

HUMAN RIGHTS & LEGAL AID

Magazine


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LEGAL
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FOUNDATION
Haki Itawale



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Editorial

Legal Resources Foundation publishes this second issue in 2020 as a recognition of the myriad legal questions and needs that arise every other day within the different spheres of people's lives.

Justice Advisory centres, established under the Legal Aid Act 2016 are slowly and steadily developing into a strong avenue for delivering legal aid and assistance. Communities in underprivileged neighborhoods in urban, peri-urban and rural areas often suffer injustices from both state and non-state sources. Justice advisory centres have come in handy in 2020, to provide support for citizens who suffered injustice as the country battled COVID-19 pandemic. We feature select Justice Advisory centres in Nairobi in Lang'ata, Eastleigh and Kariobangi.

LRF responds to legal aid questions about civil procedure in an increasingly ICT oriented justice system, family relations, adoption, identification documents, custody and maintenance. these questions sometimes arise in diverse contexts requiring situation specific responses. These are legal concerns by Kenyans of different walks of life.

In our review we feature a collection of topical justice sector opinion pieces. The publisher provides deep reflections on the subject violent extremism on why it is every Kenyan's business. For an extended period, violent extremism has been considered to be an adult only members' club. However, this has changed in the recent times following life imprisonment of a fifteen-year-old in 2015. We delve into this subject with a deep analysis on what this means.

We revisit the extractives sector with an analysis of strategies that could make Kenyas' experience better in the region.

As a contribution to expanding legal literacy LRF endeavors to breakdown legal concepts in a simplified way to enable the poor, vulnerable and marginalized understand and use the law to protect and advance their rights. It is our sincere hope that this issue will be useful to our readers.

Editorial Team





CONTENTS



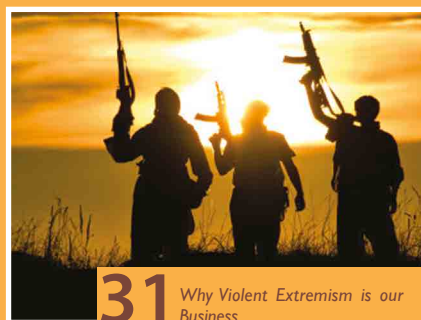
11 Legislative and policy Advocacy on police reforms within Police Reforms Working Group-K with Interior cabinet secretary Fred Matiangi on Independence of police in BBI report



17 Community Sensitization Forums to educate members of the community on the constitution, alternative justice system, child rights among others.



19 Legal aid questions and responses



31 Why Violent Extremism is our Business



39 Legal Aid at Nairobi City Court



41 Success story of Paralegal Intervention



Contents

CONTRIBUTORS TO LEGAL AID MAGAZINE	4
EDITORIAL	5
FEATURE	8
JUSTICE ADVISORY CENTRES IN NAIROBI	8
(i) Kariobangi Paralegal Network	9
(ii) Eastleigh Justice Centre	14
(iii) Lang'ata Justice Advisory Centre	17
LEGAL AID QUESTIONS AND RESPONSES	19
If someone wants to adopt a child already living with them, do they have to get legal consent from the biological parents?	20
Want to stop payment for my daughter she is over 18yrs	21
I had a relationship with a girl whom we got a child (girl) together. We lived together and she was lucky and travelled abroad and left me with the child who was one year at that time. During the holidays I would take the child to his grandfather but later he refused and denied me access to her. What can I do in this situation coz I have tried to go to court but it seems like my lawyer is on his side	22
Birth certificate or loose scholarship	23
Police arrest people at night	24
Removal of former husband's name from my national Identity card	25
Our children's custody case was concluded and the mother awarded	26
Are summons by WhatsApp valid?	27
Adding a surname to the birth certificate of my first-born child	28
Can parenting be motivated by connection other than biology?	29
My problem is that, I have a wife whom we have stayed together for 14 years now and blessed with two children now 9yrs and the other 1 1yrs of whom I pay school fees in an academy	30
REVIEW	31
Why violent extremism is our business	31
Juvenile justice system did not anticipate children involvement in violent extremism?	33
Extractive sector in Kenya: will we hack it?	35
Pictorial – paralegals at work	37
Legal aid in Kisii	37
Legal Aid at Nairobi City Court	39
Success Story of Paralegal Intervention	41



Justice Advisory Centres in Nairobi

Justice Advisory Centres are to be ideally be centres established by the National Legal Aid Service for administering and providing legal aid services in Kenya pursuant to Section 3(d) and 7 (f)(n) of the Legal Aid Act No 6 of 2016

The Justice Advisory Centres are to be located in every county with a possibility of a further decentralization to the sub-county and ward levels to improve speedy access to legal aid. These centres may be manned by paralegals supervised by staff of the National Legal Aid Service or Advocates appointed by the Service.

The aim of the centres is to make legal aid accessible to the indigent. Over the year's justice advisory centres have taken different forms.

a) Community Justice Advisory Centres:

