LGBTIQ community of teaching their children ‘bad’ practices. This increases the level of hostility that is faced by the LGBTIQ community in the society
- Being pelted with stones by community members as one walks around
- Religious institutions such as churches and mosques have rejected them and ex-communicted them from attending prayers or services.

Such practices have contributed towards the increased stigma and violations of the rights of the LGBTIQ. Despite this, members of the LGBTIQ community do not feel safe to report such violations to the police. The analysis of the participant responses highlights various reasons as to why this is so.

Level of engagement experienced by the LGBTI community in their interaction with the Police

While it was acknowledged that to a large extent the rights of the LGBTIQ community have been catered for in the Constitution, enforcement of these rights remains a problem. This is as follows:

Perceptions of Police Officers to the LGBTIQ Community

To begin with, many police officers do not have adequate knowledge and understanding of LGBTIQ issues. This has therefore resulted in the police having negative misperceptions of
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LGBTIQs. This attitude is reflected right from the reporting desk when a member comes to report a case at the police station.

Jane (not her real name) had this to share:

Case Study

A fellow transgender friend of Jane had been given some work to do. Upon completion of the job, she did not receive her dues for the services that she had rendered. Instead, she was beaten up by her employer and chased away. Jane accompanied her friend to report the case at the police station.

Upon arrival, they were first told to move away from the reporting desk. This shocked Jane as she could not understand why they were being turned away. The police officer then proceeded to ask them the following questions:

“Why are you people like this? (Referring to their transgendered state) Why do you talk and act the way you do?”

The police officer at the reporting desk then proceeded to chase them away from the police station. They were even not given the opportunity to air their complaints. They did not receive any assistance at all.

Jane concluded by sharing how such a reception was contrary to the slogan of the Kenyan Police Service, “Utumishi kwa wote”, service to all. “Doesn’t all include the transgender as well?”, she asked.

Some members also fear that if they go to report a case at the police station, they will be arrested because of being LGBTI or Q. In some cases, some members have gone to report a case and have ended up being put in cell and asked to part with either one or two thousand Kenya Shillings (Kshs. 1,000 or 2,000) so as to be released.

In addition, some police officers are stigmatized by their colleagues for assisting members of the LGBTIQ who come to report cases at the police station. This causes them to shy away from assisting other LGBTIQ members who come to report cases.

Other key challenges faced by the LGBTIQ while interacting with the police include the following:
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i) Harassment from the police: Members who have already been identified by police officers as being either of an LGBTIQ are prone to harassment. During such incidences, police officers normally accuse one of committing offences such as being a sex worker. Such harassment sometimes is accompanied with physical assault and also demands for monetary payment to the police.

ii) Arbitrary arrests: Once police officers identify you as a member of the LGBTIQ community, one becomes the target of arbitrary arrests. The police officers then accuse you of conducting an offense which one has not committed. For example, being in possession of bhang, being drunk and disorderly, loitering among others. Most members opt to offer a bribe to the police so as to be released instead of going through the court process to answer for charges that one has not committed. This sometimes also involves the offering of sexual favours in order to secure one’s or a friend’s release. This violation is exacerbated by the fact that police officers do not use condoms thereby putting the health of those who opt to give sexual favours to secure release at risk.

iii) Members who are either transgendered or intersex face additional challenges at the police station that have to do with gender identification. When an accused person is taken to the police station, the arrested person is asked by police officers to clarify as to whether one is either male or female. Before one can explain him/herself, they are usually ordered to remove their clothes so that the police can see and decide the gender for themselves. One respondent shared this experience:

“I was once arrested and taken to the police station. Upon arrival, the police officers asked me whether I was a male or female. Before I could answer, I was ordered to remove all my clothes so that they could assess for themselves. The police officers then went to an extent of fondling my private parts. I felt so violated.”

iv) There is also the fear (especially among the males) of being raped while in the cells. This largely stems from the fact that police stations only have cells for either male or female suspects. The cells therefore do not cater for the gay, transgendered or intersex members.

