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# GOOD PRACTICES

FOR ENHANCING

# ACCESS TO JUSTICE

IN PREVENTING AND COUNTERING  
VIOLENT EXTREMISM







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# **GOOD PRACTICES**

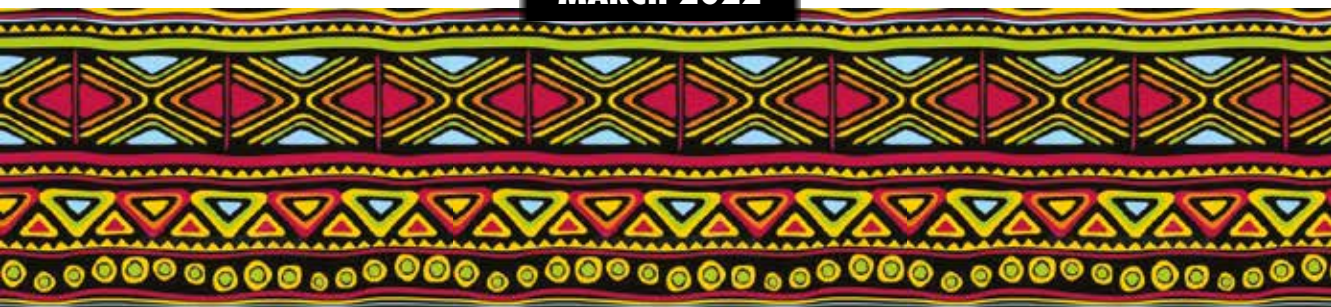
FOR ENHANCING

# **ACCESS TO JUSTICE**

IN PREVENTING AND COUNTERING  
VIOLENT EXTREMISM

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**MARCH 2022**







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Pwani Social Justice Centres  
Working Group





## FOREWORD

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Kenya's sojourn in the fight against terrorism is a long story, but suffice it to say that as a country we have learnt through our successes and failures. Part of our adaptation has been to embrace the whole of government and the whole of society approach. Thus, our current efforts at prevention and countering of violent extremism are a repertoire that brings together government agencies, civil society and the community in a wonderful cocktail of sorts. This blend, spearheaded by the National Counter Terrorism Centre (NCTC) has assembled investigative, prosecutorial and adjudicative agencies to a strategic conversation culminating in living customized blue prints as per the needs of each department.

The National Counter Terrorism Centre has been working closely with HAKI Africa and the Office of the Director of Public Prosecutions (ODPP) under the CREATE project to give the preventive and counter violent extremism measures the much needed shot in the arm especially in the Coast region. Through the project, various justice actors have rallied together to address the bottlenecks that exist in the justice system and ensure communities and individuals at risk of violent extremism have an avenue of addressing their concerns. These efforts have boosted faith in our justice system and countered claims of injustice seen as major push factor to violent extremism.

Any democratic society governed by the rule of law, as Kenya is, understands that respect for human rights is a peremptory tenet that ensures that justice is not only done but also seen to be done. The National Counter Terrorism Centre embraces respect for human rights as an integral part of preventing and countering radicalization within communities. By advancing a humanistic approach in delivery of justice, communities are encouraged to join and own government and civil society efforts, leading to resilience against violent extremism in addition to propagating nationhood and patriotic values.

In the implementation of the CREATE project, communities and justice actors shared platforms, experiences and developed empathetic practices that would eventually support access to justice, culminating into closer working relationships. These practices further set our nation apart as a leader in generating organic solutions to our problems, and in so doing, makes Kenya a pace setter in espousing standards that are people responsive, effective and based on the rule of law to counter the ever-morphing threat of terrorism.

This book captures these good practices that if applied across the various players in the justice spectrum, will add great value in the fight against terrorism. As the National Counter Terrorism Centre, we are confident that their application will go a long way to help the country win the fight against terror. We commend our partners HAKI Africa and the ODPP for documenting these good practices. With this novel posture, we are firmly and surely on our way to decimating the breeding pools for violent extremism.

*Dr Rosa Nyawira*

**Director**

**National Counter Terrorism Center (NCTC)**



Executive Director HAKI Africa, Hussein Khalid (front left) and the Director of Public Prosecutions, Noordin Haji during a press brief in Mombasa (front right).

## ACKNOWLEDGMENT

The Office of the Director of Public Prosecutions (ODPP) and HAKI Africa are first and foremost grateful to the Almighty God for the honour to serve Kenyans in the dispensation of justice. It is indeed a great privilege to be working for and serving Kenyans. Further, we thank God for the opportunity to write this journal and share our experiences in delivering our mandates and ensuring Kenyans have improved access to justice as part of efforts to prevent and counter violent extremism in the country.

We also want to thank the government and its justice institutions who have been excellent partners and forthcoming with information that has greatly informed the content of this publication. Through their hard work and desire to give the best service to Kenyans, they have derived innovative and effective practices that will undoubtedly enhance access to justice and rule of law in the country. The various institutions that have worked together in this endeavor include the following:

- Office of the Director of Public Prosecutions
- The Judiciary
- Attorney General's Office
- National Police Service
- Kenya Prisons Service
- Probation and Aftercare Department
- Kenya Wildlife Service
- Kenya National Commission on Human Rights
- Independent Police Oversight Authority (IPOA)
- Witness Protection Agency

The Office of the Director of Public Prosecutions (ODPP) and HAKI Africa also express their gratitude to civil society partners, particularly social justice centres, who have worked hand in hand with justice actors to develop this lessons. Civil society has been instrumental in bridging the gap between justice institutions and communities and promoting trust between the two. Without civil society involvement, it would have been challenging to get communities to freely share information. We specifically note and appreciate the following partners:

- Sisters for Justice (S4J) – Mombasa Social Justice Centre
- Uhaki na Usawa - Changamwe Social Justice Centre
- Institute for Land Governance and Human Rights (INLAGHR) - Kilifi Social Justice Centre
- Malindi Community Human Rights Centre

Our gratitude also goes to communities we have engaged and Kenyans in general for trusting the team with information and sharing their experiences with the justice system. Our development partners also deserve special recognition for supporting our work. Without the financial support, it would have been difficult to achieve this publication.

To all, we say ahsanteni sana!

*Noordin Haji*

**Director**

**Office of the Director of Public Prosecutions**

*Hussein Khalid*

**Executive Director**

**HAKI Africa**

*Section 1.0*

# **BACKGROUND**

**BUILDING FAITH IN THE JUSTICE SYSTEM  
AS A TOOL FOR PREVENTING AND  
COUNTERING VIOLENT EXTREMISM**



Members of the Coast Social Justice Centers Eric Mgoja (left), Simon Kazungu (centre) and Naila Abdalla (right) in Mombasa during a peaceful demonstration.

In the recent past, criminal justice issues have come to the fore in the country with the rise of crime in both urban and rural areas. Criminal activities blamed on armed groups as well as extra judicial killings blamed on the police have been on the increase leading to members of the public calling for action to tame the situation. Coupled with the ever-present threat of terrorism and violent extremism in different parts of Kenya, the state of security has come under much attention from different actors. There has been demand for more action from the justice system to address the deteriorating state of security in the country and ensure improved access to justice and rule of law for and by all.

In addressing justice matters, criminal justice actors including the Office of the Director of Public Prosecutions (ODPP), Judiciary, Director of Criminal Investigations and Human Rights Groups have been on the receiving end with the public pointing fingers at them for not following up to ensure justice is done. Conversely, criminal justice actors have also been accusing each other for the stalemate in the sector. Police blame courts for releasing suspects. Courts blame the ODPP for not presenting water-tight cases. The ODPP blames the DCI for not doing proper investigations. Human rights groups blame police for killings and the police blame human rights groups for what they consider to be siding with criminals and bad elements in society.

In the confusion, criminal elements, particularly violent extremists, have taken advantage of the situation to portray the justice system as a failed structure that cannot deliver much needed justice to communities, particularly those perceived to be marginalized and discriminated. They have used this rhetoric to recruit unsuspecting youth into their ranks by hoodwinking them that justice will be delivered through their criminal ideologies and terror activities. It is as a result of this that for the past decade or so, hundreds of youth from Kenya and in particular the Coast and North Eastern have been swayed into joining Al Shabaab and other terror groups. Contributing to high levels of radicalization and violent extremism in the Kenyan society.



This situation called for urgent need to bring the criminal justice sector and actors to work together to address the existent bottlenecks that clog the system and make justice appear elusive to many Kenyans, particularly those in the Coast and North Eastern regions. Making justice accessible would directly address a key contributor to violent extremism and radicalisation. Based on this background, a concept was mooted to implement a pilot project in Mombasa and Kilifi counties to enhance enjoyment of human rights and access to justice with the sole of purpose of building faith in the justice system and countering the narrative that it is impossible or hard to get justice within the formal justice system in Kenya.

*Section 2.0*

# **INTRODUCTION**

**TO THE ACCESS TO JUSTICE PROJECT**

**BUILDING INDIVIDUALS' AND  
COMMUNITIES' RESILIENCE TO VIOLENT  
EXTREMISM**



Community members sharing views during a meeting by HAKI Africa in Kilifi for families whose kins had been forcefully disappeared.

## 2.0

Article 159 (2) (a) of the Constitution provides that “justice shall be done to all, irrespective of status”. This constitutional provision requires that all persons be guaranteed equality and fairness before the law regardless of their social, economic or political affiliation. With the current situation in the country, Kenyans are complaining that all is not well within the corridors of justice. It is incumbent therefore upon the criminal justice sector to work together and with citizens to safeguard the Constitution and ensure all persons access and acquire justice. Article 3 (1) emphasizes the need to defend the Constitution and states that “every person has an obligation to respect and uphold and defend this Constitution”.

It is therefore apparent that as Kenyans, we have a right and obligation to uphold justice. It is with this realization that concerted efforts are being made to bring key actors together to work towards the realization of a just society anchored on constitutional values and respect for human rights and rule of law by all. The Access to Justice Project, jointly implemented by the Office of the Director of Public Prosecutions (ODPP) and HAKI Africa, is an effort towards this direction. Specifically, the project seeks to build faith in the justice system and dissuade individuals at risk of violent extremism from engaging in terror activities in the guise of pursuing justice. The project is countering a potent ideology that is used to recruit youth into terror groups.

The logic behind the project is that if youth have faith in and can access the justice system, then they will not be easily convinced to join terror groups as they will have their issues addressed amicably using the formal system. With rising cases of killings, enforced disappearances, torture and other human rights violations, violent extremists have used these common community grievances to recruit unsuspecting youth to join their terror cells. Duping the youth that doing so will be liberating themselves from oppression. Once they join the terror groups, they are then initiated into criminal acts that not only go against the law but also their faiths.



Having in place a formal system, where individuals at risk of violent extremism can access and get the justice they seek, will directly counter the narrative being used by recruiters. Making justice accessible therefore will contribute to the prevention and countering violent extremism. It is on this premise that the Access to Justice project is anchored. Specifically it seeks to address the obvious issues that makes justice appear inaccessible to the common citizen. These include issues such as addressing police harassment/torture, fair and open investigations, decision to charge, legal representation and prolonged court hearings. Making these services accessible contributed to building faith in the justice system and resilience of communities, particularly youth, to violent extremism.

Through the Office of the Director of Public Prosecutions (ODPP) and HAKI Africa, the pilot project mobilized all justice actors in the counties of Mombasa and Kilifi to work together towards making justice accessible. Institutions involved included the Judiciary, Probation Department, National Police Service (including the Anti Terror Police Unit (ATPU)), IPOA, Kenya Prisons Service, among others. Jointly, the stakeholders agreed on the key issues to be addressed in order to make justice accessible to citizens particularly those vulnerable to violent extremism. Besides addressing the challenges between justice actors themselves, specific activities were also designed to engage the public and reach out to them to ease their access to the justice institutions.

## *Section 3.0*

# **LEARNING**

## **FROM THE PROJECT**

# **DRAWING GOOD PRACTICES FOR ENHANCING ACCESS TO JUSTICE IN PREVENTING AND COUNTERING VIOLENT EXTREMISM**



Inmates and remandees at Kaloleni Prison during a legal aid clinic conducted by HAKI Africa, ODPP and partner social justice centers.