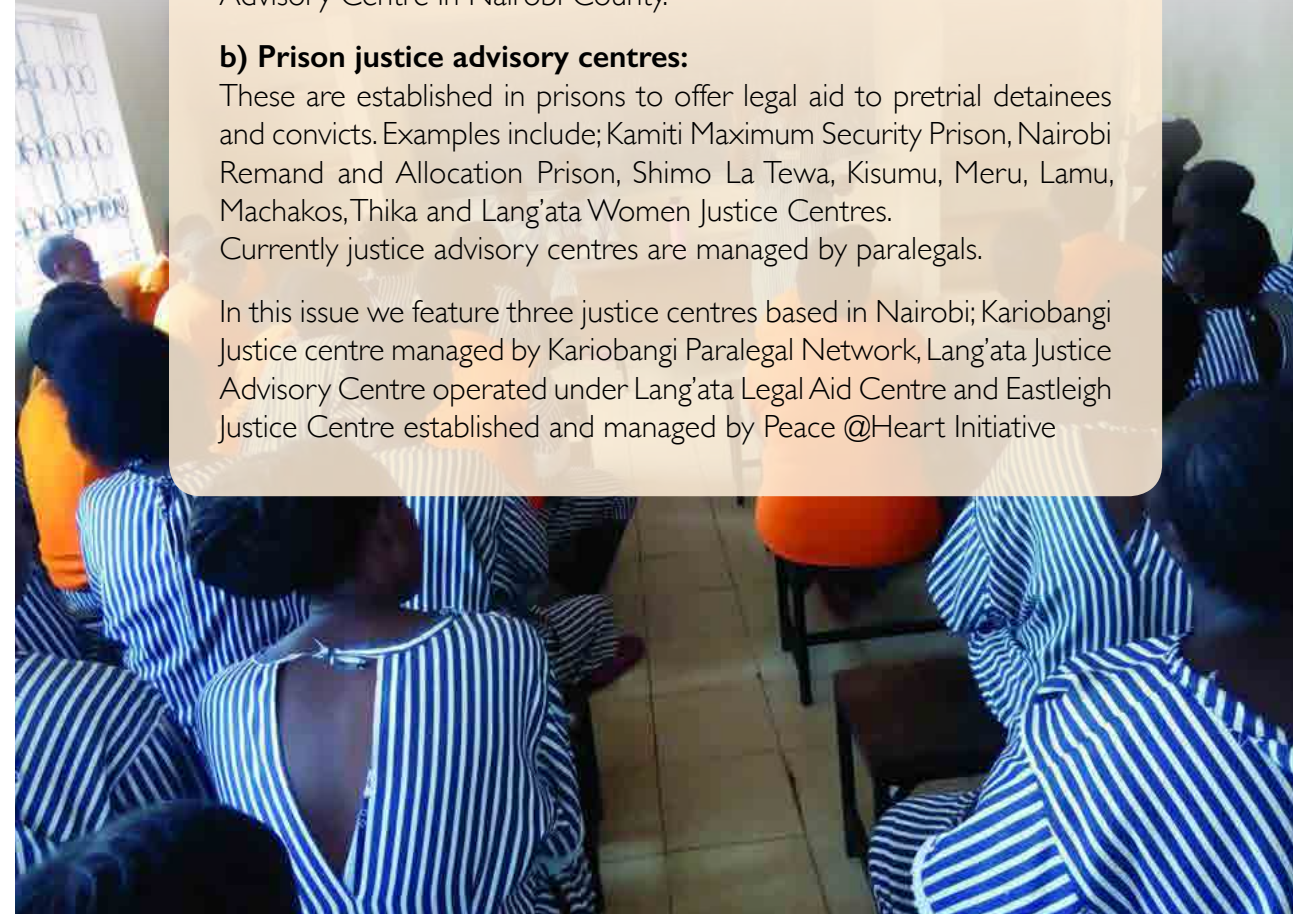
These offer legal aid services to communities in areas where they are located. Examples include Mwala Community Resource Centre in Machakos County, Kinoo Paralegal - Community Resource Centre in Kiambu County, Kariobangi, Korogocho, Eastleigh and Lang'ata justice Advisory Centre in Nairobi County.

b) Prison justice advisory centres:

These are established in prisons to offer legal aid to pretrial detainees and convicts. Examples include; Kamiti Maximum Security Prison, Nairobi Remand and Allocation Prison, Shimo La Tewa, Kisumu, Meru, Lamu, Machakos, Thika and Lang'ata Women Justice Centres.

Currently justice advisory centres are managed by paralegals.

In this issue we feature three justice centres based in Nairobi; Kariobangi Justice centre managed by Kariobangi Paralegal Network, Lang'ata Justice Advisory Centre operated under Lang'ata Legal Aid Centre and Eastleigh Justice Centre established and managed by Peace @Heart Initiative



(i) Kariobangi Paralegal Network



Senior Paralegal Ezekiel at Kariobangi Paralegal Network Oluoch left displays a copy of Bond and Policy guidelines implementation used to educate clients right on how to apply for bail include at police station and court

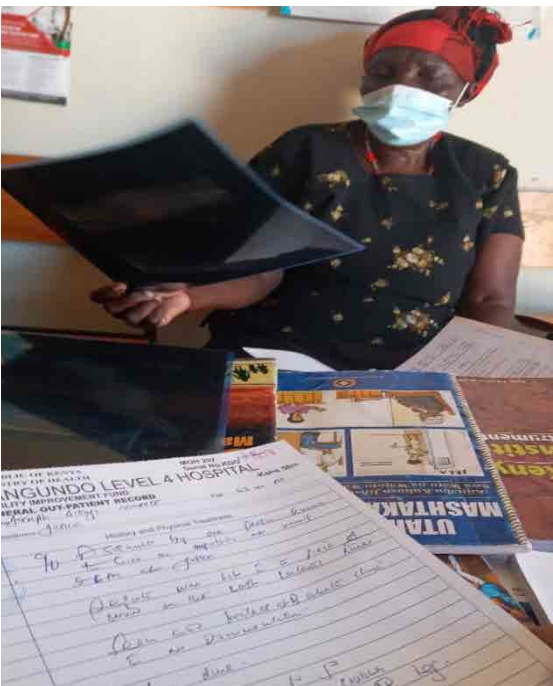


Lucy Wanjiru from Kayole gets legal Aid on child custody from Kariobangi Paralegal Network





Janet in blue dress seeks legal Advice from Kariobangi Paralegal Network Senior of senior paralegal Bilasio Wandera after son was charged at Makadara Law court for robbery



Lucy Nkerote from Joska in Matungulu Machakos County lodges a complain at Kariobangi Paralegal Network on police inactions for failing to arrest a perpetrator who broke the sons left leg. Persons from other areas are free to access the justice centre for legal aid

MEDICAL EXAMINATION REPORT

PART I—(To be completed by Police Officer requesting examination)

From Joska POLICE STATION Ref. DB 12
 Date 24/10/2020

To the... MEM KASONGO LEVEL II Hospital/Dispensary.

I have to request the favour of your examination of:—
 Name JOSEPH GITONGA MARE Age 41 YEARS (if known)
 Date and time of alleged offence 19TH OCTOBER 2020 AT 1930HRS
 Address

Sent to you/hospital on the 23RD OCTOBER 2020 under escort of SELF
 and of you furnishing me with a report of the nature and extent of bodily injury sustained by him/her.
 Date and time reported to police 24TH OCTOBER 2020 AT 1930HRS

Brief details of alleged offence HE ALLEGED TO HAVE BEEN ASSAULTED BY A PERSON WHO WISHED TO HARM HIM WITH A KNIFE AND ASCERTAIN A DEGREE OF INJURY

Signature of Police Officer

PART II—MEDICAL DETAILS—(To be complete by Medical Officer or Practitioner carrying out examination)
 (Please type four copies from the original manuscripts)

SECTION "A"—THIS SECTION MUST BE COMPLETED IN ALL EXAMINATIONS

Medical Officer's Ref. No. 125.P.120

1. State of clothing including presence of tears, stains (wet or dry) blood, etc.
Lefts clot. touch left hand

2. General medical history (including details relevant to offence) Assault by one person with knife to harm on 27/10/2020 at around 1930HRS at Joska 1400 15th Lt leg

3. General physical examination (including general appearance, use of drugs or alcohol and demeanour)
No pain. No use of drugs or alcohol

Joseph Gitonga's P3 form filed at Joska Police station





Legislative and policy Advocacy on police reforms within Police Reforms Working Group-K with Interior cabinet secretary Fred Matiangi on Independence of police in BBI report



During live talk show at Radio Maria Nairobi on every Wednesday from 7.00 pm -8.00 pm the rights and law





Victim of Huruma police brutality in enforcing Covid-19 curfew. The justice centre provides support to victims of state and non-state violence to pursue justice



Patrick Victim of police brutality in April in enforcing Covid-19 curfew.