Many participants attributed that their fear of the police stemmed from the experiences. This has greatly inhibited their right to access to justice as many members of the LGBTI community do not report incidences where their rights have been violated. This situation is made worse in cases of sexual violations. Procedurally, one can only receive free treatment as has been provided by the government if they possess a dully filled P3 form from the police. The lack of reporting of sexual offences experienced by the LGBTIQ community further puts their right to health at risk.

Positive Interaction between the LGBTIQ community and the Police

Despite the identified challenges faced by the LGBTIQ community while interacting with the police, the respondents acknowledged that there has been much improvement in their engagement with various police officers. For example, respondents reported that there were some
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police officers who they could now call upon for assistance in case of anything. These police officers usually go out of their way to assist the LGBTIQ.

There is a crop of police officers who treat us like human beings, and not approach us as LGBTIQ. Some of the improvements that have been witnessed include:
- Police officers have reduced the incidences of arresting LGBTIQ who are sex workers
- Being provided a secluded private place to report sensitive cases such as sexual assault

This improvement was largely attributed to the sensitization programs that the Police Officers have been taken through that have been conducted by different human rights based organizations. The main challenge still remained that after a few months, the police officers who have undergone sensitization are transferred to other stations. This leaves the LGBTIQ with the challenge of sensitizing a new crop of police officers.

3. SEX WORKERS

Knowledge of Rights
Participants representing sex workers had excellent knowledge of their rights to access to justice which they were able to cite. Some of the rights mentioned by respondents included:
- One is not supposed to be arrested arbitrarily. A police officer should introduce him/herself and then inform you the reasons as to why they want to arrest you
- Upon arrival at the police station, one should be informed of his/her charges that have been brought against them
- One should not be asked to pay bribes or give sexual favours so as to secure one’s release. In fact, it was acknowledged that paying a bribe is more expensive than the fine that one is usually imposed with at a court of law
- A sex worker has the right to legal representation in court.

Level of engagement experienced by Sex Workers in their interaction with the Police

i) Negative perception of sex workers
The first challenge that sex workers face in the pursuit of justice is the negative perception of police officers towards sex workers. Sex workers felt that police officers looked down upon them because of the nature of their work. This attitude is especially felt when sex workers come to report cases of sexual violence at the police station. Those who have reported rape cases have been received with a negative attitude, with little or no help offered to them. One respondent gave an example of an incident where she went to report a rape incident. The reporting police officer had this to say,
“Ona huyu malaya. Si umezoea kufanya 4 ama 6 hours? Umezoea kupeana, rape should be normal to you.”

(Look at this prostitute. Aren’t you used to engaging in sexual intercourse for four to six hours? You are used to giving it out, so rape should be normal to you)

This negative perception affects the speed at which the cases reported by sex workers are handled. Sex workers felt whenever they went to report cases; the police did not handle their issues with urgency. In many instances, sex workers would be kept waiting while other complainants were attended to. This lack lustre attitude by police officers is based on the assumption that sex workers are usually on drugs and thus the police do not take their complaints seriously.

**ii) Arbitrary Arrests**

Sex workers shared that once police officers were able to identify individual sex workers, they became easy targets for arbitrary arrests. For example, a female sex worker (FSW) found seated by herself in a social place is usually arrested and charged with either soliciting, or intentions to solicit, whether or not the FSW was on duty. However, if the sex worker is accompanied by someone, they do not get arrested.

Respondents felt that they were not safe from arbitrary arrests. An example was given of how police officers stormed into a hospital where sex workers usually receive treatment and were arrested. A concerned participant reiterated that,

“If sex workers cannot feel safe at a hospital, where will they feel safe?”

Once arrested, sex workers tend to be falsely accused and charged with offences such as being drunk and disorderly, being violent, possession of illicit drugs and robbery.

**iii) Payment of bribes and use of sexual favours in exchange for release**

In incidences where sex workers are arrested (whether arbitrarily or in the curse of duty), some sex workers sometimes opt to offer a cash bribe to the police officers so as not to be charged. This is done to avoid spending the night in a police cell, especially for sex workers who have young children.