The pilot project was implemented during the period February 2019 to March 2022 in the counties of Mombasa and Kilifi. From the implementation of the pilot Access to Justice Project, the Office of the Director of Public Prosecutions (ODPP) and HAKI Africa constantly monitored and evaluated the activities that were undertaken vis a vis the impact they were having on making justice accessible thus reduce vulnerability of individuals at risk of violent extremism. Through application of the human rights based approach to preventing and countering violent extremism, specific activities were jointly designed by justice stakeholders that targeted justice actors as well as individuals and communities at risk of radicalisation. The overall objective of all activities was to make it easier to dispense and receive justice to prevent and counter violent extremism in the project counties.

There were activities that were specific to support justice actors to dispense justice. Key among these activities were Court Users Committee (CUC) Meetings and Probation Department Trainings. The CUC meetings offered an opportunity for justice actors to regularly meet and address the bottlenecks that impede delivery of justice such as poor investigations, insufficient evidence, torture of suspects and prolonged court cases. The meetings were also crucial to deliberate on challenges justice actors faced in addressing VE cases such as disabling legal frame works, interference of judiciary work and insufficient evidence. The probation department trainings enabled probation officers, who are responsible for community related issues including integration on behalf of the justice system, to understand the manifestation of violent extremism in communities and the human rights based approach to addressing violent extremism.

Some of the VE risks associated with people who have been released from prison include being killed by their communities/state, ostracised by the society, isolated by their families and/or forcefully disappeared. Activities that targeted communities mostly focused on making the public understand how to access the justice actors and the processes involved while seeking justice. The activities included providing support for community social justice centres such as linking them with criminal justice actors and legal aid clinics . The social justice centres were crucial in establishing resource free and accessible centres.



Through the implemented activities of the project, important lessons were drawn and documented that had substantive impact on building faith in the justice system by individuals at risk of violent extremism thus reduce their vulnerability. The lessons drawn also include those that assisted justice actors to better perform their duties of serving the public thus delivering on their mandates. While there were many other practices that contributed to access to justice by individuals at risk of violent extremism, the project concentrated on the most prominent lessons that had the highest impact. The ten lessons include those to be done within justice institutions and others to be done collectively with other actors and safe spaces where individuals at risk of violent extremism could approach for support and social/legal advice. The centres became the bridge between justice actors and communities. The legal aid clinics offered a platform for engagement and open discussions on sensitive issues between justice actors and individuals/communities at risk of violent extremism.

## *Section 4.0*

# **GOOD PRACTICES**

## **ENHANCING ACCESS TO JUSTICE IN PREVENTING AND COUNTERING VIOLENT EXTREMISM**

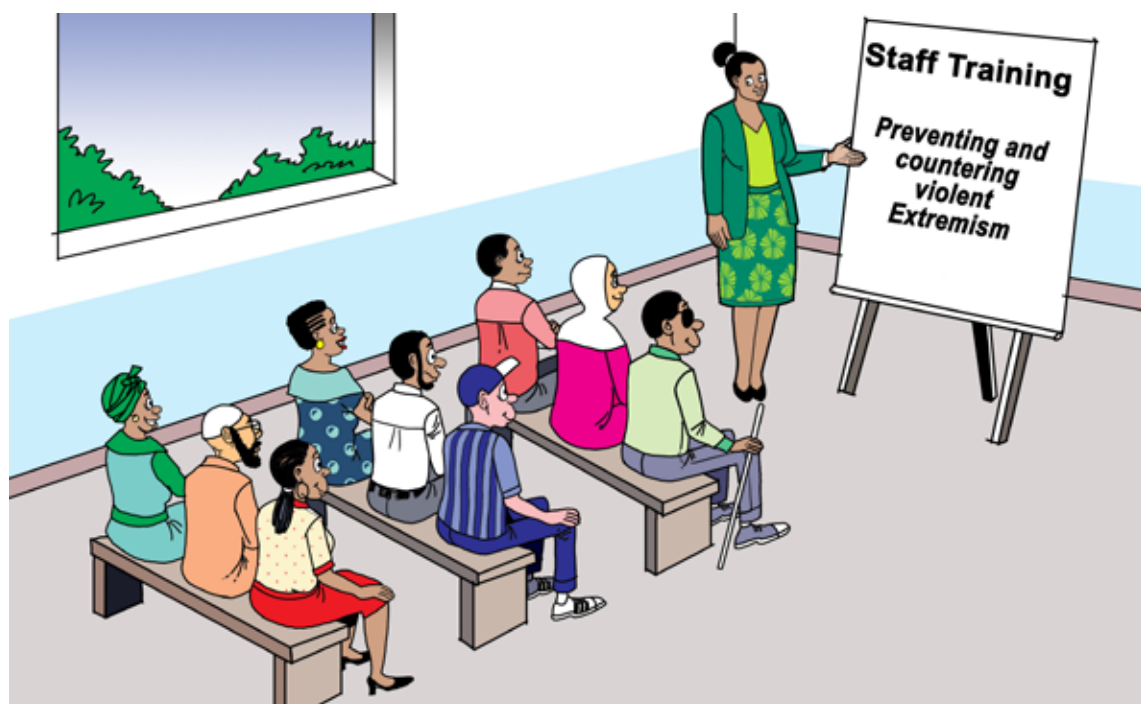


Her Excellency the British High Commissioner, Jane Marriot (centre) and the two conveners of the Malindi Community Human Rights Center, Barke Bujra (left) and Victor Kaudu (right) during the official launch of the human rights centre in Malindi, Kilifi County.

## 4.0

Through the implemented activities of the project, important lessons were drawn and documented that had substantive impact on building faith in the justice system by individuals at risk of violent extremism thus reduce their vulnerability. The lessons drawn also include those that assisted justice actors to better perform their duties of serving the public thus delivering on their mandates. These good practices have been compiled from the experiences of justice actors and institutions during the implementation of the Access to Justice Project by the Office of the Director of Public Prosecutions (ODPP) and HAKI Africa. Where they have been applied, they have contributed to the efficacy of justice institutions in addressing violent extremism. Below is a compilation of the practices:

### GOOD PRACTICE #1: TRAINING ALL STAFF ON PREVENTING AND COUNTERING VIOLENT EXTREMISM



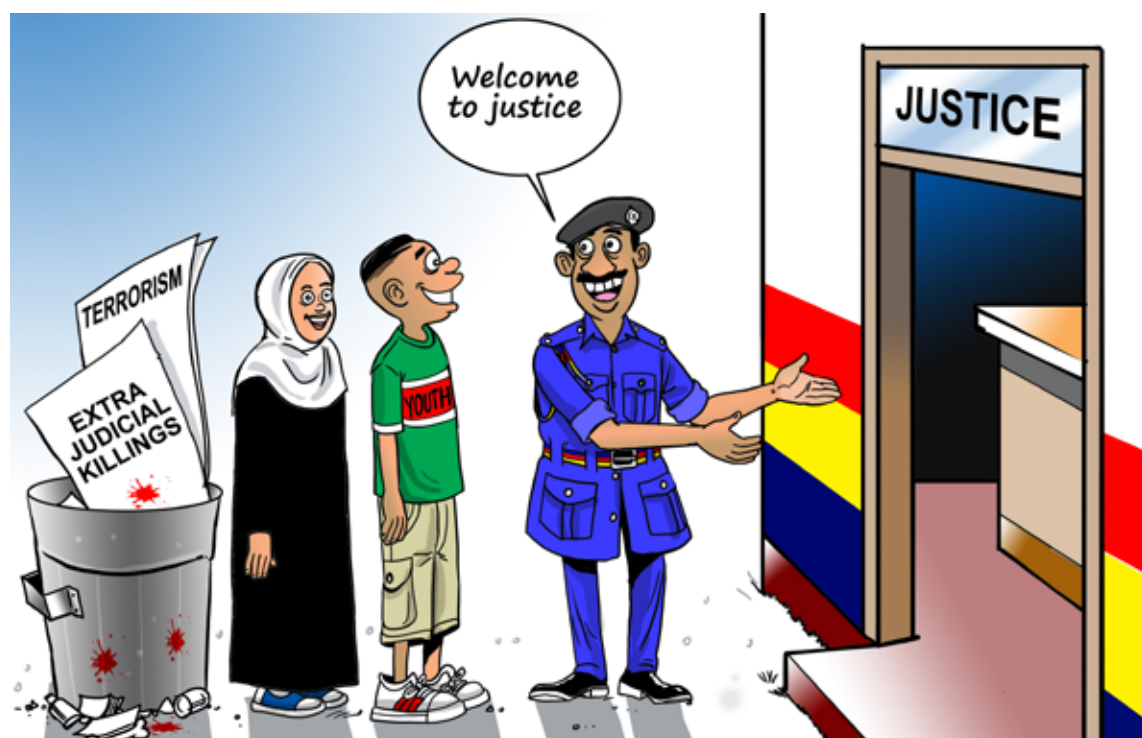
Justice institutions should identify modalities of introducing in house trainings to their staff on preventing and countering violent extremism. Experts can be sourced from outside to train the staff and let them know how violent extremism manifests itself in society and how it is intertwined with their work. Local experiences can be shared where individuals can come to the office and give talks on their encounters with violent extremism. The in house trainings can be in the form of an afternoon or a 2-3 hours in the morning where staff come together to listen to an expert or victim. This will help expand their knowledge base on how to prevent and counter violent extremism.

**Recommendation:** Heads of justice institutions and agencies should introduce in house trainings on preventing and countering violent extremism. Experts should be contacted to talk to staff about how they can contribute to preventing and countering violent extremism in society through their work.

## GOOD PRACTICE #2: IDENTIFY AND APPOINT A FOCAL PERSON ON PREVENTING AND COUNTERING VIOLENT EXTREMISM

In every justice institution, there should be a focal and or lead person who will spearhead efforts of the institution around preventing and countering violent extremism. This person should be given the opportunity to attend trainings and build their capacity on the subject. The same person should lead the team on cases around violent extremism that come to the attention of the institution.

The focal person should also play the role of raising awareness around preventing and countering violent extremism among colleagues and support the institution's engagement with experts and authorities on the subject matter. The person should be a resource to the justice institution around preventing and countering violent extremism.



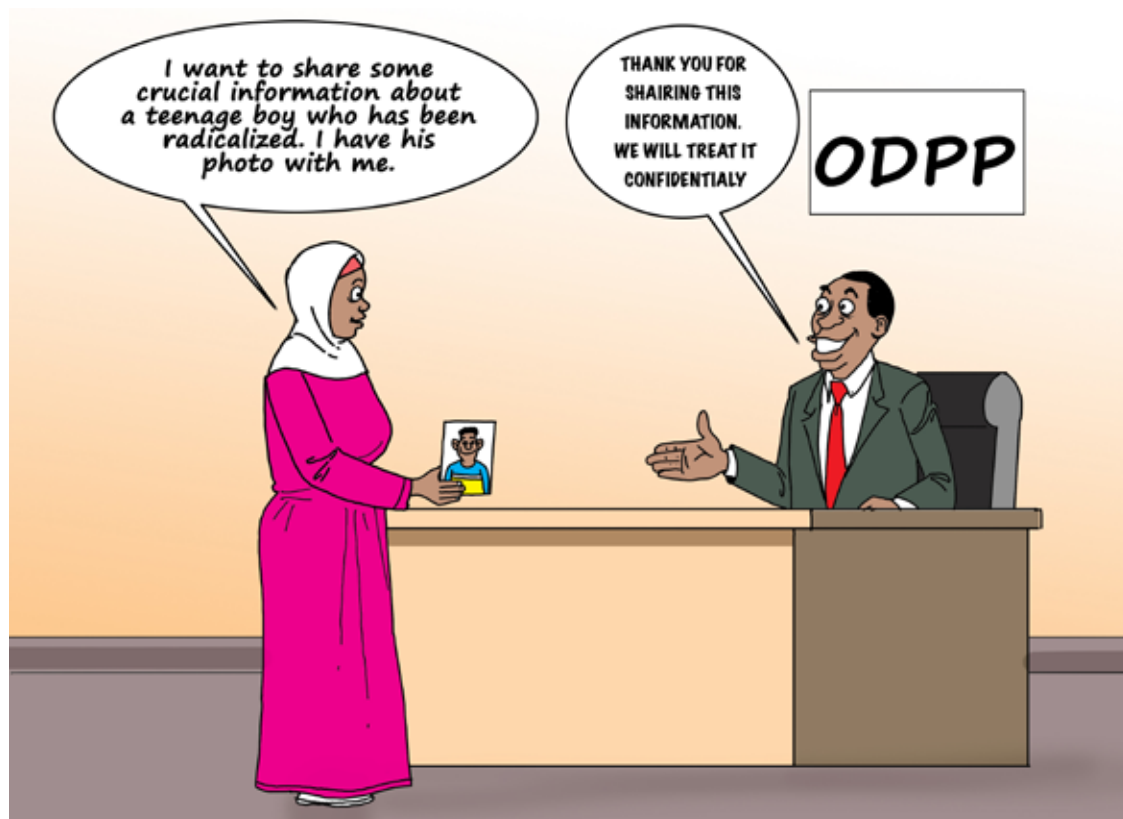
**Recommendation:** Every work station for all justice actors should have a focal person on preventing and countering violent extremism. This person will take lead in all matters related to the subject and also mobilise colleagues to understand issues therein and how to best handle them within their institution.