Interreligious participants who attended the Freedom on Religious Beliefs and marginalized communities.





Kariobangi Paralegal Network

Tel: 0720 201613, P.O. Box 47714, 00100 GPO, Nairobi, Kenya

E-mail: kariobangiparanet@gmail.com

Kariobangi Paralegal Network (KAPARANET) is an independent, not for profit registered Community based organization (CBO) that promotes access to justice, through human rights education, legal education, legal aid/ advice sessions, research and advocacy. It was started in 2009 and registered in 2012. Kariobangi paralegal Network is located within Holy Trinity Catholic Church Kariobangi along Outering Road.

KAPARANET has 25 active trained paralegals who continuously provide legal Aid to clients who need legal aid support from their places of residence.

KAPARANET is a member of the Makadara Court users committee, Police reforms Working Group- Kenya and Private security

Observatory Governance and member of Namati legal Empowerment Network. Legal Aid provided include drafting of affidavits, petitions, demand letters, making referrals, legal Advice, KPARANET also convenes the interreligious forum in Kariobangi area that promotes freedom on Religious Beliefs in partnership with Haki Africa.

Kariobangi Paralegal Network (KAPARANET) promotes access to justice, through human rights education, legal education, legal aid / advice sessions, research and advocacy. It was started in 2009 and registered in 2012. Kariobangi paralegal Network is located within Holy Trinity Catholic Church Kariobangi along Outering Road. In 2020, KAPARANET supported the following cases at the Justice Advisory Center

Criminal	Civil	Sexual Gender based violence	Children	Monitoring Human rights
15	3	8	5	15



(ii) Eastleigh Justice Centre

The Eastleigh Justice Centre was established by Peace @ Heart Initiative Network (PHIN) in partnership with Legal Resource Foundation (LRF) in 2019. The centre seeks to contribute to operationalization of the Legal aid Act 2016 by providing accessible legal aid services to the poor and marginalized communities.

Our area of jurisdiction covers the area from Uhuru highway all the way to Outering road to the East of Nairobi City County. In particular our outreach covers Starehe, Kamukunji Mathare, Embakasi West and Makadara Sub-Counties in Nairobi.



Starehe community sensitization forums on AJS



Village elder makes a contribution to the discussion during a community forum

The cases referred to the Justice Advisory center include but not limited to the following:

- Assault cases
- Child protection
- Tenant /landlord disputes
- Police harassment
- Family disputes
- Domestic violence
- Gender based violence
- Fraud
- Succession
- Labor related disputes - Workman's compensation

In 2020 our centre received more than fifteen cases. Most of the cases are referred by religious leaders, Nyumba Kumi elders, Paralegals and Civic educators





PHIN Paralegals Dan, Juliet and a client during a session at the Advisory Centre.





Peace @Heart Initiatives Network (PHIN)

Unity for Peace is our responsibility

Mobile: 0732 72 79 69, Email: phinkenya20@gmail.com,

Introduction

Peace @ Heart Initiative Network (PHIN) is a community based, non-partisan in politics and religion, charitable organization based in Nairobi, Kenya. Since its inception in 2011, PHIN has been a consortium of interdenominational actors with a common denominator of peace. It has committed itself unequivocally to peace-building and development in Kenya through advocacy, capacity building, art and participatory research. PHIN organizes and hosts periodic seminars, workshops and art events as strategies to reach diverse stakeholders in the community to promote justice and peace, cohesion and integration.



Our Vision:

To build a society free from poverty with just societal structures



Our Mission:

Peace at Heart Initiatives Network is motivated to cherish, preserve and uphold the sacredness of all human life, justice and peace as embodied in many manuscripts.

One of PHIN's Thematic Areas is Transitional justice: Conflict analysis and negotiation, dialogue, peace building, forgiveness and reconciliation.



(iii) Lang'ata Justice Advisory Centre

Lang'ata Justice Advisory Centre was opened by Langata Legal Aid Centre, a Community Based Organization started by paralegals in October 2017. The centre based at Mugumoini in Lang'ata constituency provides legal advice to vulnerable, disadvantaged, and marginalized communities initially in Kibra but has since expanded its programs to cover Langata and Dagoreti Sub-Counties.

For three years now LLAC has been promoting access to justice for the poor and marginalized communities within Langata and Dagoreti Sub-Counties by providing legal aid and legal awareness, advocating for gender development, and enhancing good governance on peace and security.

We envision a society with enhanced Access to Justice. To achieve this, we work closely with other development partners, government, paralegals, and volunteer advocates who advise clients on legal issues.

LLAC has held several community outreach activities to sensitize local leaders on our mandate. We have also held economic empowerment initiatives targeting women and girls who are victims of gender-based violence (GBV) and eviction.

In 2020 we have partnered with Legal Resources Foundation Trust to conduct Community Sensitization Forums to educate members of the community on the constitution, alternative justice system, child rights among others.





LANGATA LEGAL AID CENTRE

Langata Legal Aid Centre is a registered community based organization that provides legal advice to marginalized communities.

Our Services

1 Children matters

- Custody and/or maintenance
- Adoption
- Child abuse.

2 Family matters

- Separation-
- Divorce cases
- Succession
- Matrimonial property cases

3 Land Disputes

- Buying and selling property
- Transfers
- Leases
- Charges
- Assignments

4 Mediation

5 Housing

- Evictions
- Demolitions
- Landlord and tenant disputes

6 Gender based violence

- Sexual harassment
- Domestic violence
- Assault

7 Employment & Labour matters

- Employment contracts
- Unfair termination disputes
- Redundancy
- Pensions

8 Accident & Company disputes

Our office opens from Monday to Friday between 9.00 am - 4.00pm.
We're located at Lang'ata Mugumoini, Chief's Office

Contact us

0757945212 or 0789064958

Email: info@llac.co.ke | Website: www.llac.co.ke

Facebook: Langata Legal Aid Centre | Twitter: @aidcentre



Legal aid questions and responses



If someone wants to adopt a child already living with them, do they have to get legal consent from the biological parents?

Answer

The silent conversation that emerges in reading the text of this question is your knowledge about recognisable parenthood. It is not clear whether you are man or woman, nonetheless, the question you pose presents our readers and those who seek legal knowledge on parenting with two concepts of parentage; biological and non-biological. It should be known that biological, similarly referred to as natural parenthood has express legal recognition and is only contestable if a party questions paternity that departs from genetic configuration of the child to both or either of the parents. Non-biological, otherwise known as adopted parenthood must be sanctioned by law. To make this discussion precise, we will first define adoption, seen as the legal process by which a child becomes the child of another or other persons other than his/her natural or biological parents. When this happens, an automatic and permanent transfer of rights and responsibilities shifts from the biological parents to the adopters.