In some instances, police officers accept sexual favours in exchange for the release of the arrested sex workers. This is prevalent in situations where the sex workers do not have money to offer bribes to the officers. A respondent candidly puts it as follows:

“I have once been arrested when I did not have any money on me. The arresting officer asked me if I would want to “see” him aside. I complied. We went beside a tree, I bent over and we were done in minutes. It was the easy option out.”
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Of particular concern to the sex workers was a specific police station (which they were not comfortable to reveal) which was notorious for unlawfully detaining arrested sex workers without presenting them before a court of law within the prescribed official 24 hours. Here, the detained sex worker is kept as a sex slave until the arresting officer has satisfied his sexual urges. At this point, the sex worker is finally released without any charges, but only after cleaning the police station and washing the uniforms of the police officers.

To conclude, respondents acknowledged that despite these challenges, there had been some milestones made on how the police officers serve sex workers. It was reported that some police officers were quite helpful, especially one police officer from Bamburi Police Station who always listened to cases reported by sex workers and follows up on their cases.

4. MUSLIMS

Arbitrary Arrests and Infliction of Torture

In the wake of the rising number of terror attacks that have been experienced in the country over the last two years, Muslims have become the target of negative stereotyping and arbitrary arrests by the police.

In Mombasa County, participants shared that boys from as low as age ten are usually arrested by the police and would disappear for a period of three days. During this time, the boys would report that they underwent torture aimed at coercing them to admit that they are members of the Al-Shabaab terror group. The young boys are only released once they promise to be police informers. Such arbitrary arrests also included that of middle aged Muslim men, which are more frequent in the evenings after the evening prayers. Muslim men are an easy target as they are easily identifiable from wearing kanzus, which is the traditional Muslim attire.

Stereotyping of Muslims as suspected Al-Shabaab members is also done based on physical appearance. Young men who have a beard are targets for arbitrary arrests. In Nairobi County, participants shared that those arrested are normally transported in Toyota Proboxes, and disappear without a trace. On the other hand, the Kenya Police Service maintains that they neither have nor use Proboxes as a means to carry out their duties. It was observed that this trend is changing with the car of choice for carrying out such operations now becoming brand new Subaru Outbacks.

Illegal practices of the police officers from the Anti-Terror Police Unit (ATPU) have also worked to instill fear into the Muslim community. In areas such as Majengo and Kiamako in Nairobi County, as well as Mombasa County; the ATPU normally carry out raids in search of terror group members between two and three am in the morning. During these raids, Muslims
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have become the subject of beatings and torture aimed at coercing them to divulge information on the knowledge they have on terror activities. However, people have become so afraid of the police which makes them unwilling to share any information they may have because of the fear of being falsely accused to be a member of a terror group.

Extra-judicial killings
The Muslim clergy have also become targets of extra-judicial killings. Participants shared that most of these killings tend to happen after the clergy are blocked by pro-boxes.

5. PERSONS WITH DISABILITIES (PWDS)
The perception that police officers have of PWDs is that they are helpless and inadequate. This is reflected in the following ways when PWDs go to report a case at the police station:

First, police officers tend to assume that some offences cannot be meted against PWDs. For example, in cases of sexual assault, police officers have been said to ask whether someone would really want to rape a PWD. Also in cases where a PWD has been swindled off some money, it is assumed that the culprit was merely assisting the complainant, and it is not possible that the person could have caused harm or theft to the PWD.