### GOOD PRACTICE #3: SET UP RESOURCE CENTRES WITHIN JUSTICE ACTORS' OFFICES ON PREVENTING AND COUNTERING VIOLENT EXTREMISM



Justice actors are vital in efforts to prevent and counter violent extremism in the country. As a result, staff who work in justice institutions must be regularly updated on information and news about violent extremism. To do so, there is need to have resource centres in every office where latest update on the issue can be found and staff can regularly update themselves with the current information. The resource centres can be simple such as a shelf on one corner of a library or work place which will stock laws, policies, articles and news items on preventing and countering violent extremism. The resource centres should be accessible to all and where possible, also accessible to clients and partners who work with the justice institutions.

**Recommendation:** At each justice institution work station, the focal persons should ensure there is a resource centre where material on preventing and countering violent extremism can be found for staff to read and abreast themselves on the subject. Relevant statutes such as the Prevention of Terrorism Act, major court decisions, media articles as well as literature should be made available.

**GOOD PRACTICE #4: HAVE AN OPEN DOOR POLICY FOR PUBLIC TO SURRENDER VIOLENT**

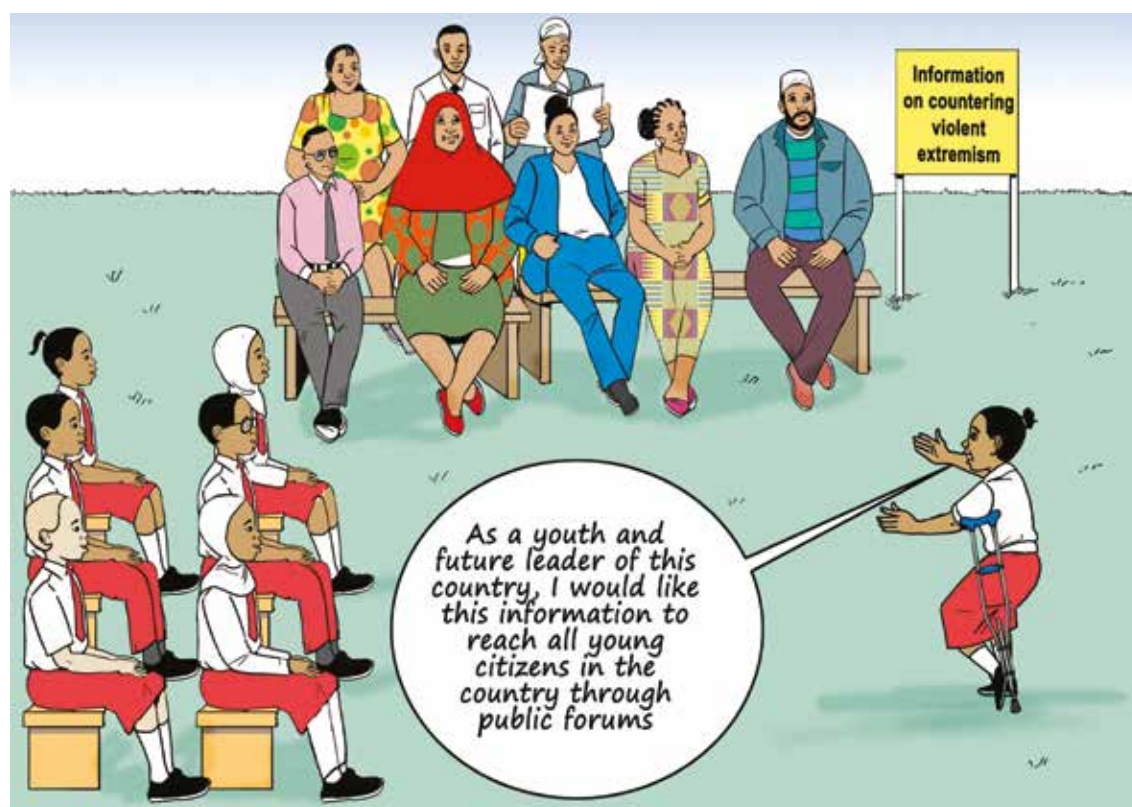
Justice actors, particularly those engaged in the pre trial process including the police and Office of the Director of Public Prosecutions (ODPP), should adopt an open door policy where members of the public can walk into their offices anytime to share information related to violent extremism. This open door policy should be publicly announced and the public assured of confidentiality. The justice actors should also encourage those wishing to surrender to do so with the assurance that their rights will be guaranteed and justice upheld. The open door policy should be applied at all justice institutions and the public advised to approach the institution they are most comfortable and have trust with.

**Recommendation:** Heads of justice institutions including the police, Independent Police Oversight Authority (IPOA), ODPP and others should announce an open door policy and call on anyone with any information related to violent extremism to reach out to them. Assurances of confidentiality should be made.

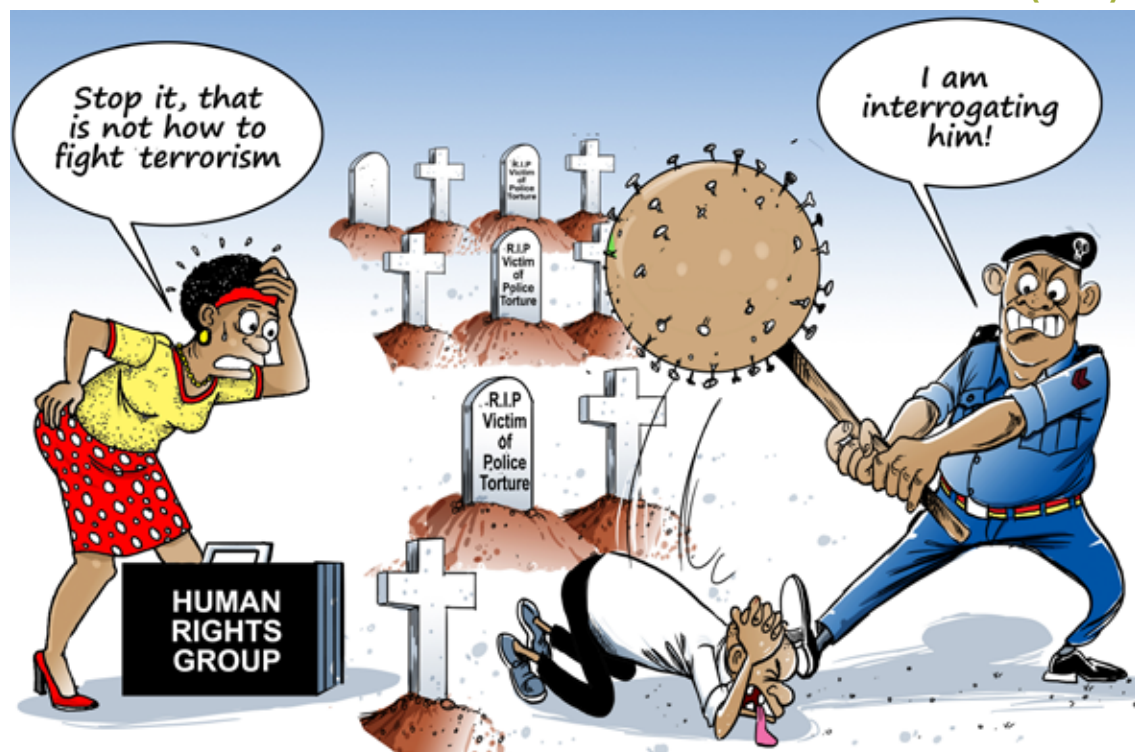
## GOOD PRACTICE #5: COME UP WITH SERVICE CHARTERS ON HOW TO DEAL WITH VIOLENT EXTREMISM CASES

Every justice institution should take time to come up with a service charter that will stipulate how cases related to violent extremism will be dealt. The charter should be made public and deliberate efforts made to ensure it is widely circulated among the public. Awareness of the charter will ensure those dealing with the justice institutions have a clear understanding of the processes involved and what to expect with their cases. The charter should include issues related to time lines, responsible officers, relevant laws applied and if possible give clear examples. Having the charter and popularizing it among the public and also justice actors will clear the air on any ambiguities and will promote trust and understanding of each justice institution's work.

**Recommendation:** All justice institutions should embark on developing service charters on violent extremism cases and regularly update them based on new knowledge and experiences encountered. Efforts should be made to produce simplified versions for distribution and posting on public spaces particularly within the justice institutions.



## GOOD PRACTICE #6: APPLY THE HUMAN RIGHTS BASED APPROACH (HRBA) TO PREVENTING AND COUNTERING VIOLENT EXTREMISM (PCVE)



Over the years and in preventing and countering violent extremism, states have worked to ensure they counter extremism and radicalisation well in the hope of protecting their citizens from harm. However, there are many cases where counter terror activities have caused harm and contributed to gross human rights abuses of individuals and communities thus further driving many into radicalisation. To guard against such a situation, there is need for justice actors, including security agencies, to urgently familiarise themselves with the rights based approach to preventing and countering violent extremism. Each actor, particularly the police, should ensure they observe human rights of suspects guaranteed in the Constitution when doing their work.

**Recommendation:** Justice institutions, particularly police and judiciary should incorporate human rights based approaches in the trainings of recruits, new staff and existing personnel. At all times, heads of justice institutions must impress on their staff the need to ensure they adhere to human rights guaranteed in the Constitution.

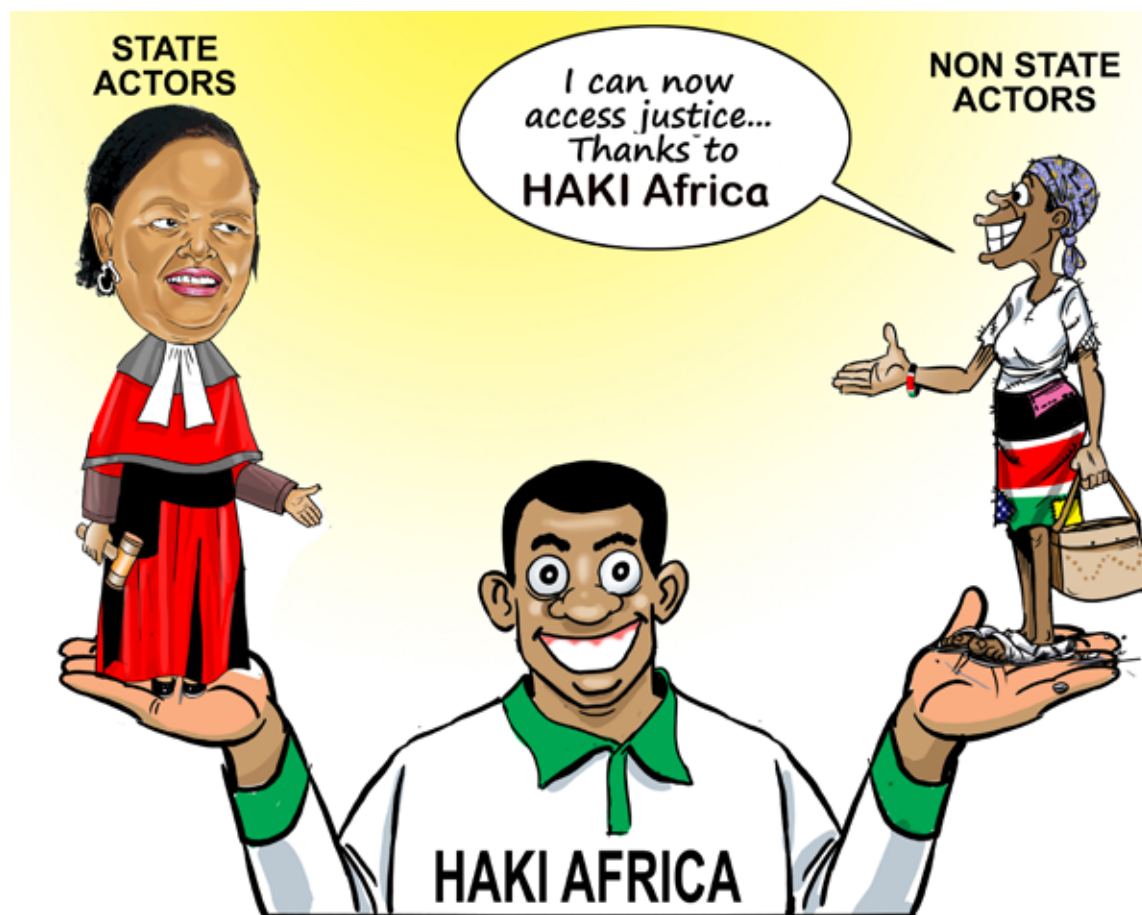
## GOOD PRACTICE #7: PROMOTE INTER AGENCY PARTNERSHIP AND COLLABORATION ON PREVENTING AND COUNTERING VIOLENT EXTREMISM