To contextualise the situation you have described, we will tether our response along four assumptions; that you wish to adopt a child unrelated to both you and your spouse but domiciled in your house: you seek to adopt a child who is related to you or your spouse: that the child in your custody has traceable biological parents or guardian: and that the legal consent you seek is for the best interests of a child older than six weeks but less eighteen years as a principle captured by section 4 (2) and (3) of the Children's Act in pursuant to Article 53 (1-e) of the Constitution. Equally, the difference in years between you and the child sought for adoption is twenty-one years on the low.

Scenario one: *if the child you seek to adopt is unrelated to either you or your spouse, then a consent will be required from the biological parents or guardians if traceable. Though this is limited to the extent that such*



biological parents are not deemed to have abandoned the child and are not permanently separated. Since you have been living with the child, the law on children at section 157 (1) strengthens your desire by directing that this live-in situation should be at the minimum of three months. Nonetheless, should the child be fourteen years upwards, then their consent will be necessary for the completion of the adoption process.

Scenario two: *if the child you seek to adopt is son or daughter to you or your spouse, then consent is required from the other biological parent outside this union. This is referred to as kinship adoption. However, this consent may be waived, if the parent seeking adoption can prove before the High Court consistent non-concern of the other on parenting obligations. In the same context, any fourteen-year-old and above this age has to consent.*

Other than what has been mentioned previously in this text, one needs to know that adoption processes require the would-be adopter or adopters to be of sound mind without history of insanity in accordance with the Mental Health Act, aged 25 and not exceeding sixty-five. If the applicants are a couple then their marriage should have been effectively existing for three years. Important to know is that the law is structured to prohibit any single man seeking to adopt a baby girl, similarly any single woman

seeking to adopt a baby boy, neither does it allow an adoption order to be granted to applicants staying together, yet unmarried. In a similar fashion, the law forbids homosexuals to adopt a child in Kenya, besides any applicant who has been convicted of crimes such as defilement, rape, assault, causing bodily harm, living on earnings of prostitution or runs and manages a brothel among other child welfare threatening offenses.

Therefore, for you and any other person out there in similar situation, the aforementioned must be met. Further, without rubbishing the fact of staying with the child within the minimum time required by law, the court may direct that certain issues be clarified in the best interests of the child. Through a social worker or children officer, the court may seek to get insights on the quality of the applicants' home and environment, in which the to-be-adopted child will reside. Second, the court may also ascertain the capacity of the adopters to educate the child they seek to adopt: and third, the court may want to know the adopters ability to effectively dispense off the duties of parents that include feeding, sheltering and clothing the child, as well offer reliable health care. While it is advantageous you stay with child, the law may seek to determine your other capacities to protect the child from likely harm.



Want to stop payment for my daughter she is over 18yrs

Thank you. This question is important and timely for us and our readers particularly because many who face such challenges often suffer in prolonged silence. From the tone of your asking, though this is interpretive, it is clear that you find it a burden to continue taking care of your daughter who is above 18 years. You have not indicated whether she is in your residence under direct care or stays away from you, likely with the mother, if you are unmarried. Four issues emerge that require us to canvass in order to find justification as to why you think stopping payment for your 18-year-old daughter is the best thing to do. First is to outline parental roles towards the welfare, interests and needs of their children, which the law defines as rights. Second is to develop a general understanding as to when the term child support is used in our social and legal conversations. Third, is to create a short conversation of social and legal parameters of parenting. Fourth, is to highlight when any parent may have to continue support to their child even after 18 years.

A parent is either biological or an adopter. This definition includes those people who act as parents known foster parents and guardians. In an umbrella perspective and within legal recognition of parenthood, none of these persons is lesser when it comes to parental responsibility. All are obligated to offer quality care to their children, and where a couple is involved, expectations of equal and non-discriminate responsibility is anticipated by the law. Section 6 of the Children's Act in the larger confines at Article 53 (1-e) of the Constitution, inclines every child to parental care including equal responsibility of the

mother and father to provide for the child whether, married or not. To contextualise responsibility of parents, it is necessary to invite Constitutional provisions at Article 43, which emphasise right to highest attainable standards of health, including reproductive health care, central in explaining support to your daughter, if at all. Further, parents are to ensure their children are in adequate housing, enjoy reasonable sanitation, find and use adequate amounts of quality food besides access education in the bigger context of a reliable social security system.

Child support in its social construction comes with the natural mandate of one being a parent. It is expected by the society that one's son or daughter will not lack or languish in the state of lacking, especially about basic needs such as those mentioned earlier in this write up. However, the law also anticipates invitation into the child support arena, when social mechanisms fail to protect children from unnecessary suffering(s). When man or woman fails to live up to the threshold set by parenthood with regard to the products of their loins, even in liberal societies, the law often steps in to rein over irresponsibility. From this part of the conversation, it is indicative that the law only comes into play whenever the social support system seems unlikely to guarantee a child proper care.

The Children's Act in the mother spirit offered by the Constitution considers a child to be any person below the age of 18. In this scenario, every parent by all the definitions that place children under their care have no option but to cater for the welfare, needs and interests of their children. As a right this is captured at section 4 (3) of the Children's Act in pursuant to Article 53 of the Constitution which obligates not only parents but courts and other administrative institutions to take decisions that best reflect the interests of the child.

In principle therefore, child maintenance terminates at age 18, nonetheless, there are circumstances that may demand extension of this parental responsibility upon intervention by the court. In a case before the High Court, Justice Aggrey Muchelule in 2019, while departing from a decision of a lower court offered the following as basis upon which support can be extended beyond the age of majority; first the child in question may be having a disability and require specialized care. Second, the child could be suffering from an illness or ailment which require medical care beyond the age of 18. Similarly, the above-18 child, may be pursuing education and training which currently is being paid for by the particular parent and extends beyond their age. In your question, we do not have sufficient information with regard to any special circumstances likely faced by your daughter and cannot with finality give you wisdom to abscond this responsibility. However, you are at liberty to contest the support you give her, citing circumstances and reasons that motivate your desire to terminate the same before a competent court of law.



Hi I had a relationship with a girl whom we got a child (girl) together. We lived together and she was lucky and travelled abroad and left me with the child who was one year at that time. During the holidays I would take the child to his grandfather but later he refused and denied me access to her. What can I do in this situation coz I have tried to go to court but it seems like my lawyer is on his side...? The story is long...

Hey man!