Other challenges that are faced by PWDs while filling reports at the police station are as follows:
1. Most police stations do not have sign language interpreters. This makes it difficult for those who are deaf to be able to explain themselves. Thus, those who come to place a complainant end up not being assisted because the police officer at the reporting desk is unable to record the complainant’s statement.
2. This situation is especially worse for those deaf suspects who have been arrested. Many of the times, it is only at the court session where it is realized that the suspect was deaf.
3. Once arrested and booked into a cell, police officers normally confiscate the crutches and wheelchairs of those who are crippled. Without their walking aids, these people are usually unable to move. This affects their mobility which inhibits them from using the toilets, and even to lining up for food. Police officers are also not helpful in assisting such persons to move around.
4. Some police stations while having steep stairs do not have ramps. This hinders those that are crippled from accessing the stations.
5. Cases reported by those with a mental disability are rarely handled with speed. This is because police officers assume that the complainant is mad and thus assumed that the person does not know what they are talking about.
6. HUMAN RIGHTS DEFENDERS (HRDs)

Human rights defender is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders address any human rights concerns, which can be as varied as, for example, summary executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues, forced evictions, access to health care, and toxic waste and its impact on the environment. They do this on behalf of individuals or groups.3

In Nairobi County, the HRDs who participated in the study mainly resided within the informal settlements of Nairobi. The main challenges faced by HRDs in their engagement with the police as they advocate for the fulfillment of various human rights within the community included:

1. Some HRDs are perceived as a threat to the job security of police officers because of the watchdog role they play in keeping local police officers that work in their communities accountable for their actions. Such HRDs are prone to receiving threats from the police so as to discourage them from participating in human rights based activities that have to do with access to justice.

2. Arbitrary arrests by the police. This would then be followed by requests for cash bribes by the police so as to be released.

3. Once arrested, HRDs have experienced torture and brutal treatment from the police. This is done in order to discourage them from following up on cases that touch on police brutality.

4. Many HRDs have also been kidnapped by the police where they get threatened to desist from human rights based activities. It was shared that some HRDs have even disappeared without a trace after being arrested.

5. It is important to note that many of the police officers who participate in such arrests do not display their identification numbers, or if they do, they wear them under their sweaters. It therefore becomes difficult to report such officers as one cannot be able to offer any evidence when identifying the rogue police officers.

6. Lastly, during demonstrations by HRDs to highlight different human rights concerns that stem from their areas of residence, GSU officers are usually used to brutalize protestors.

LEVEL OF ENGAGEMENT EXPERIENCED BY MINORITIES IN THEIR INTERACTION WITH THE COUNTY LAW ENFORCEMENT OFFICERS

While most respondents agreed that strides have been made in how the police interact with minorities, the same cannot be said of County Law Enforcement Officers commonly referred to

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3The term “human rights defender” has been used increasingly since the adoption of the Declaration on human rights defenders in 1998. Until then, terms such as human rights “activist”, “professional”, “worker” or “monitor” had been most common. The term “human rights defender” is seen as a more relevant and useful term.
as *kanjo* or county *askaris*. It was unanimously agreed that the county *askaris* were brutal in how they handle and arrest people. This was in this way:

County *askaris* were reported to carry out **arbitrary arrests**. This is mainly targeted towards PWDs, sex workers (even while not on duty) and street hawkers. One respondent shared how a group of her friends got casual jobs of conducting a promotion for sweets in Ukunda, Mombasa County. While they were waiting for the ferry to transport them to the South Coast, they were arrested by the County *askaris*. They were later accused of carrying out advertising without a license because of the t-shirts that they were wearing that had images of sweets.

The county *askaris* seem to lack knowledge and training on human rights and access to justice. They never inform an arrested culprit the reasons as to why they have been arrested. One only discovers their charges once they are presented before a court of law. This creates room for being given fake charges as one is unable to prove beyond reasonable doubt that these charges are false once before a court of law.

Once arrested, the *askaris* normally ask for bribes to secure release. A Daily Nation article that was published on 2nd November 2015 reported that the *askaris* normally leave a trail of death and permanent injuries on street hawkers who do not bribe them. To add on, the *askaris* are said to ask for sexual favours from sex workers who are arrested while on duty. Others even go to the extent of raping arrested sex workers.