Justice actors should make deliberate efforts to partner and collaborate with each other on matters related to preventing and countering violent extremism. Sharing of information with each other, particularly on cases before the various actors should be encouraged. Further, partnership on investigations on how best to approach cases of violent extremism should be automatic. Regular meetings bringing together different justice actors to specifically address cases related to preventing and countering violent extremism should be held. The meetings will help address the bottlenecks existent in the system such as inadequate evidence and how the different officers from different institutions can work together to address them.

**Recommendation:** Heads of work stations should encourage their officers to partner and collaborate with other justice institutions around preventing and countering violent extremism. Sharing of intelligence, support documents as well as information that can assist in addressing the subject should be encouraged.



## GOOD PRACTICE #8: ENCOURAGE PARTNERSHIP WITH CIVIL SOCIETY AND OTHER INSTITUTIONS DEALING WITH PCVE



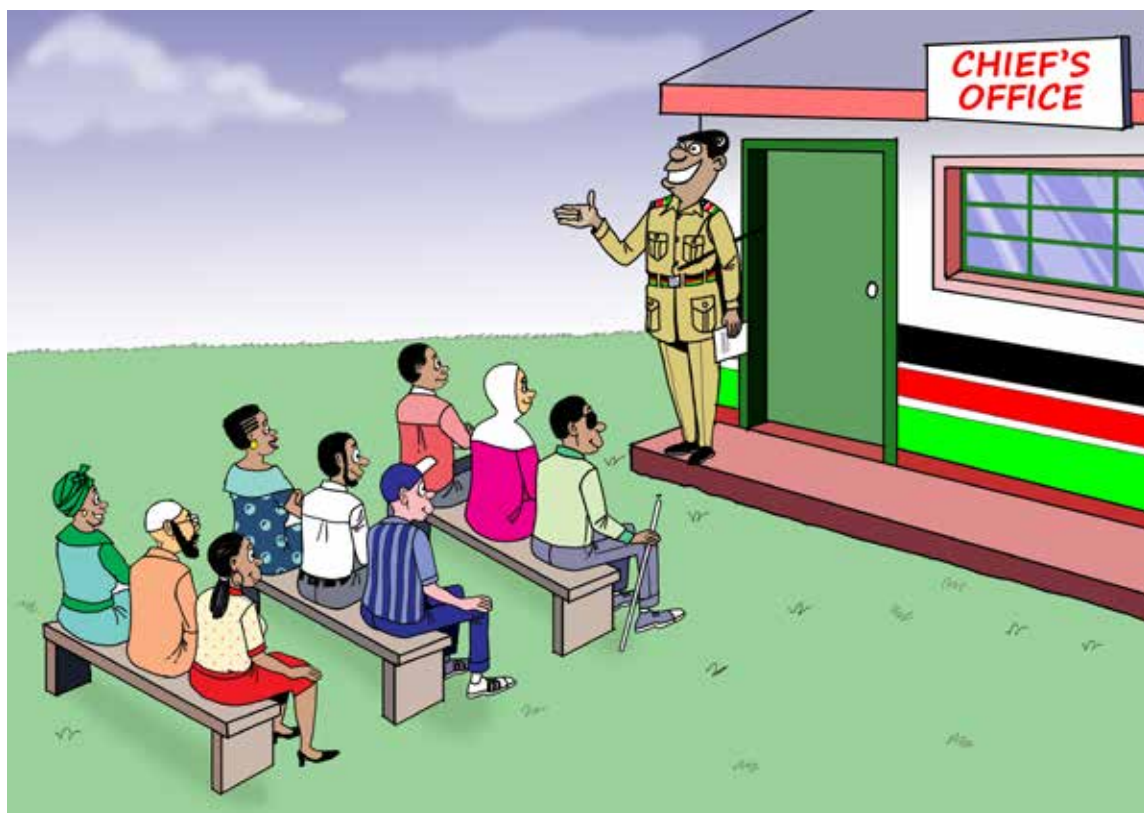
Justice actors should make deliberate efforts to reach out to civil society organisations including human rights groups, social justice centers and religious institutions working on preventing and countering violent extremism in order to share knowledge and experience as well as build trust with communities. Such partnership will expose justice actors to strategies and practices they can apply in their work to better understand and handle issues of violent extremism that are brought before them. The partnership will also create a stronger working relations with non state actors and therefore narrow the gap between justice actors and their communities. It will also demystify justice institutions and make them more accessible by communities at risk of violent extremism.

**Recommendation:** The state should encourage justice institutions to partner with civil society and other non state institutions including human rights groups, faith based organisations and academia who deal with preventing and countering violent extremism. This will support knowledge generation and experience sharing thus narrow the gap between justice institutions and communities.

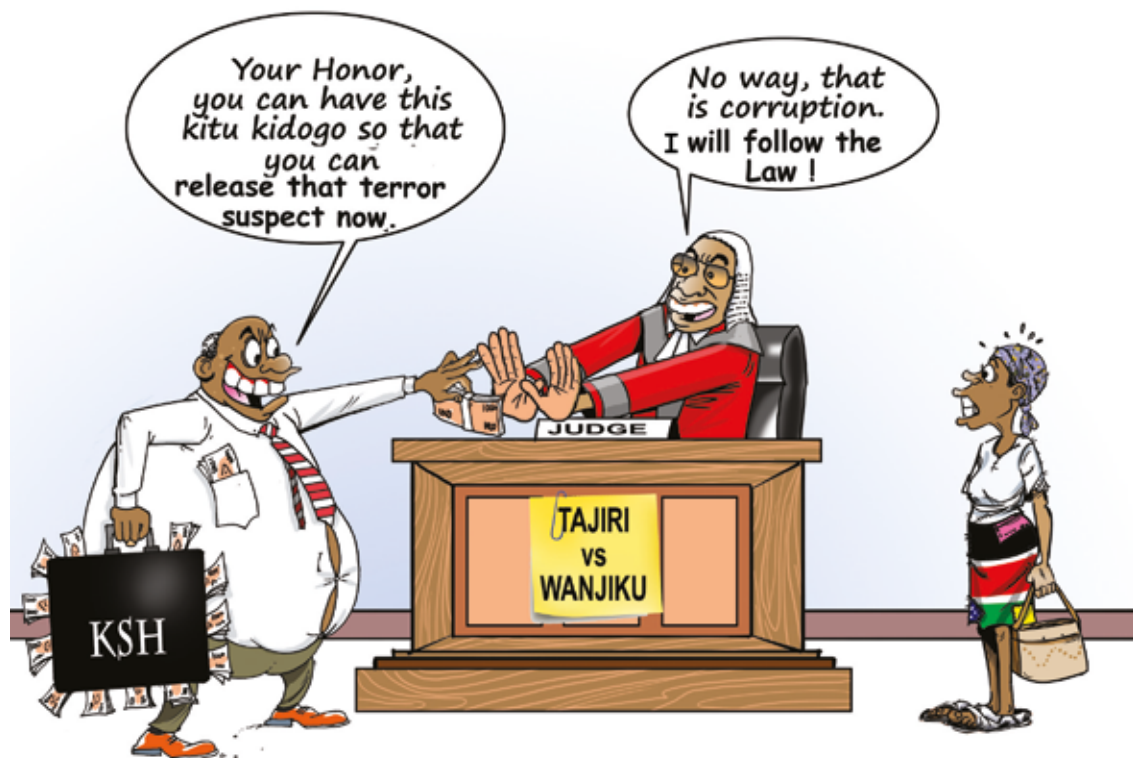
## GOOD PRACTICE #9: HOST PUBLIC DIALOGUE FORUMS WITH AT RISK COMMUNITIES ON PREVENTING AND COUNTERING VIOLENT EXTREMISM (PCVE)

Public trust in the justice system is paramount at challenging extremist narratives. Therefore, there must be deliberate efforts by justice institutions to reach out to communities and build faith and restore in them hope for justice. This can best be realized by holding dialogue forums between justice actors and communities, particularly those at risk of violent extremism. These forums should specifically ask communities what they think the justice actors should do to build faith in the justice system thus reduce communities' vulnerabilities to radicalisation. Follow up meetings should also be held to check whether what was agreed previously has been implemented, to develop systems of accountability. The forums can be held by specific justice institution on their own or collectively with other justice institutions.

**Recommendation:** Justice actors must prioritise getting feedback from the public they serve and use that feedback to improve their services. By so doing, the public will feel their complaints are addressed and this will reduce mistrust in the justice system which is used by violent extremists to recruit aggrieved persons into their ranks.



## GOOD PRACTICE #10: FIDELITY TO THE LAW WHEN DEALING WITH VIOLENT EXTREMISM CASES



Cases related to violent extremism are always sensitive and have a direct bearing on national security particularly the safety and security of communities. As a result, these cases must be handled strictly in accordance with the law and all efforts made to ensure no deviation from the prescribed practice. Bribes, favoritism, nepotism and other derelictions should be avoided by justice institutions in order to ensure not only that justice is done but also seen to have been done.

This also means that officers who are posted to handle violent extremism cases should be carefully vetted and their track record devoid of past misconduct. Full application of the law without fear or favor should be upheld at all times when dealing with violent extremism cases. Failure to uphold the law simply drives people further into the hands of violent extremist organisations.

**Recommendation:** Heads of justice institutions must ensure the law is strictly applied when handling violent extremism cases. They should ensure there is zero tolerance to corruption and action taken on any officer abusing the law. Use of extra legal means to achieve results should also be avoided.

**GOOD PRACTICE #11: EXPERIENCE SHARING ON COUNTERING VIOLENCE EXTRIMISMS**

Justice actors and institutions should make it their norm to continuously learn and share experiences with each other on countering violent extremism locally and across jurisdictions. CVE is an ever evolving challenge with extremists devising new ways of executing their attacks everyday. Whether technological, ideological or physical, innovations are emerging constantly. It is therefore important for justice actors to keep themselves updated and informed so that they are not left behind and be able to handle emerging issues. The learning should be horizontal across peers but also vertical. Efforts should also be made to learn from other jurisdictions how they deal with CVE cases including prevention, detection and prosecution.

**Recommendation:** Justice institutions should strive to update themselves on matters pertaining CVE and ensure they understand how issues manifest themselves in the society. Justice actors should interact with their counterparts in other parts of the country and across borders to know how they deal with various CVE issues that come to their attention.



ODPP representative Edwin Okello (left), Voi Law Courts administrator, Elizabeth (centre) and HAKI Africa legal officer Rosette Ochoo (right) during a public inquiry forum with members of the community in Taita Taveta County.