As a man I wish to congratulate you for opening up. Psychologists and counselors have consistently highlighted how it is difficult for men to share their relationship problems especially those touching on emotions and family. Your narration provides a legal and social learning journey for our readers and those of us in similar situation to adjust how we view unfavourable relationship outcomes that must be dealt with. The issues you have raised are weighty for any father who loves their child, more so a daughter as it is your case. You have shown that access to your daughter has been and continues to be curtailed for unknown reasons. Second, though not very pronounced is custody of the girl, which you have explained was well till after a specific holiday when the grandfather took over without any consultation with you; and third are the options you have in finding favourable result with regard to your daughter's wellbeing.

The law is clear: The Constitution of this country at Article 53 (1-e) directs that a child has the right to enjoy protection and parental care from both parents, notwithstanding their marital status. The legal opportunity for both parents to enjoy quality time with their daughter or son, outweighs and defeats any social preferences and cultural biases besides philosophical differences that may prevail between

families in which the child is born. The law doesn't prejudice any of the parents, father nor mother with regard to the rights of the child, neither does it empower auxiliary care takers such as grandfathers to interfere, not unless there is proof of neglect and abandonment on your part. Even though the society may view negligence by lenses that mirror reduced social ties between larger families, the Kenyan law and courts envisage individualized acts of abuse, denial of basics such as food, education and fundamentally love.

As mentioned, custody is the other legal issue you allude, which is the physical possession of the child in particular the place where they reside. Parental care includes ensuring that children have shelter over their heads, nonetheless, this must be exemplified by the threshold given in Children's Act at Section 83 (1) within the overriding best interests of the child principle captured at Article 53 (2) of the Constitution. These include wishes of natural parents, foster parent or guardians who have custody of the child, as is the case with the grandfather of your daughter; and the child (if in a position to speak their mind), parent-child relationship bond, parenting abilities, besides the mental, physical and emotional health alongside relevant accessible social support system. Your situation indicates that you have no custody of this child.

Having stated the legal issues that constitute your dissatisfaction with the how the welfare and rights of your daughter are being handled, there is need to identify the avenues before you in seeking to arrive at possible solutions. First, there is an opportunity for direct discussion with the mother of your daughter, whose outcome can then be shared with the family unit for execution. Second, upon failure of the first strategy is to invite larger family representatives from both sides of the aisle in close consultation with the area children officer(s) for a negotiated approach that will allow you to access your daughter and even agree on custody arrangements. If the results of these approaches don't create amiable solution, then filing a petition in children's court is necessary and your prayers in this matter will be access, which may include visitation rights and custody. The court will consider the many things herein mentioned in determining who deserves to be the care giver of the girl. If the mother will be around, the court may have to make a decision on custody by considering the sex and age of the child. Generally, children and in this case a baby girl of tender age are often left with their mothers. You say that the lawyer is on their side, but it's not he/she who makes decision but a magistrate. It is difficult to follow up on this statement because its blanket and explains nothing legal, but should you feel shortchanged there is an opportunity to contract another lawyer, if at all the matter is in court.



Birth certificate or loose scholarship

Question

I applied for a birth certificate in 2010 and then lost it. On enquiry, there were no records of the same.

I changed the place of birth on my Identification Card using my guardian and then later applied for Birth Certificate but registrar (Nakuru county) refused to process my Birth Certificate yet I need to apply for passport since I have scholarship.

Answer

A scholarship anytime in a person's moment of seeking academic prowess or expanding their professional horizon is magical. Congratulations! Your text demonstrates the urgency for you to have a passport, yet it is evident that the process hasn't been easy in trying to acquire one. You sound frustrated and desperate. You are one among many Kenyans who go through this unfortunate ordeal. The reasons for such experiences are as diverse as the people, but lack of relevant information and little understanding of government bureaucracy abounds. Your situation presents several issues to be canvassed, but not all are legal in nature. You have pointed to the following: the right of a person to have properly recognised state identification; the process of birth registration and the linkages between different government agencies; legal mitigation on inconsistent identities originating from record(s) or documents; and the probable scenarios likely to curtail re-processing of a birth certificate.

First, let us agree that every Kenyan has a right to state recognition by documents of identification such as Passport, Identification Card (ID) and any other documents of registration as provided by the Constitution at Article 12 (1-b). It should also be clear that government agencies, whether in isolation or cohorts are constructed to facilitate not prohibit state services. In your context, proper reasons from the registrar in Nakuru required to have been provided indicating to you why the birth certificate couldn't be processed. This is not legal but individual attitude. Any state or public official must always remember they are employed to serve the public.

The mandate to register births, the result of which is a birth certificate is on the Registrar of Births. This office is meant to hold and archive all the birth registers bearing names of children whose birth notifications have either been issued by assistant registrars (who are medical personnel) and national government administration officers in locations, for children born in and out of hospital respectively. The original copy of the birth notification is issued free of charge to parents, but the duplicate is retained by the two officials mentioned herein, because it is among others, an attendant document towards acquisition of a birth certificate. The purpose of a birth notification is to notify and confirm to government the entry of a new birth in her population records, hence used to plan for and allocate resources appropriately.

The process of acquiring a birth certificate is easy and largely administrative upon payment of requisite fee. You are supposed to have several documents to process a new one since you are an adult, including the following: copy of the original birth certificate (if available) baptismal certificate, child immunization clinic card (if available), notification of birth, school leaving certificates and identity card. Since you seek replacement, the issue of changed place of birth doesn't arise, and the county registrar of Nakuru should make reference to the original documents, upon which your first birth certificate was given. Though, this can be impossible if at all you were born in another county, nonetheless, you need to be advised accordingly. It is not clear from your question. However, if this is the premise to deny you a birth certificate, then administrative confirmation that you are the same

person born in point A and presenting yourself as having been born in another, courtesy your National identification Card can be remedied by records kept by the chief who is national government officer at the grassroots or by the hospital records, where your birth happened, if at all. Couple this with a sworn affidavit before Notaries of public or commissioner of oaths at the Judiciary stating you to be the one and same person referenced in the two areas of birth.

Are there circumstances when issuance of birth certificate can be denied, despite this being a constitutional right? To begin with, we acknowledge the discretion of the registrar of births to provide a birth certificate to anyone, with or without birth notification. Second, is when the documents being used to verify a person's identity have very distinct disparities causing difficulty to ascertain someone to be who they claim. Third, is when the documents given at birth such as birth notification are not submitted to the relevant area registrar of births in good time, especially after six months, making them redundant hence causing unnecessary delay in the process. Fourth, is the poor filing and archiving of records within relevant government agencies, whose effect is on the service seekers such as you.

Having furnished you with information on how to replace your birth certificate, we hope you will be able to follow through till acquisition of a passport to enable travel for your studies.