On the other hand, respondents from both counties observed that offering of bribes or sexual favours to the council *askaris* was the preferred and easier option rather than pursuing the matter in court. In particular, respondents from Mombasa County felt that the way in which the criminal justice system was operated by the county actually worked to limit one’s access to justice. This is because upon arrest, the suspects are normally booked into cells at a police station. Here, it is impossible for them to receive bail since police officers at a particular station cannot process bail since they were not the ones that carried out the arrest. A gap thereby exists in terms of the coordination between the police and the county law enforcement officers where arrests and processing of bail are concerned.

Lastly, the council *askaris* were reported to use a lot of brutal force when handling minorities. This is illustrated in the case study below:

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Case Study

On 13th September 2015, Wambua Manga, a street hawker, was selling his wares on the pavements of Tom Mboya Street Nairobi, when there was sudden commotion. All hawkers suddenly fled in one direction.

Unfortunately for Wambua, Nairobi city council askaris surrounded him. “They grabbed me and started battering with clubs and knives as one of them repeatedly kicked my lower leg with his boots,” he says of his attackers. “The last thing I remember hearing was ‘wewe hakuna mahali tunakupeleka, tutakumaliza hapa’ (We are not taking you anywhere, we will kill you here),” he recalls. One of them kept stabbing him even as he tried to defend himself.

After some time, the crowd that had gathered intervened and the askaris got in their van and drove off leaving him for dead.

Wambua passed out due to the pain caused by a broken shin bone, internal injuries, fractured ribs and a mob-style beating. He woke up four days later admitted at Kenyatta National Hospital at Ward 6C.

Respondents identified that the major challenge they face that inhibits them to report cases of brutality by city council askaris is that many of them do not wear uniforms. Those that wear
uniforms do not have any identifications numbers unlike police officers. Thus, when one goes to report a case, it becomes difficult to prove beyond reasonable doubt that a particular city council askari is the one who assaulted you.

**BARRIERS AFFECTING POLICE EFFECTIVENESS WHILE DEALING WITH CASES REPORTED BY MINORITIES**

The major barrier that affects police effectiveness and performance in conducting investigations, arrest and prosecution of cases reported by minorities is that they do not meet the “Minimum Evidentiary Threshold” that is required. This refers to evidence sufficient to charge a person with an offense so as to be sure of a reasonable likelihood of conviction in court.

In addition, the office of the Director of Public Prosecution (DPP) relies on the police officer to present the evidence, plaintiff and witnesses so that a case can proceed. Thus, a court prosecutor cannot take up a case if he/she feels that the case cannot get a judgement.

Based on the above, police officers face numerous challenges in the follow up of cases reported by minorities. Some examples were highlighted as follows:

Before an arrest is done, the complainant has to give adequate information and provide necessary evidence. Many female complainants usually shy away from providing full information, especially in cases of sexual violence.

A number of sex workers come to report cases at the police station while under the influence of alcohol. After investigations are done and arrests made, the complainants rarely come back to provide evidence such as the doctor’s report. Police officers are therefore left with no choice but to release the suspect as they cannot forward the case to the courts.

To add on, police officers cannot compel witnesses to provide evidence. Where witnesses fail to cooperate with the police and give a statement, police officers are left with no choice but to abandon the case.

In other instances, investigations are duly carried out, evidence collected and the cases are forwarded to court. The complainant however then fails to show up for the court hearings. As a result, the court is forced to discard the case. Such incidences are common for cases that have been filled by sex workers, where the suspect pays some monetary settlement to the complainant, who then does not show up in court. This is also common in defilement cases where parents are given some money and then they shift from their places of residence. The court is then forced to release the suspect. Such occurrences normally reflect badly on the performance of police officers. They also demoralize the police officers, and as a result, the police officers shy off from taking on similar cases in future.
LEVEL OF KNOWLEDGE OF MINORITY GROUPS IN THE AREAS OF MECHANISMS FOR REDRESS

Many minority groups interviewed separately and in groups, reported that their members had little or no knowledge as to the avenues that were available to them to report any complaints regarding the lack of, or poor services received from the Kenya Police Service.