*Section 5.0*

**OTHER GOOD  
PRACTICES**

**THAT CAN SUPPORT DISPENSATION OF  
JUSTICE ACROSS ALL TYPES OF CASES**



Besides the good practices specific to violent extremism, below are other practices that are general and will help justice institutions dispense justice more efficiently across all types of cases:

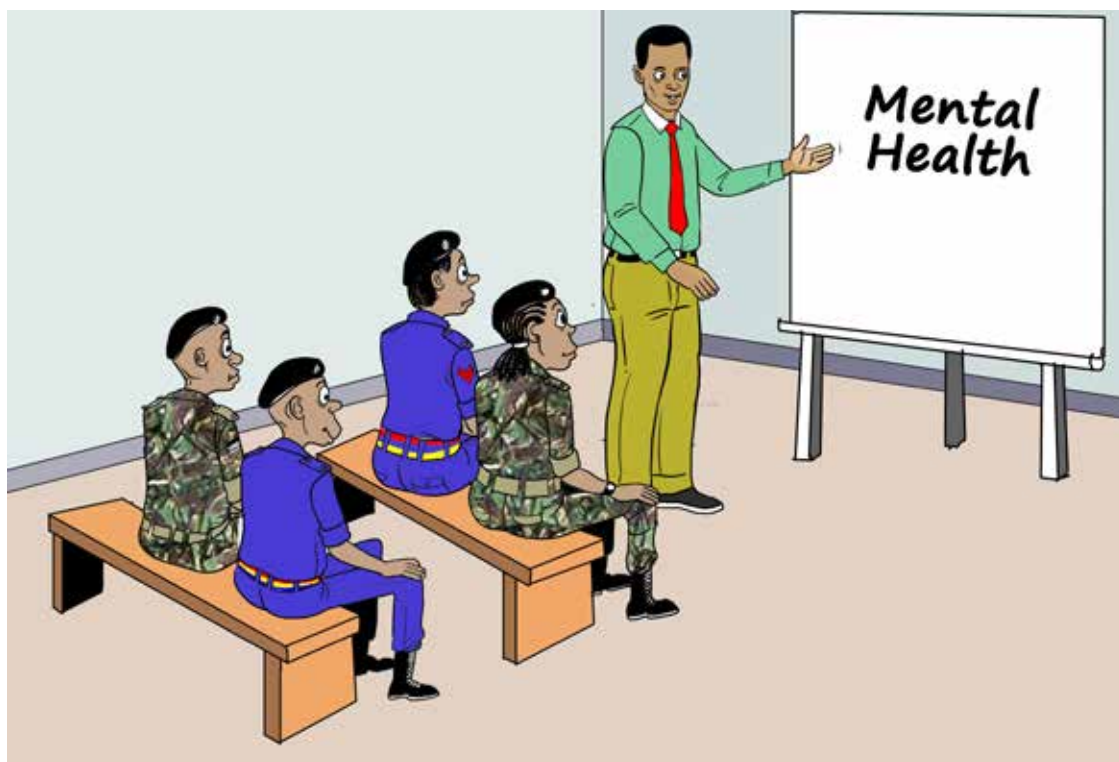
### GOOD PRACTICE #1: ENSURING CONDUCIVE WORKING ENVIRONMENT FOR JUSTICE ACTORS



Justice actors including judges/magistrates, police, prosecutors, prison wardens and probation officers, are human beings who also have rights like any other person. In most cases, they are neglected by their employer and are always on the receiving end of the public's wrath. This demoralises them from performing their work and more often than not, they end up venting their frustrations on their clients – the people. As a result, goods and service delivery becomes wanting which makes receiving individuals and communities feel neglected, discriminated and/or marginalized by the State. It is this situation that is then used by radicals to recruit into their ranks.

**Recommendation:** State should always seek ways of improving the working conditions of its staff. This includes ensuring good remuneration, clear promotion and transfer policy, regular appraisals and provision of benefits including housing and medical care. Conversely, the State should avoid unprofessional practices such as nepotism, selective disciplinary action and unfair dismissals.

## GOOD PRACTICE #2: MENTAL HEALTH SUPPORT FOR JUSTICE ACTORS



Across the world and Kenya in particular, there is increased pressure to deliver in life. This takes a toll on many. According to the World Health Organisation (WHO), it is estimated that 5 in every 6 Kenyans who suffer from mental health illness do not receive treatment. Mental health illness is a fact and also affects justice actors who deal with criminal and sadistic cases which often include deaths and gross violations. Stress and trauma that result from dealing with and exposure to violence and death can affect individuals' abilities to positively engage with others, manage anger, make good decisions and show empathy for others.

To help the justice actors adapt to the pressures of work and deliver justice, there is need for them to get regular mental health checks and services.

**Recommendation:** Every work station for all justice actors should have a professional psychologist at hand to address mental health issues for staff. Particularly for security stations such as police stations and army barracks, the psychologist should be available to perform debriefs and assist officers to cope with the pressures of work. For many years, Kenyans have been lamenting about corruption,

**GOOD PRACTICE #3: ENSURE SUGGESTION BOXES ARE PUT UP AND INFORMATION SHARED IN THE BOXES IS ACTED UPON**

Enhancing trust between justice actors and the public they serve is paramount. Providing avenues to share feedback in confidence is key in establishing the much needed trust, particularly around issues that are highly sensitive.

One practice that has worked for decades is putting up suggestion boxes where justice actors can receive feedback and complaints on their work from members of the public. The suggestion boxes should be kept in open spaces which are easily accessible by clients.

They should also be regularly opened and heads of institutions must ensure they process the complaints received in order to boost public confidence. Where possible, the suggestion boxes should be under the office of the head of the institution.

**Recommendation:** Justice actors must prioritise getting feedback from the public they serve and use that feedback to improve their services. This process can be easily realized through public suggestion boxes set up within justice institution that will receive suggestions and complaints for action by the relevant authorities.



**GOOD PRACTICE #4: USE OF TECHNOLOGY INCLUDING ENSURING ONLINE PRESENCE**

In the Covid-19 new normal, technology has become inevitable. From meetings to court sessions, all are now done using technology. In the fight against violent extremism, it is important to understand how and where radical messages are propagated in order to counter them and initiate alternative narratives on peace and security.

It is a known fact for years now that there is a lot of recruitment into violent extremism done online. There is therefore need for justice actors to occupy this space and engage the public on justice issues. Not only is using technology going to help justice actors reach a wider audience but it will also help in data collection and soliciting feedback for improved service delivery.

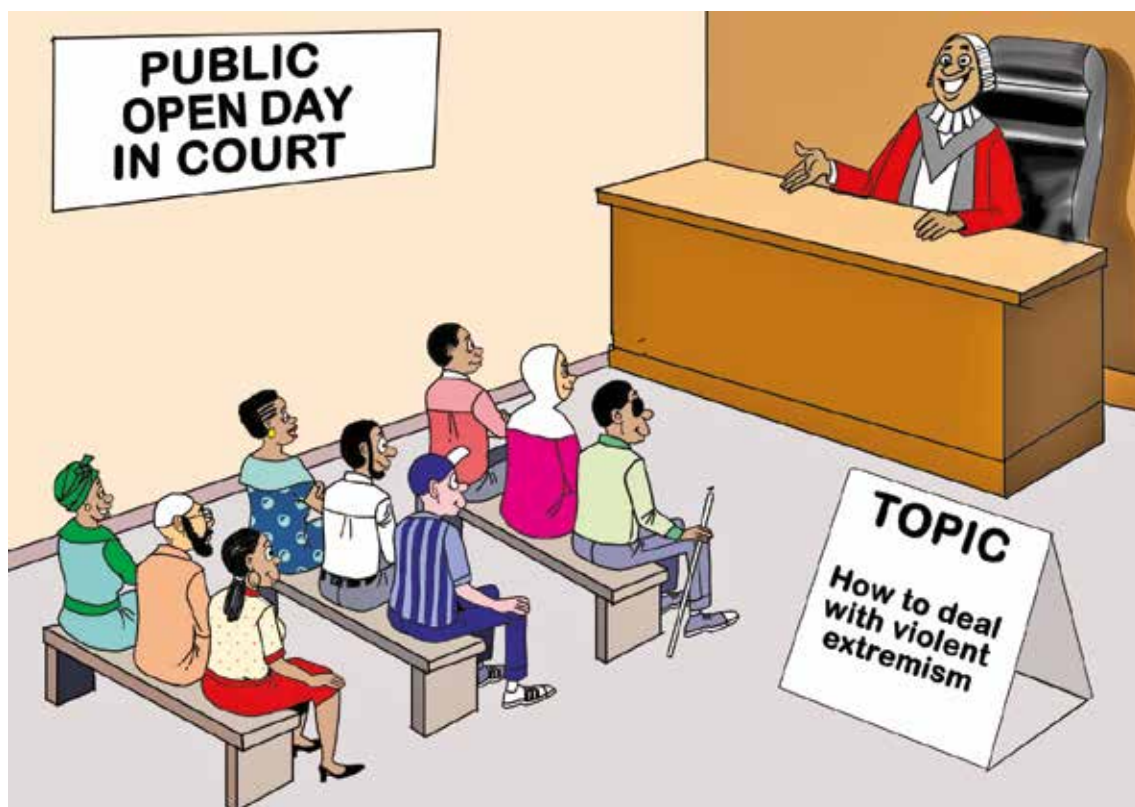
**Recommendation:** All justice institutions must make it mandatory to have online presence and platforms for engaging with the public particularly youth. At least once a month, there should be online opportunities where members of the public can engage with the justice actors and have their issues documented and/or addressed.

## GOOD PRACTICE #5: UNDERTAKING OPEN DAYS TO MEET THE PEOPLE

For many Kenyans, what is done within the corridors of justice remains a mystery. The local *mwananchi* engages justice actors only when necessary. As a result, majority of the people do not know the justice institutions let alone understand their roles. With this disconnect, it becomes challenging for the people to freely engage with the system since they view it as an abstract structure detached from the public.

The situation widens the gap between *mwananchi* and the justice actors which is then used by radical elements to sow discord and mistrust. There is therefore need to demystify the justice institutions by letting the public engage them freely and know who they are and what they do. This will make it easier to have cordial relations thus build trust.

**Recommendation:** All justice institutions should host open days where they invite members of the public into their premises to learn and understand about their work. The open days should showcase the successes of the institutions and how they help in delivering justice. At least one open day should be held each year for each institution.





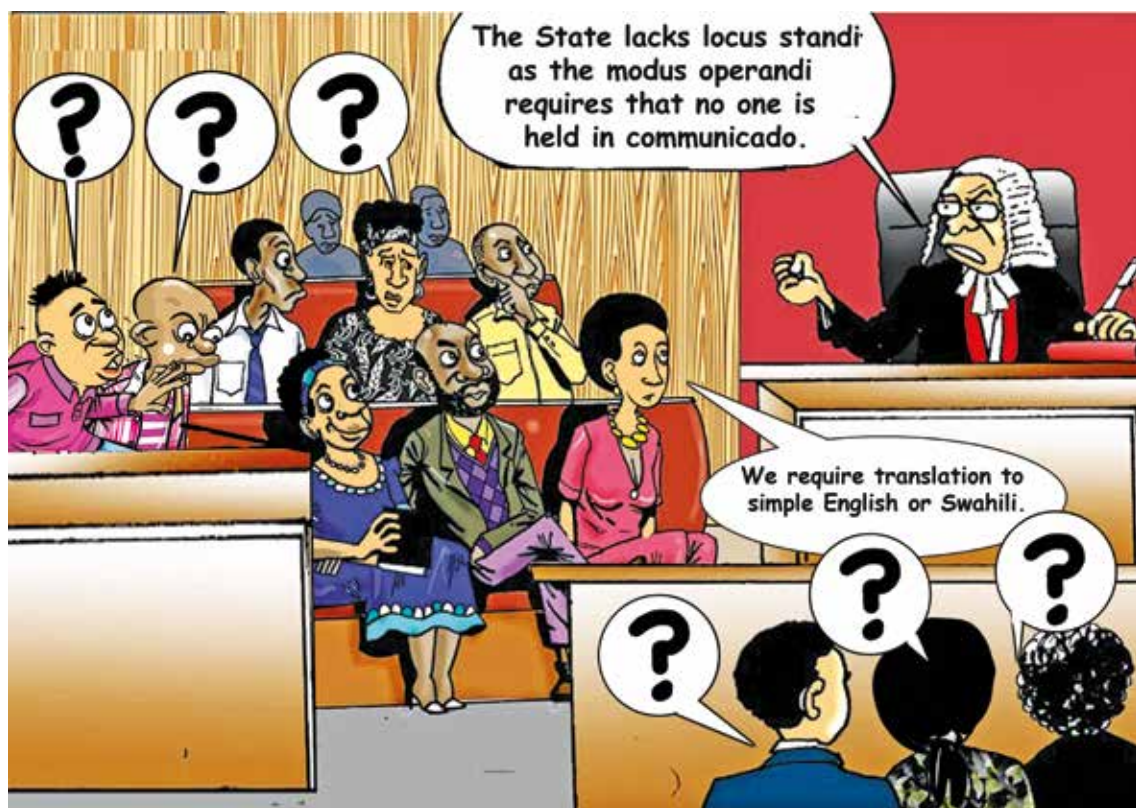
The Secretary Public Prosecutions Dorcas Oduor (left), Director of Public Prosecutions Noordin Haji (second left), Director of HAKI Africa, Yusuf Aoubakar (second right) and the Executive Director of HAKI Africa , Hussein Khalid (right) conversing during the official launch of Kilifi Social Justice Center (Institute for Land Governance and Human Rights) in Mtwapa, Kilifi County.