Police arrest people at night



Question

I often see police arrest people at night and my cousin has once been a victim. During that time he called me to assist, and for fear of attending court, I bribed the Police to release him. Following this incident, I want to ask, if someone is arrested at night;

- 1. On what offense are they likely to be charged?*
- 2. What is the bond one can expect to pay?*
- 3. Can someone spend time in jail?*
- 4. I understand loitering could be one of the charges, but how does the court determine such an offense especially if one is arrested near their house.*

I'm looking forward to your answers/arguments.

*Kind Regards,
Peter.*

Answer

After reading the content of your question, we are encouraged that public education on legal knowledge is a noble initiative. You have mentioned some of the key operational tools upon which the criminal justice system is anchored, further, highlighted specific crime scenarios commonly applied by police while executing their work. We acknowledge and appreciate your command of legal issues, though basic, it does reflect what many Kenyans, ordinary or otherwise lack. You raise several legal issues in the criminal justice system. In order to canvass and offer an organised response, contextualization is necessary. First is the role of police in society in which they operate. Second,

is due process upon arrest of any person prior to attend court. Third, is information regarding tools that drive the criminal justice system. Fourth, is to review the crimes in your text, but in the larger picture of likely offenses if one is arrested at night. Fifth, is to draw understanding on the role of court to determine and punish culpability.

Peter, all of us must get interest to understand that police's main role is to maintain law and order, preserve peace, protect life and property, prevent and detect crime, besides apprehend offenders as they enforce laws and regulations charged to them. So, police should not be seen to be doing anything outside these functional areas. This is tantamount to flouting the law that establishes the National Police Service, found in the National Police Service (Amendment) Act in pursuant to Article 243 and 244 of the Constitution. Notwithstanding, the reality of some police officers abusing work ethics like soliciting for bribes and exploiting citizens in an open secret.

Nonetheless, police must do their work. Hence on arrest there is a procedure to be followed as outlined at Article 49 of the constitution on rights of arrested persons. The arrested person is to; be informed in a language they understand the reason for arrest, be allowed communication to an advocate or someone who can assist them, not to be compelled to any confessions or admissions and be taken to a court of law in the shortest time possible not exceeding 24 hours on a charge that is defined in law. For your information,

the police have authority to release an arrested person on what is popularly referred to as police bond of between Kenya shillings 0 to 10,000 as such persons await scheduled time to appear in court and answer charges as drafted in the police station occurrence book (OB). Therefore, it was wrong for you to pursue bribery.

Awareness regarding some of the tools applied in the criminal justice system is important. As requested, bond is a commitment or undertaking made by an accused person in custody binding themselves to conditions set by a court or police station, failure to which they forfeit a certain amount of money known as bail. Whereas the amount of bail payable is the prerogative of a magistrate or police station commander in relation to the offense one is accused of, similarly demenour of the accused to invite trust in the decision of the judicial or police officer administering the same.

While, it is difficult to identify specific offenses one can be charged with, it is necessary to have an inkling of what is likely. To be clear, is for you to know there are crimes which stand repealed but police on night duty tend to employ them. Some of this comprise loitering with an intent to commit crime, idle and disorderly person which may include a common prostitute who seemingly conducts themselves in a manner likely to cause breach of peace. Others, which are recognised in law include preparation to commit felony at section 308 of the penal code, which describes a person found away from his usual place of residence with any article (item) for use in the course of any burglary, theft or cheating. Further, offenses such as drunk driving and common nuisance. However, in these times of quarantine, under the Public Health Order Act, breaching the set curfew hours has since become a common crime at night.

Last, is for us to know that court's main function is to dispense justice to those who seek its interventions. Determining and convicting an accused person is not express, rather based on evidence proofing beyond reasonable doubt over alleged offense. Thus, conviction not guided by mandatory sentences, has options of fine or community service orders. So, to be found guilty does not necessarily predispose accused person to jail term.



Removal of former husband's name from my national Identity card (ID)

Question

Help me remove my ex last name in my ID and driving licence. We never got married but had come-we-stay relationship for a couple of years. Since I was so young and didn't know much, they took me to take ID with his name as my husband. Now we've been separated for more than 15 yrs, He never gave any support to our son. Single-handedly I have struggled to pay for his needs and see him through primary and secondary school and now about to join university. I don't want his name in my documents. Help me remove his name which is my last name in my ID and driving licence. Thanks in advance. Linda.



Answer

Linda, the desire to detach from your former come-we-stay husband, sounds like a humble and reasonable resolve from a man you claim has never bothered to provide for his own son. Fifteen years of separation are still glued by a name inscribed in your national identity card and driving license yet you dislike it. Without belabouring whether your efforts to educate your son through university will be easy, it is clear you seek denouncement and total separation from the man you once called husband. In addition, a conversation is necessary on what to do should the removal of name experience resistance from him or any other person.

First, things first. Congratulations. You have single-handedly taken care of your son. You deserve our praise and encouragement. You give hope to other women and couples undergoing comparable challenges. Having acknowledged your contribution to the development of your son, we delve into the change of name process. For anyone aged 16 and upwards as demonstrated by the text you present to readers, a deed poll process is available. A deed poll is the official or legally recognised document filed under the registration of documents provided by the government for those who may wish to change, rearrange, add or remove name from documents.

You will have to visit the national registration bureau and be provided with a form known as Form 4 A, on which you will be expected to do the following; fill the new names that you will prefer on your document; indicate the old name from which you wish to depart; provide reasons motivating the removal of your former husband's names. Based on the last point you may need to know that the registrar holds prerogative to disallow or allow the change you seek. The law has provided several caveats to discourage or reduce misuse or abuse of the deed poll process. One, the law demands that an application originating from a married person be coupled with spousal consent recognising the proposed name. Two, for a person who claims separation from their partner, a certificate from an advocate indicating that the applicant is living separate from their estranged spouse is required. Three, if at all the applicant is divorced then a certificate of marriage alongside court decree absolute (otherwise known as certificate of divorce) is essential to facilitate the removal or addition of name. Four, the law is open to all people to change name at anytime of their lifespan for as long the purpose is not to defraud, deceive or avoid obligation. Once the aforementioned rules have been observed and verified in the application, the deed poll will be registered at the Principal registry, and thereafter advertised in the Kenya

Gazette for a period not more than 30 days.

As mentioned, the registrar is by law allowed not to sanction any change of name process. This could be for a number of reasons, including and not limited to the following; if the name is impossible to pronounce; if the name being sought has numbers, symbols or punctuation marks; if the preferred names are vulgar, offensive and blasphemous. The registrar can also reject names, whose interpretation seem to promote discrimination, criminal activities, use of prohibited drugs and racial or religious hatred. Similarly, other names likely rejected are those that ridicule people, groups, governments, companies and organisations. Lastly, names that fallaciously impress one to have been conferred or inherited honour, title, rank or academic award such as Sir, Lord, Lady, Prince, Princess, viscount, Baron or Baroness, General Captain, Professor and Doctor amongst others.