To begin with, very few respondents were aware that they could make complaints about a police officer or policing operations at the office of the Independent Police Oversight Authority (IPOA).

The few who were aware of IPOA lacked confidence in the police complaints system. This was largely attributed to fears of corruption and impunity by senior police officers. It was generally agreed that since most participants had not seen IPOA work; they lacked faith in how the institution would handle complaints.

In addition, participants were also apprehensive as to the number of days that investigations for police misconduct would take. The perception that IPOA would delay in handling complaints acted as a big deterrent towards minorities’ willingness to report complaints at IPOA.

Case Study

On 10th April 2014, Joseph Maina, a street hawker, was selling socks around Khoja roundabout. A County government van full of askaris pounced on them. As he attempted to flee, he heard two gunshots followed by a sharp pain in his body before he passed out.

His medical examination report filed at the Kenya Police on 10th November 2014 and referenced OB 69 indicates that the bullet fired at him by a police officer “entered his body from the back through his shoulder blade exiting through his left orbital cavity”. The bullet shattered his eyeball, leaving him blind on one eye. This information was filed seven months after he had been taken round in circles by police.

Joseph Maina filed a complaint at the Independent Policing Oversight Authority (IPOA). A signed note number IPOA/CMU/1003/2014 shows that it received Mr Maina’s case on September 16th last year. As of November 2015, the authority is yet to be establish which officer shot him. IPOA, for its part, says it is still working on the case.
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Secondly, most respondents were not aware of that the Office of the Ombudsman existed, as well as what the functions of this office were. As a result, very few participants had ever considered this option of seeking redress. Those who had heard of this office were not aware where the physical offices of the Ombudsman were located, both in Nairobi and Mombasa Counties.

When asked where and to whom they would report cases of misconduct, a majority of the participants preferred to seek the intervention of Human Rights Based Organizations whenever they have a complaint about a specific case whose investigation has stalled. The organizations that respondents reached out to for assistance include the Kenya Human Rights Commission (KHRC), Haki Africa and Coast Women in Development (CWID). These organizations have been active in following up of cases and ensuring that alleged suspects of human rights violations against minority group members are brought to book.

Few participants mentioned that they would report complaints to officers within the National Police Service such as the OCS, OCPD, and the officer in charge. This was largely attributed to the negative experience

Summary
In general, some of the shared problems faced by minorities residing in Nairobi and Mombasa Counties that emerged from focus group discussions (FGDs) include:

- A hostile relationship exists between minorities and police officers. This makes it difficult for minorities to report cases to the police as well as to cooperate with the police in the investigation of cases.
- Lack of access to justice as a result of delayed investigations and arrest by the police.
- The lack of effective participation in the making of decisions regarding access to justice limits minorities from being able to influence decisions that affect their access to justice.

Conclusion
Many minorities interviewed separately and in groups, reported that their interaction with the police across both counties has been a hostile one in majority of the cases. They felt that the police deliberately harass them in an attempt to gain financially in form of bribes, as well as delay in handling of their cases.

Equally, some minority members accused the police of enforcing the rights of wealthy and influential individuals over those of the members of minority groups who are often not financially well off. This is especially the case in gender based violence, sexual offences and defilement cases.
Access to justice is further inhibited in areas where Village Elders (Wazee wa Mtaa) are consulted first whenever an offence has occurred. These elders, whose opinion is well respected in the community, have the onus to decide whether a specific case should be forwarded to the police or not. In cases of gender based violence and defilement, sometimes the elders may opt to protect the identity of the culprit by choosing to solve the case at the family level.

While minorities in Kenya are increasingly recognized by state from an identity perspective, this recognition has yet to translate into real respect. This is clear from the limited level of participation of minorities in decision-making and holding the relevant offices to account in relation to matters that affect access to justice. This means that minorities have to contend with dominant groups within formal decision-making bodies where they have limited or no representation. For example, Sex Workers in Mombasa County applied to get representation in the Court Users Committee. They did not receive any feedback on their application.