## GOOD PRACTICE #6: TRANSLATION OF LAWS, REGULATIONS, GUIDELINES AND COURT DECISIONS TO KISWAHILI AND/ OR LOCAL DIALECT

Justice institutions should make efforts to translate laws, regulations, guidelines and court decisions into Kiswahili and/or local dialect so that community members can fully understand the issues at hand. Besides translation, the Judiciary should have its judgments written in other languages such as Kiswahili or a local dialect that is more understandable to the public and accused persons.

By translating judgements, laws and key financial documents, it will improve peoples' knowledge in the legal system. It will also ensure those engaging the justice system fully understand and appreciate what's happening thus improve the trust of the community members in the justice system.

**Recommendation:** In order to enhance understanding of the court system and other judicial functions, relevant documents such as laws, guidelines and court trials should be made available in Kiswahili and other local languages widely used in the area. This will enhance the peoples' appreciation of court processes thus make it easy to promote trust.





Grassroot partners from Nairobi area during a press conference at HAKI Africa offices in Nairobi to condemn extrajudicial killings.

# ANNEXES



**From left:** Senior Programs Officer HAKI Africa Salma Hemed, DPP Nigeria, Abubakar Mulami, DPP Zanzibar Salma Ali, DPP Kenya Noordin Haji and Director of HAKI Africa Prof Najya Mohammed at HAKI Africa offices in Mombasa during a courtesy visit.

## Annex 1

### INTRODUCTION TO HUMAN RIGHTS BASED APPROACH (HRBA) TO PREVENTING AND COUNTERING VIOLENT EXTREMISM (PCVE)

#### INTRODUCTION

Human rights based approaches to preventing and countering violent extremism are initiatives designed to uphold human dignity in the process of fighting terrorism. The approach views security not just as a mere duty to combat crime but also an obligation to ensure respect for individuals and communities' self esteem and worthiness. Terrorism aims at the very destruction of human rights, democracy and the rule of law [and] has a direct impact on the enjoyment of a human rights, in particular the rights to life, liberty and physical integrity.

Human rights recognizes that States are required to take steps to prevent terrorism and that this duty has been delegated to the police and related agencies. States therefore have an obligation to protect all individuals within their jurisdiction and to secure for them all protections afforded by their constitution, legislation and international human rights law.

#### CONSTITUTIONAL FOUNDATION OF HUMAN RIGHTS BASED APPROACH IN KENYA

In Kenya, rights are accorded in the bill of rights located in chapter 4 of the Constitution of Kenya, 2010. The connection between human rights and PCVE is provided for in the Constitution as follows:

- Article 29 provides that “every person has the right to freedom and security of the person.” All security work including Preventing and Countering Violent Extremism, fighting crime, anti-stock theft, etc therefore is in furtherance of the Right to Security.
- Article 21 of the Constitution obligates the state and every state organ to promote the rights and freedoms in the bill of rights including the right to security. The work of the police including the Anti-Terrorism Police Unit and others therefore is to promote the right to security
- Article 238 (1) provides that “national security is the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.” Amongst the key duties of the security organs therefore is to protect the people’s rights and freedoms.
- Article 238 (2) further provides the principles of national security to include... “(b) national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.”

The above four constitutional provisions inform the rights based approach to security in Kenya.



Presiding Judge Mombasa Law Courts Justice Eric Ogolla (left) and Legal Officer HAKI Africa, Rosette Ochoo (right) having a chat during a Court Users Committee meeting in Mombasa.

## OBJECTIVES OF THE HUMAN RIGHTS BASED APPROACH TO PCVE

HRBA is a non-coercive approach that considers citizens participation in security and countering violent extremism as crucial. It views security as a fundamental right and freedom that requires collective efforts to attain. HRBA to PCVE differs from counter terrorism (CT) in that it addresses the underlying factors, including push and pull factors, that contribute to violent extremism and radicalisation. CT only addresses the threat of terrorism at hand.

The HRBA has two objectives:

1. To empower rights-holders to claim and exercise their right (Rights-holders are individuals or social groups that have particular entitlements in relation to duty-bearers)
2. To strengthen capacity of duty-bearers who have the obligation to respect, protect, promote, and fulfil human rights (Duty-bearers are state or non-state actors, that have the obligation to respect, protect, promote, and fulfil human rights of rights-holders.)

## PRINCIPLES OF THE HUMAN RIGHTS BASED APPROACH (HRBA)

The HRBA is underpinned by five key human rights principles, also known as PANEL: Participation, Accountability, Non-discrimination and Equality, Empowerment and Legality.

Participation – everyone is entitled to active participation in decision-making processes which affect the enjoyment of their rights.

Accountability – duty-bearers are held accountable for failing to fulfil their obligations towards rights-holders. There should be effective remedies in place when human rights breaches occur.

Non-discrimination and equality – all individuals are entitled to their rights without discrimination of any kind. All types of discrimination should be prohibited, prevented and eliminated.

Empowerment – everyone is entitled to claim and exercise their rights. Individuals and communities need to understand their rights and participate in the development of policies which affect their lives.

Legality – approaches should be in line with the legal rights set out in domestic and international laws.

## CONCLUSION

Preventing and Countering Violent Extremism (PCVE) is the soft power of counter terrorism (CT) and seeks to engage communities in building resilience against extremism and radicalization. HRBA to PCVE seeks to ensure international human rights standards are observed in counter terrorism operations. It recognizes that human rights violations are a trigger and push factor of violent extremism. Applying HRBA in PCVE therefore is in itself a form of deradicalisation as it responds to the global call to ensure CT does not violate human rights but respects and upholds them.



Sisters for Justice Executive Director, Naila Abdalla (left) and the DPP Zanzibar, Salma Ali (right) during the launch of Sisters for Justice's website in Kisauni Mombasa.

## Annex 2

### MEMBERS OF THE CRIMINAL JUSTICE SYSTEM IN KENYA

#### 1.0 OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

The Office of the Director of Public Prosecutions (ODPP) is the National Prosecuting Authority in Kenya which has been mandated by the Constitution to prosecute all criminal cases in the country.

The Director of Public Prosecutions (DPP) is the head of the ODPP and operates independently as stipulated under Article 157 of the Constitution. However, the DPP is required to be accountable to the Public by presenting an annual report to Parliament and the President on the performance of the ODPP. The DPP may also be required, on a need basis to present a report to Parliament on a matter of national or public interest.

The Office was delinked from the Attorney General's Office in 2011 after the promulgation of the Constitution in 2010.

The ODPP has presence in all the 47 counties in Kenya with its headquarters in the City of Nairobi. A Chief County Prosecutor (CCP) heads each ODPP County Office and is responsible for working with the courts and the investigative agencies to provide high quality prosecution services in their jurisdiction.

The mandate of the ODPP is to institute and undertake prosecution of criminal matters and all other related incidents. The mandate of ODPP as derived from Article 157 of the Constitution is to institute and undertake prosecution of criminal matters and all other aspects incidental thereto.

These include:

- a) Instituting and undertaking criminal proceedings against any person before any court of law except the court martial;
- b) Taking over and continuing with any criminal proceedings commenced in any court by any person or authority with the permission of the person or authority and
- c) Discontinuing at any stage before judgment is delivered of any criminal proceedings with the permission of the court.
- d) Directing the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct.

## 2.0 NATIONAL POLICE SERVICE

The Kenya Police has its small beginnings in the period between 1887 – 1902, tracing its foundation on the Imperial British East Africa (I.B.E.A.) Company, and a businessman Sir William McKinnon, who in the interest of his business found it necessary to provide some form of protection (security) for his stores along the coastline of Kenya.

It is from this origin that the concept of constituting a real police service was formed in Mombasa. Generally, police activities centered on protection of the business of the I.B.E.A. Company where the strength was mainly of Indian origin with a skeleton staff of some Africans otherwise referred to as 'Askaris'. During those early stages of the small police force, its duties were negligible.

Core functions of the national police service include:

- a) Maintenance of law and order;
- b) Preservation of peace;
- c) Protection of life and property;
- d) Prevention and detection of crime;
- e) Apprehension of offenders; and
- f) Enforcement of all laws and regulations with which it has been charged.

### 2.1 THE DIRECTORATE OF CRIMINAL INVESTIGATIONS (DCI)

The Directorate of Criminal Investigations (DCI) is part of the National Police Service. The establishment, development and growth of Criminal Investigations Department can be traced to the evolvement of the Kenya Police to which it remains one of the key formations. The first police officers were recruited in 1887 by the Imperial British East Africa Company, I.B.E.A. to provide security for stores in Mombasa. It was from these humble beginnings that the Kenya Police was born.

The Directorate of Criminal Investigations derives its mandate from Article 247 of the Constitution of Kenya and through the National Police Service Act 2011 which establishes the Directorate as an organ of the NPS ostensibly to offer specialized criminal Investigative services. The Directorate is an arm of National Police Service and under the direction and command of the Inspector General of NPS.

The mandate of the Directorate is further derived from Section 35 of the National Police Service Act 2011 which gives the core functions of the Directorate in the areas of prevention, detection and investigation of serious crimes. The functions of the DCI are:

- a) Collect and provide criminal intelligence;
- b) Undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime among others;

- c) Maintain law and order;
- d) Detect and prevent crime;
- e) Apprehend offenders;
- f) Maintain criminal records;
- g) Conduct forensic analysis;
- h) Execute the directions given to the inspector-general by the director of public prosecutions pursuant to article 157 (4) of the constitution;
- i) Coordinate country Interpol affairs;
- j) Investigate any matter that may be referred to it by the independent police oversight authority; and
- k) Perform any other function conferred on it by any other written law.