Should there be resistance from any quarter, you can cite the following in a court of law. First is your early marriage and coercion of adopting his name. Second is his disinterest and non-contribution in your life and that of his son. We hope that this helps you and other women trapped in the same dilemma.

Question

August last year our children's custody case was concluded and the mother awarded, but I was given visitation rights on weekends and over the holidays. My concern is that I only managed to see the kids for 3 weekends and thereafter they were unavailable. I have information that the children are mad because they cannot see me, in fact the boy who is 11 years has threatened "Kuhepa" (sneak from current custody). Besides the guiding and counselling at his school thinks the counselling therapy is fast becoming meaningless because the boy insists in being with me (dad). I am tired of "mabishano" (unnecessary arguments) but I fear losing my kids, even after paying their school fees as required. I have information these kids are disturbed and unhappy, and on many occasions punished by beatings whenever they speak to me, especially the few times I visit them in school. The mother's conduct, including the introduction of another man to the kids, and forcing them to call him dad, shows her effort to deny the kids an opportunity to be with their real dad. Given this situation, is there a way social worker can be sent to school to talk to them. They are depressed and need support. I am tired with courts.... yet I need help.

Answer

Though the tone in your text is laboured and pained for what sounds like love and care of a good father towards his children, we hasten to congratulate you as a model father speaking for many who remain silent on similar issues. You invite us to review five fundamental issues. First, is the power of the court whenever decrees originate from it. Second, are the obligations of parents in matters decided by the court: third, touches on the rights of children when parents are separated: fourth, is the role of third parties such as social



workers in the welfare of children: and fifth, involves the orders of the court outside its own walls, referred to as enforcement in precincts of law.

The writing indicate you understand the law to a good extent. You have demonstrated that custody as defined at Section 81 of the Children's Act, is the actual possession of a child in safe abode, in this case granted to the mother. In the same measure you have alluded to your visitation rights, falling on the weekend and school holidays. You decry the violation of these rights, evidenced by three interactive weekends and no more. This situation is synonymous with the concept known as contempt of court, which according to Contempt of Court Act 2016 is an act that demeans the court by either disobeying its directions, consequently preventing administration of justice. The mother of your children is in breach of a court order by denying you access as granted by the court.

On the foregoing, it is clear that parties in a suit before any court, upon judgement are obligated and decreed to respect, execute and follow through the undertaking that accompanies such pronouncements. Therefore, the rights of children to be cared for, protected and loved doesn't cease with or without court orders. In fact, Article 53 (1-e) of the Constitution directs both parents irrespective of their marital status or spousal difference to invite equal responsibility, besides exude non-discriminate attitude and deed in safeguarding the rights and welfare of their children.

Let it not be lost to you that the conversation about the rights and welfare of your children is listed in the adjudicative processes of the court. Even though you register dislike of the court, having sought direction from it previously, likely that you, your partner, children and other concerned community members are predisposed to its full intervention, including advise for alternative ways of resolution and listening to appeals of earlier orders. You may wish a review of this situation following non adherence of the court order, which is tantamount to contempt. Nonetheless, before you proceed to court again, you may seek the intervention of a social worker or children officer to help the two of you negotiate an acceptable approach in executing the court order; similarly work out best ways to ensure the children have peaceful stay in school.

However, should you remain with the option of the court, filing a petition will be necessary based on the following grounds: non-circumstantial denial of access causing less quality time and bonding between you and the children: cruelty to children, who are scolded, beaten and discriminated every time they interact with you, besides being forced to call another man father who has no legal immunity/ recognition in this relationship: and the wishes of the child. Your prayers, in this petition would be full unhindered access to your children and custody if you so wish. Good luck, the law is on your side.



Are summons by WhatsApp valid?

Question

I read your article and would wish to know what I need to do in case the man fails to show up. I had sued the father of my girl and he was given a demand letter, he never responded and the matter was referred to children's court. The date is 6th of next month.

He was served with the letter after he refused to be dropped in his office so it was sent via WhatsApp

Kindly advise



WhatsApp



Answer

Your question during this time is a testimony that you are fine, even as COVID-19 ravages the country taking with it some lives. Thanks for keeping safe and strong. You have sought to know the rights of your child and understand the court serving processes, among the other pertinent legal issues. In context you seek to understand how the Kenyan civil court functions. Additional legal issues include; jurisdiction of a court in which a matter has been filed; appearance or non-appearance by parties in a civil suit; and the use of technologically driven communication platforms as an avenue for serving a party.

The Civil Procedure Code, found at Chapter 21 of the Kenyan laws alongside Civil Procedure Rules guides the process of civil cases in Kenya. This is supported by the specific law of the issue before the magistrate. For instance, the court will invoke relevant sections of Children's Act, if at all the matter is for juveniles, just as it would, were the issue at hand been land. It is the responsibility of each person in a civil matter; with or without legal representation to familiarise themselves with Civil Procedure Rules as they detail how civil suits are conducted.

While your text doesn't indicate the origin of the demand letter, there is clarity that the children's court was moved. Civil procedure rules offer criterion that determine in which court a matter should be heard, often referred to as jurisdiction. Jurisdiction refers to the competency of court to adjudicate over a matter, qualified by the following: party, especially the defendant being resident in the geographic authority of the court; the issue or incident being refereed having

occurred in that authority space of the court. In your situation the matter was taken to the children's court because the issues were related to children. You have not mentioned but often cases heard in this court include child custody and maintenance, matters for children in need of care and protection, besides children in conflict with the law among others.

Parties to a civil suit are required by law to appear in court whenever their matter is listed for hearing. The question of whether one appears or not in person is guided by provisions of section 20 to 24 of the civil procedure rules. Besides, the rules guide the court on what to look for in determining whether a litigant is aware of the suit filed. However, should the court discern that the person being sued in unwilling to participate in the trial, the magistrate or judge may deliver a judgement in favour of the person who filed the case.

A party can be served with suit papers through several means. Order 5 rule 8 of the civil procedure rules requires that service on a defendant in person, unless he has a designated advocate or agent empowered to accept service, in which case summons on either of these two shall be sufficient. Where a defendant cannot be served in person suit papers can be delivered in their offices where the person carries out business.

Having considered the challenges where persons being sued refuse to receive suit papers, and now in the context of public health directives related to COVID-19, the Chief Justice on 20th March 2020, issued guidelines known as practice directions to effect service through technology. Section 5 of these guidelines states that during this period, parties are directed,

whenever possible and unless otherwise directed by the court, to serve court documents and processes through electronic mail services and mobile enabled messaging applications as provided for under Order 5 Rules 22B and 22C of the Civil Procedure Rules. This, if interpreted would mean that available technology including WhatsApp may be used. It is of course necessary to show that the other party actually read or opened documents by what is commonly known as "blue tick". The court may require this evidence either in its original form or through a certified copy.