The lack of minorities’ participation in public policy on matters to do with access to justice translates into weak voice in public decision-making, thereby contributing to an increased sense of exclusion.
CHAPTER 5

RECOMMENDATIONS
Based on the findings of this baseline survey, the following recommendations are proposed:

i) State Institutions

_The Kenya Police Service_
Whereas it has been acknowledged that great improvement has been seen in the way police officers engage with minorities (on women, youth, people living with disability, Muslims and Lesbians, Gays, bisexuals, Transgender, Intersexual(LGBTIQ)), there is still room for improvement.

- Police officers still need to be trained on minority rights and the factors of exclusion that affect minorities. Such efforts should be introduced as part of the officers’ training curriculum at Kiganjo Police Training Institute. This will address the challenge that is faced when a police officer who has undergone training on the same from Human Rights Based NGOs is transferred to another police station. In addition, on the job capacity building on minority rights needs to be offered and reviewed regularly.

- Relations between the police and minority communities may be strengthened by partnership agreements. Such partnerships could be forged between local and national police, minority CSOs and minority community representatives. Such partnerships would serve to improve relations between the police and minorities, as well as strengthen community policing efforts. Engagement could be mainstreamed throughout law enforcement institutions at all levels.

- Efforts should be made to ensure that police stations are friendly to PWDs. All police stations should have ramps to enable those who are crippled to access the stations. All police stations should also have sign interpreters to assist persons that are deaf and dumb to record statements.

- Arbitrary and discriminatory profiling of Muslims should cease and they be treated with equality as other citizens and also police stations should cater for specific needs of arrested Muslims during the period of Ramadhan by following the fasting timelines when providing meals.
Due to the number of people being arrested with children, the national police service should establish children cells for there have been reported cases where male teenagers have been remanded in women cells.

There is need to professionalize documentation and data information and update of police on new laws and procedures.

Police should enforce the law and conduct investigations within the framework of rule of law and human rights.

For the work of the police to be fruitful in working to improve access to justice for minority groups we recommend close working relationship and cooperation with the following institutions;

*The Independent Police Oversight Authority (IPOA)*

- Conduct outreach to the general public and to civil society groups, including those that represent marginalized groups, to provide them with information about how victims of police abuses can file complaints with IPOA or with the Internal Affairs Unit.

- The Independent Police Oversight Authority (IPOA) should make deliberate efforts to expedite the investigations of complaints that have been filed at their offices. The ability of such a system to deal with Police complaints in a swift manner is crucial for maintaining trust and confidence in the rule of law. The reports of such cases should also be made public. This will build confidence in the institution and encourage minority group members to report complaints on police to the institution.

- The Independent Police Oversight Authority should push the National Police Service commission to allocate all police station with adequate resources to cater for the welfare of the police in all police stations

- The Independent Police Oversight Authority should facilitate recruitment of specialized officers in all police stations to cater for various areas of policing and judicial procedures, and also the transfers should address the existing gaps and the ones the transfers create.

- The Independent Police Oversight Authority should create a system for police career and profession development as well as standardization of allowances for field officers.
Independent Commissions

- The Kenya National Commission on Human Rights should closely monitor instances of violence and discrimination against minorities, including by law enforcement officers. In addition, they should make recommendations to county governments and to the Kenya Police service to improve compliance with national and international law with regard to minority rights, and monitor their adherence to those laws.

- The National Gender and Equality Commission in accordance with section 8 of the National Gender and Equality Commission Act 2011 should conduct an audit of the status of minority groups and make policy recommendations to the government on ending discrimination against these groups. In addition, they should also ensure that Kenya complies with its international treaty obligations with regard to the rights of minorities.

Office of the Ombudsman

- Many participants did not have knowledge of the existence of the office of the Ombudsman. As a result, this is an option that minority groups have not explored where they have been denied adequate services at police stations, or any other government institutions. This calls for more sensitization programmes by the office of the Ombudsman on its mandate and activities.