### 3.0 THE JUDICIARY

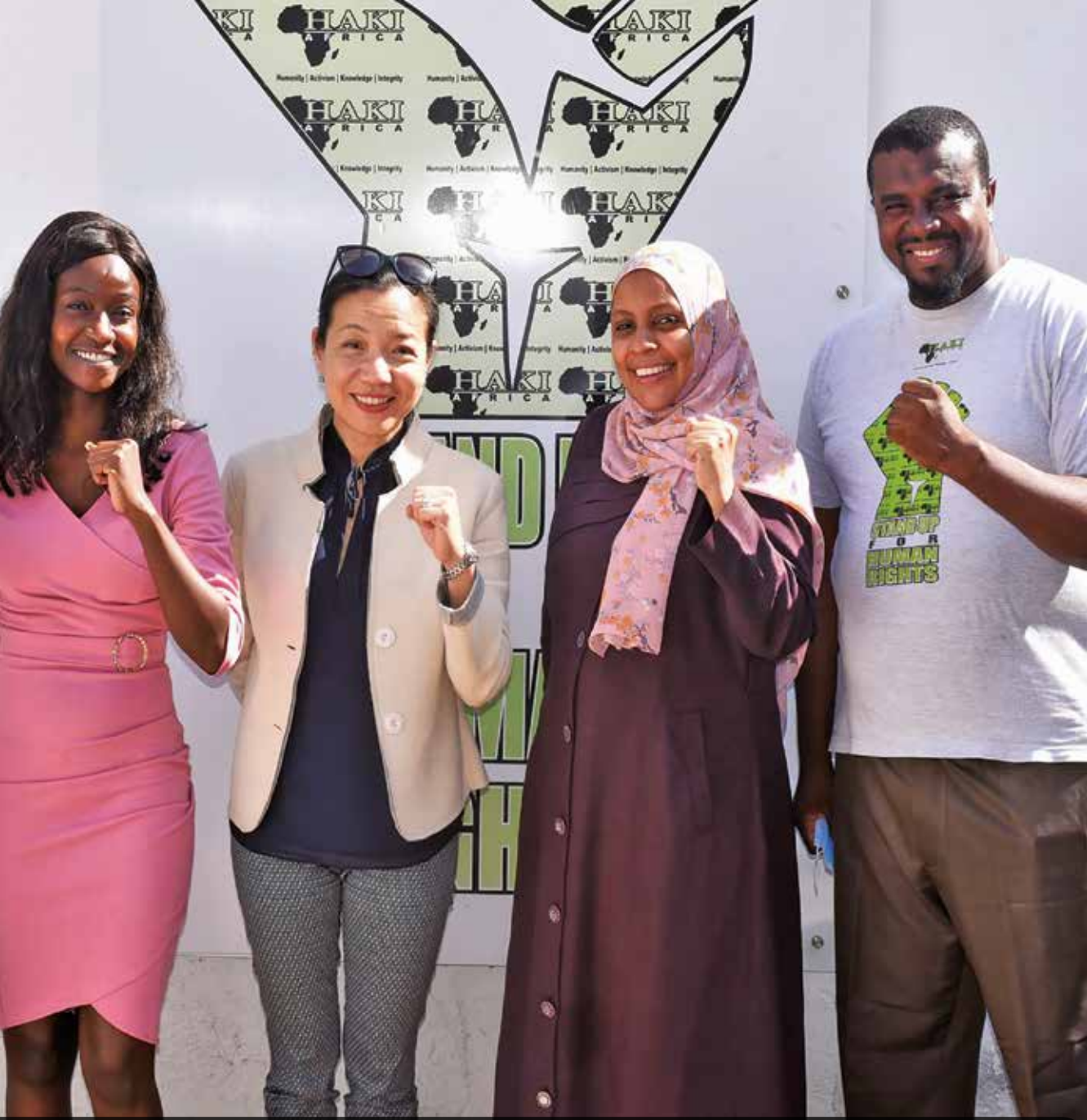
The Judiciary is one of the three State organs established under Chapter 10, Article 159 of the Constitution of Kenya. It establishes the Judiciary as an independent custodian of justice in Kenya. Its primary role is to exercise judicial authority given to it, by the people of Kenya.

The institution is mandated to deliver justice in line with the Constitution and other laws. It is expected to resolve disputes in a just manner with a view to protecting the rights and liberties of all, thereby facilitating the attainment of the ideal rule of law.

The Judiciary and its related institutions (Judicial Service Commission (JSC), Kenya Law; previously National Council for Law Reporting (NCLR), Tribunals and the Judiciary Training Institute (JTI) perform the following functions;

Article 159 of the Constitution establishes the Judiciary comprising of the Supreme Court, the Court of Appeal, the High Court, the Environment and Land Court, the Employment and Labor Relations Court, the Magistrates Court, Kadhis Court, Tribunals and Court Martial. The functions of the Judiciary are:

- a) Facilitate access to justice
- b) The administration of justice
- c) Formulation and implementation of judicial policies
- d) Formulation of case law and legal information
- e) Protection of human rights



Legal Officer HAKI Africa Rosette Ochoo (left), Senior Human Rights Advisor to the UN Resident Coordinator in Kenya in the Office of the High Commissioner of Human Rights Li Fung (second left), Senior Program Officer HAKI Africa Salma Hemed (second right) and the Finance Manager HAKI Africa Said Abdu (right) during a courtesy visit at HAKI Africa office in Mombasa.

#### 4.0 PROBATION AND AFTERCARE SERVICE

Probation and Aftercare Service is a government department in the Ministry of Interior and Coordination of National Government, State Department for Correctional Services. It provide advisory reports to court and other agencies for the purpose of determining bail and bond terms and for decision-making on sentencing and release of offenders. Probation also supervise, resettle, reintegrate and rehabilitate offenders serving various non-custodial sentences in the community. In the management of offenders, they work with victims of crime and the public in ensuring public-safety.

As the sole administrator of community based sanctions in Kenya, Probation and Aftercare Service derives its mandate from the Constitution of Kenya, 2010 in relation to criminal law and correctional services, and the following statutes:

As the sole administrator of community based sanctions in Kenya, Probation and Aftercare Service derives its mandate from the Constitution of Kenya, 2010 in relation to criminal law and correctional services, and the following statutes:

- The Probation of Offenders Act, Cap 64, Laws of Kenya
- The Community Services Orders Act, Cap 93, Laws of Kenya
- The Power of Mercy Act, No. 21 of 2011, Laws of Kenya
- Prisons Act, Cap 90, Laws of Kenya
- The Borstal Institutions Act, Cap 92, Laws of Kenya
- Children's Act, No. 8 of 2001, Laws of Kenya
- The Sexual Offences Act, No. 3 of 2006, Laws of Kenya
- Prohibition of Female Genital Mutilation Act, No. 32 of 2011, Laws of Kenya
- Protection against Domestic Violence Act, No. 2 of 2015, Laws of Kenya
- Mental Health Act, Cap 248, Laws of Kenya
- Prevention of Terrorism Act, No. 30 of 2012, Laws of Kenya
- Victim Protection Act, No. 17 of 2014, Laws of Kenya
- The Criminal Procedure Code, Cap 75, Laws of Kenya
- The Penal Code, Cap 63, Laws of Kenya

The Department also implements various government policies related to probation work; general rules of international law; and treaties and conventions ratified by Kenya which form part of law under the Constitution.

The main functions of the department are:

- a) Conducting social inquiries of accused persons, offenders and petitioners for preparation of pre-bail, pre-trial, pre-sentence or post-sentence reports;
- b) Assessing and classifying offenders;



Members of the community at Malindi Community Human Rights Center seeking advice and intervention in a land dispute at Maweni, Malindi.

- c) Preparing and presenting reports to courts and other penal organs for decision making and dispensation of justice;
- d) Supervising offenders on executive orders, non-custodial orders and release licenses;
- e) Developing and implementing rehabilitation programmes for offenders serving various non-custodial measures;
- f) Reintegrating and resettling offenders leaving custody and correctional institutions to the community;
- g) Facilitating restitution and reparation through alternative dispute resolution mechanisms;
- h) Providing services for the protection and promotion of rights and welfare of victims;
- i) Providing accommodation to needy and deserving offenders in probation hostels and transitional houses; and
- j) Promoting crime prevention activities to enhance public safety through probation resource centres.

The Department also implements various government policies related to probation work; general rules of international law; and treaties and conventions ratified by Kenya which form part of law under the Constitution.

## 5.0 THE KENYA PRISONS

Kenya Prisons Service (KPS) is a department within the Ministry of Interior and Coordination of National Government established under the Prisons Act Cap 90 and Borstal Institutions Act Cap 92 Laws of Kenya. It is mandated to provide public safety and security by ensuring there is safe custody of all persons who are lawfully committed to prison facilities, as well as facilitating the rehabilitation of custodial sentenced offenders for community reintegration.

The functions of the Kenya Prisons are:

- a) Containing and keeping offenders in safe custody.
- b) Rehabilitation and reformation of prisoners for social re-integration
- c) Facilitation of Administration of Justice by producing offenders to courts.
- d) Containing and Rehabilitation of young offenders in Borstal Institutions and Youth Corrective Training Centre.
- e) Provision of facilities for children aged 4 years and below accompanying their mothers to prison.
- f) Recruitment, training and development of suitable human resource for the Prison Service

## 6.0 WITNESS PROTECTION AGENCY (WPA)

Witness Protection Agency is a body corporate established under the Witness Protection Act, 2006 Laws of Kenya which came into operation on 1st September 2008 vide Legal Notice No. 110 of 2008 dated



Program Assistant HAKI Africa, Ali Fujo (left), community representative (second left), Program Officer HAKI Africa, Mesaid Omar (second right) and Administration intern, Arnold Baya (right) posing for a photo after holding a forum on community engagement and participation with justice actors.

19th August, 2008 as amended by the Witness Protection (Amendment) Act, No. 2 of 2010 and Witness Protection (Amendment) Act, No. 45 of 2016. The Regulations to facilitate the efficient and effective implementation of the Act were promulgated vide Legal Notice No. 99 of 2011 which came into force on 5th August 2011. The Rules which apply to the proceedings with the respect to protected witnesses came into effect on 23rd November 2015 Vide Legal Notice No. 225 of 2015.

The object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies as stated in Section 3B of the Witness Protection Act, 2006.

The Agency is part of the Governance, Justice, Law and Order Sector (GJLOS). The sector plays an important role in implementing programmes and policies and undertaking institutional reforms that are aimed at providing a stable environment for social, economic and political development of the country. The Agency, for the purposes of accountability, reports to the Attorney General on the overall fulfilment of its object and purpose and the performance of its functions.

The functions of the Agency in terms of Section 3C of the Witness Protection Act are to:-

- a) Establish and maintain a witness protection programme;
- b) Determine the criteria for admission to and removal from the witness protection programme;
- c) Determine the type of protection measures to be applied;
- d) Advise a government ministry, department, agency or any other person on adoption of strategies and measures on witness protection; and
- e) Perform such functions as may be necessary for the better carrying out of the purpose

## **7.0 KENYA WILDLIFE SERVICE (KWS)**

KWS established as a uniformed and disciplined service by the Wildlife (Conservation and Management) Act, Cap 376 Laws of Kenya repealed by the Wildlife Conservation and Management Act, 2013.

Functions include:

- a) conservation and management within national parks, wildlife conservation areas, and sanctuaries;
- b) provision of security for wildlife and visitors in national parks, wildlife conservation areas and sanctuaries;
- c) Enforcement activities such as anti-poaching operations and wildlife protection.

## **8.0 CONSTITUTIONAL COMMISSIONS AND OVERSIGHT BODIES**

The commissions and oversight bodies of the Kenya Government are created by Chapter 15 of the Constitution of Kenya and/or Acts of Parliament. They include but are not limited to the following:



Convener of Mathare Social Justice Centre Gatheke Gacheri (left), Program Officer HAKI Africa Zaina Kombo (second left) , Executive Director HAKI Africa Hussein Khalid (second right) and a community representative (right) , posing for a photo outside Mathare Social Justice Centre in Nairobi.

## 8.1 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

Kenya National Commission on Human Rights (KNCHR) is a Constitutional Commission established under Article 59 of the Constitution of Kenya 2010, and operationalized by enabling statutes namely; the KNCHR Act No. 14 of 2011 (revised in 2012) KNCHR is also guided by the 1993 United Nation's Paris

### PRINCIPLES ON NATIONAL HUMAN RIGHTS INSTITUTIONS (NHIRS)

Mandate of the Commission is to promote human rights, fundamental freedoms and Constitutionalism as well as to protect and secure the observance of human rights and fundamental freedoms in all spheres of life in the Republic.

The functions of the commission are spelt out in section (8) of the KNCHR Act, 2011. The functions of the Commission shall be to—

- (a) promote respect for human rights and develop a culture of human rights in the Republic;
- (b) promote the protection and observance of human rights in public and private institutions;
- (c) monitor, investigate and report on the observance of human rights in all spheres of life in the Republic;
- (d) receive and investigate complaints about alleged abuses of human rights, except those relating to the violation of the principle of equality and freedom from discriminations under the gender and equality commission, and take steps to secure appropriate redress where human rights have been violated;
- (e) on its own initiative or on the basis of complaints investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State organs;
- (f) act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination;
- (g) formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution;
- (h) work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration;
- (i) perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and
- (j) perform such other functions as may be prescribed by the Constitution and any other written law.