Kenya Vision 2030

- The Kenyan government is urged to re-align its Vision 2030 to incorporate specific safeguards for minority groups to be able to contribute towards nation building and sustainable development. The exclusion of minorities from the mainstream economic opportunities and participation in political life is emerging as the most significant threat to the survival of minority communities across the country.

ii) Civil Society

- Development partners and civil society must urgently roll out a comprehensive civic education programme to increase the awareness of minority communities on their right to access to justice. In particular, emphasis should be given to empowering minority groups on the avenues available to them for redress whenever they are unable to access justice.

- Minority groups also lack information on avenues for participation available for them to hold different offices to account where their right to access to justice is concerned. This civic education must also target public servants, particularly the police, who are instructed by the Constitution to address the needs of vulnerable groups.
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- As part of the ongoing police vetting process, civil society organizations should sensitize minority groups with information about how victims of human rights abuses can come forward with information regarding police officers responsible for such abuses.

- Civil society organizations can also launch advocacy campaigns to push for the following:
  - Inclusion of representatives of minority groups in various committees such as the Police Reform Working Group and Court Users Committees.
  - Creation of an oversight authority on the conduct of County askaris.
  - The repeal of Sections 162, 163, and 165 of the Penal Code. This is due to the fact that it is not clear what constitutes sexual acts that are “against the order of nature.” This gap in definition can therefore be applied unfairly to discriminate members of the LGBTIQ community.
  - Prohibition of police officers from ordering, participating in, or carrying out forensic anal examinations on persons suspected of same-sex conduct because such tests are medically unsound and degrading.

iii) Parliament of Kenya

- The Senate Standing Committee on Legal Affairs and Human Rights should work with corresponding County Assembly committees to review laws passed by counties to ensure that they conform to constitutional guarantees of privacy, nondiscrimination, and equal protection of the law.

- The parliament of Kenya is also urged to:
  - Repeal Sections 162, 163, and 165 of the Kenya Penal Code, which criminalize same-sex relations between consenting adults.
  - Repeal Section 153 and 154 of the Kenya Penal Code, which are used to justify the arrest of sex workers.

iv) County Governments

- There is need to set a minimum threshold on the qualifications of who can join the county law enforcement section of the County. Once recruited, the officers need to be taken through training on human rights and access to justice, particularly on matters that concern minorities.

- The county law enforcement officers should be clearly identifiable by wearing uniforms and have identification badges to promote accountability of their actions.

- There is need for county governments to conduct sensitization programmes on the role and the mandate of county law enforcement officers. This will address the confusion that
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currently exists among minorities on the difference between the Kenya Police officers and County askaris.

- The county law enforcement section should place an officer in each police station that serves the county so as to handle charge sheets and bails of persons arrested by the county law enforcement officers and booked into a police station.

- County Governments should establish Oversight Authorities whose mandate would be to monitor the County law enforcement officers so as to ensure that they are not violating the rights of minorities.

- In addition, they need to establish county-level complaint mechanisms for residents to report and seek recourse for violations by county law enforcement officials, and widely publicize the existence of such complaint mechanisms. Such mechanisms should be made open to all complainants including minorities.

- County Assemblies should:
  - Review all county bylaws to ensure that they conform to constitutional guarantees of privacy, non-discrimination, and equal protection of all minorities by the law.
  - Repeal county by-laws that directly or indirectly criminalize sex work between consenting adults (including section 19(m) and 19(n) of the Mombasa County by-laws) or same-sex conduct.

v) The Media

- The media discourse on minorities has focused solely on gender concerns, while failing to highlight other minority groups that exist within the country. There is need to highlight challenges faced by minority groups in accessing justice with a view to spur public debate on the same. This will provide a basis of accountability of public offices in ensuring that minority groups are able to access justice. Such discourse will also serve to create awareness on the avenues of participation, feedback and redress that are available to minority groups where access to justice is concerned.

- Lastly, the media can interrogate the possibility that minority rights discourse be co-opted to serve the interests of dominant political actors. This will serve to increase responsiveness to minority concerns.