## 8.2 INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA)

The Independent Policing Oversight Authority was established through an Act of Parliament published in November 2011 to provide for civilian oversight over the work of the police in Kenya. The inaugural Board was sworn into office in June 2012.



HAKI Africa Legal Officer and a representative of the ODPP handing over a few basic needs to the prison warden and inmates during a legal aid clinic that was held in Kaloleni Prison, Kilifi County.

The IPOA Act mandates the Authority to undertake the following key functions:

- a) To investigate deaths and serious injuries caused by police action
- b) Deaths and serious injuries arising from police action are investigated by IPOA and disciplinary action or prosecution recommended. This is aimed at preventing impunity and enhancing accountability within the National Police Service.
- c) To investigate police misconduct
- d) The Authority receives complaints from members of the public on police misconduct and undertakes independent investigations. The Authority also receives complaints from police officers against fellow officers. IPOA can initiate investigations on its own motion and may refer cases to appropriate bodies including seeking the court's intervention to have its recommendations implemented.
- e) To monitor, review and audit investigations and actions by Internal Affairs Unit of the police
- f) IPOA oversees the work of the Internal Affairs Unit (IAU) of the police to independently verify that the internal police system deals with complaints against officers fairly and effectively. The Authority can take over investigations if not satisfied with IAU's intervention.
- g) To conduct inspections of police premises this seeks to ensure that police premises meet basic predefined standards and that treatment of suspects and detainees is in line with the principles laid down in the Constitution. Police premises include police stations and police posts, detention facilities and officers' residential areas. Inspection reports are prepared and shared with the relevant Authorities.
- h) To monitor and investigate policing operations and deployment. The Authority independently scrutinizes policing operations affecting members of the public to ensure policing is conducted for the benefit of the people of Kenya. Where excessive use of force and abuse of power is detected, independent investigations and remedial action is recommended.
- i) To review the functioning of the internal disciplinary process. The Authority monitors internal police disciplinary processes to ensure fairness and effectiveness and may conduct surveys to assess improvement in police internal accountability mechanisms.
- j) Reporting. The Authority is required to prepare a performance report every six months and an annual report to inform the public of its activities and provide recommendations for improvement of the functioning of the National Police Service.

### 8.3 ETHICS AND ANTI CORRUPTION COMMISSION (EACC)

The EACC is a public body established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011. As per Section 4 of the Act: The Commission shall consist of a Chairperson and four other members appointed according to the provisions of the Constitution and this Act.

Some of the mandates of the commission include:

- to combat and prevent corruption, economic crime and unethical conduct in Kenya through law



Director of HAKI Africa Yusuf Aboubakar (left), Regional Coordinator IPOA (Coast Region) Rashid Wekesa (center) and the Regional Coordinator ODPP (Coast Region) Hassan Abdi (right) during ODPP breakfast talk show on access to justice in Watamu.

enforcement, prevention, public education, promotion of standards and practices of integrity, ethics and anti-corruption.

## 9.0 CIVIL SOCIETY

Civil society is a sector in Kenya comprising of non governmental organisations, community based organisations, trusts and pressure groups/movements whose main objective is to promote human rights, rule of law, good governance and community empowerment. They are governed by various laws including:

- The PBO Act
- The NGO Coordination Act
- The Societies Act
- The Land Act
- Companies Act

With the above laws, it means different organisations may be registered under different laws. However, the PBO Act is meant to organize, coordinate and bring all civil society organisations under one legal regime. Some of the key civil society organisations working with the criminal justice system include the following:

### 9.1 HAKI Africa

HAKI Africa is a national human rights organization based in Mombasa working to improve livelihoods and enhance the progressive realization of human rights in Kenya. Initiated in 2012, the organization promotes partnership between state and non-state actors in order to constantly improve the well-being of individuals and communities and ensure respect for human rights and rule of law by all. Particularly, the organization seeks to agitate for the recognition and empowerment of local communities in Kenya to fully participate in rights and development initiatives with a view to improving the standards of living amongst all including the poor and marginalized.

### OBJECTIVES OF HAKI AFRICA

The following are the strategic objectives of HAKI Africa:

- a) To empower all people, in particular the poor, weak, marginalized and vulnerable, to understand and promote their human rights in order to preserve the dignity of individuals and communities;
- b) To mobilize all persons, including women, to be proactive in protecting and defending their rights and ensure fairness and equity across all levels;
- c) To promote knowledge and awareness of social, economic and political issues that will enhance the livelihoods of all people; and
- d) To enhance good governance, devoid of corruption and impunity, across all levels for sustainable and progressive realization of the right to development.



Finance Officer HAKI Africa Dorcas Atieno (left), Executive Director, Kilifi Social Justice Center, Simon Kazungu (center) and the Presiding Judge Malindi Law Courts, Hon. Justice Stephen Githinji (right) during a sports tournament that brought together members of the community and justice actors in Malindi.

## 9.2 PWANI COMMUNITY HUMAN RIGHTS CENTRES WORKING GROUP

Pwani community human rights centres working group is a network of grassroots organisations, and justice centres based and working at the Coast of Kenya. Members of the network include:

1. Lamu Social Justice Centre
2. Sisters for Justice (S4J) Mombasa Social Justice Centre
3. Voi Community Social Justice Centre
4. Human Development Agenda (HUDA)
5. Institute for Land Governance and Human Rights - Kilifi Social Justice Centre
6. Malindi Community Human Rights Centre
7. Fast Action Business Community Movement
8. Kinango Social Justice Centre
9. Amazing Group of Persons with Disabilities Organisation
10. Usawa na Uhaki Chagamwe Social Justice Centre

### THE FUNCTIONS OF THE CENTRES AND WORKING GROUP ARE:

- Give civic education to our community so as to instill the spirit of constitutionalism that they are enhanced in their ability to champion for their rights.
- Hold rights holders accountable by so doing the community will get value for their money and prevent substandard services.
- Promote transparency amongst our people in positions of authority by ensuring our community participate fully in any process that affects them either socially or economically
- Act as a link of our community to either government department or local and international organization, where our community can get assistance in case where they have been exposed to abuses or violation of their human rights
- Promote gender, regional, racial, class balance by enhancing checks and balances, this will go a long way in fostering co-existence, tolerance and ensure there is equity for all.

## 9.3 POLICE REFORMS WORKING GROUP (PRWG)

The Police Reform Working Group – Kenya (PRWG-K) is a civil society working group that was initiated by the Independent Medico-Legal Unit (IMLU) in November 2011 as a concerted way of buttressing the much anticipated police reforms following the promulgation of the Constitution of Kenya 2010. PRWG-K, started as a police vetting group with an interest in ensuring a participatory police vetting process that enjoys both the trust of the police and the confidence of the public.

PRWG-K brings together 20 like-minded organizations that are keen to have a reformed police service in the country and the members include but not limited to the following:



HAKI Africa, social justice partners posing for a photo with NCTC representative Njenga Miiri (seated center right ) during the launch of Malindi Community Human Rights Centre.



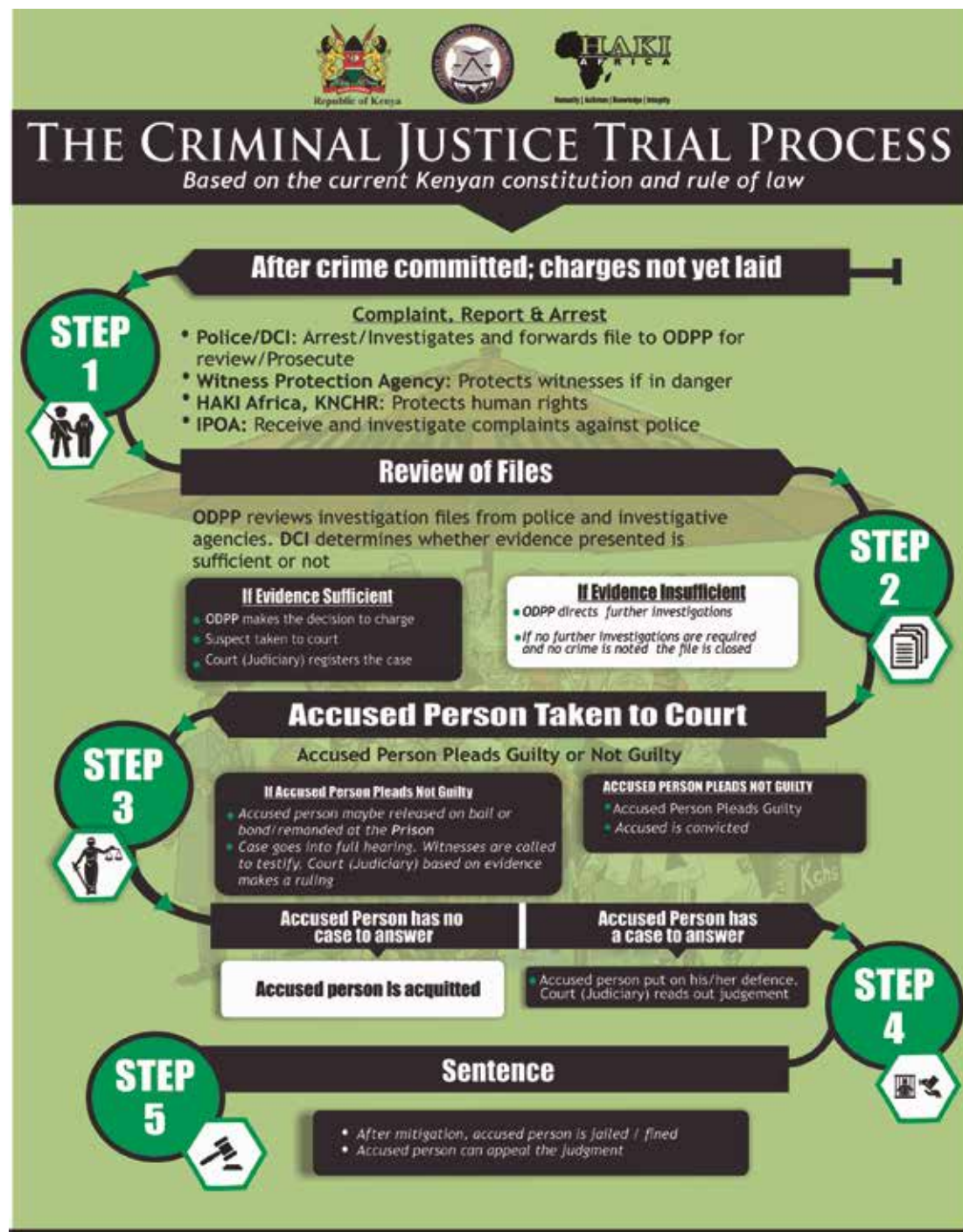
1. Independent Medico-Legal Unit (IMLU)
2. International Centre for Transitional Justice (ICTJ), International Commission of Jurists (ICJ) in Kenya
3. Transparency International
4. Kenya Human Rights Commission (KHRC),
5. Kenya National Human Rights Commission (KNCHR)
6. Federation of Women Lawyers (FIDA) Kenya
7. HAKI Africa
8. SOWED - Kenya
9. Kariobangi Paralegal Network,
10. Usalama Reforms Forum
11. Women Empowerment Link (WEL),
12. REINVENT
13. Shield for Justice,
14. Peace Brigades International (PBI)

PRWG-K's main objective is to deepen citizens' understanding of and participation in police reform issues at both the national and county level. PRWG-K works around four pillars/thematic areas:

- a) **Quality Service** - police officers are expected to protect lives and property as enshrined in Chapter 4 of the Kenya Constitution 2010;
- b) **Accountability** -Citizens must hold the police service accountable for its actions;
- c) **Public Participation** – Citizens are enabled to participate in police reforms and ensure that those who interact with the reforms groups act as ambassadors in enhancing sensitization on police reform issues;
- d) **Police welfare** - Advocates better working conditions for police officers, improvement of their living conditions, entrenchment of reasonable working hours, and ensuring that police officers are reasonably compensated for the long working hours.

## Annex 3

## THE CRIMINAL JUSTICE TRIAL PROCESS



**IPOA** Independent Policing Oversight Authority



**KENYA WILDLIFE SERVICE**







Humanity | Activism | Knowledge | Integrity



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