Even as you prepare for the hearing on 6th it is important to prepare for how you respond to claims that you have not made enough effort to ensure service has been effected. You will, as a process server swear an affidavit indicating the efforts made, and manner in which the defendant responded. For the WhatsApp serving summons, you may have to offer proof that the number you used actually belongs to the specific defendant, either by registration or frequency of use. This would be the basis for requesting the court to make judgment in default (judgement in favour of party who is present)



Adding a surname to the birth certificate of my first-born child

Question

My first-born son does not have my surname but my second born has it

How can I add my surname to his name?

Thanks in advance

Answer

Thank you. Your question is extremely vital. It offers an opportunity for our readers to understand naming as a process and terminus in a person's life. Naming as a process is both social and legal, and sometimes an event commemorating a new born. In each scenario it is an emphatic identity process that begins at birth. Socially, it is such a rite celebrated in diverse cultures among the many African communities. It's a function that establishes and promulgates a child's clan, time of birth, religion or faith, geography, community and ethnicity amongst others, especially in Kenya. Being an identity process, naming is one of the most important rights a child can be given. Section 11 of the Children's Act provides thus;

"Every child shall have a right to a name and nationality and where a child is deprived of his identity the Government shall provide appropriate assistance and protection, with a view to establishing his identity."

If we contextualise the legal importance of naming, one gets to understand why change of anyone's name, adult or child opens up them to lot many services and products provided by the state. Passports, Identity cards and various certificates including those accrued or provided upon death, performance of certain examinations, attending school, and even acquiring some professions among other recognition papers commence with a simple birth certificate bearing a person's name given at birth. Therefore, for you to add a name to your child's

birth certificate, a number of things require consideration as provided for in the Births and Deaths Registration Act. First, it is important to consider the age of the child, and our obvious assumption that child herein referred is below 18 years. Following, you are free to change their name without any administrative conditions, if they are below 2 years. You will only need to be armed with new name, a birth notification, birth certificate if any, coupled with reasons necessitating the change or addition and pay the required fee to the Registrar of Births.

For a child above 2 years, which is your most likely scenario, one requires to add or change name through a deed poll, that is dual in process but separate by application. A deed poll as mentioned on this column before is the standard application format provided under the registration of documents for change of name. In particular to your situation, a "Form 4 A" is to be filled and signed by you as the parent on behalf of your son. Similarly, this form must be witnessed by another person other than you, because you are an executor, preferably an advocate of the high court of Kenya. The second aspect is informed by the age of the child. If your son is above 16, then his consent is to be provided in the prescribed "form 4" and the same witnessed as herein described. In both cases, the application must be supported with the original birth certificate of the child and a statutory declaration or affidavit sworn by a person resident in Kenya and who knows the child well.

Since you haven't disclosed the age of your first-born son, our assumption is that he falls within the two afore-described scenarios. Secondly, you have not stated the motivation for this addition, but remember it is a requirement when submitting your application. Upon authentication of the various documents supporting the application, the deed poll will be registered with the Registrar of Documents, and thereafter gazetted in the Kenya Gazette for a period not exceeding thirty days. This period, to make a legal assumption gives the general public time to challenge the new name or raise any concerns. This could be because naming is synonymous to the identity fabric of certain communities. Once the thirty-day period is over, then your son will be free to take up the name going forward including processes to replace the old and new name from the many of his documents.

While this process seems long, it is important as the identity and official recognition of your son is a gateway to most if not all government services including documents of travel to enable international visits. Should you experience any difficulty while engaging this process, please consult an advocate or a paralegal in your area who will offer guidance. At the beginning I said naming is a process and the same has been demonstrated. Similarly, I referred to it as an end, which is the identity that a person owns till they die. Wishing you well in this endeavour.



Can parenting be motivated by connection other than biology?

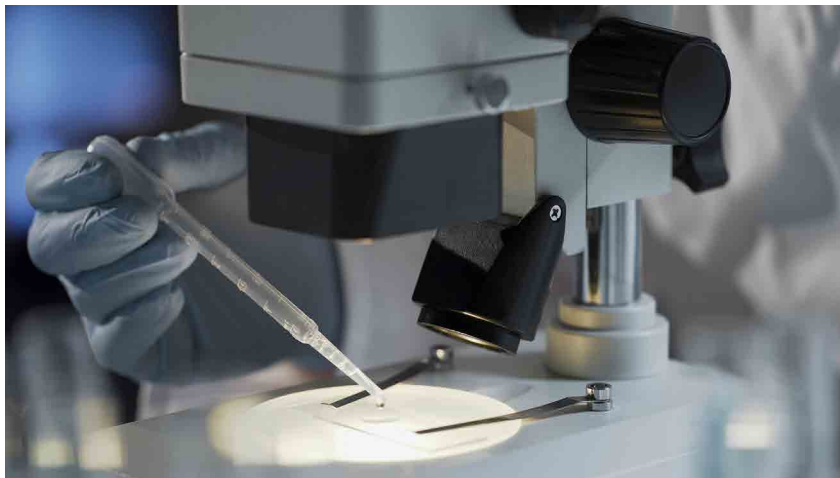
Question

I got a son with a woman. When our son was 2 years we moved in together, but along the way we disagreed and separated. A month after separation, I tried reaching her for the sake of the boy but she couldn't respond to my calls nor my text messages. I later received a call from a guy who she supposedly had moved in with. He warned me to leave his family alone. I made attempts to explain my concern for the boy, but he categorically informed that the boy was his and not mine. Thinking that the mother of the boy required time to heal, I kept off, but tried to reach out again after two months. This time, she is the one who told me the child wasn't mine. Four years on and guilt is all over me that the boy could be suffering. Is there a way to help me confirm whether indeed this is my son? How do I make the mother and her current husband agree to this without a scuffle that might hurt the boy and or confuse him? What happens if indeed the boy was not mine after taking care of him right from when she realized she was pregnant at one month to the 4th year we got separated. And what happens if he is my son?

Luke.

Answer

Men such as you are challenging stereotypes around fatherhood and changing narratives of the so-called dead-beat fathers. At least you represent men who seek to take care of those they sire. Your talk, though short demonstrates the power of conscience and the burden that comes with abscondment of rightful duties by any parent. You raise four pertinent issues: the roles of parents over their children while separated, the conflate of which is the rights of children; the role of any other person claiming parental rights over a child other than the biological parents; the need for paternity whenever the ancestral heritage is in doubt; and what likely legal scenarios upon confirmation of paternity.



Since your situation has historical underpinnings, it's advisable to begin this discussion from the time you parted with the mother of the boy. Whether the boy is yours or not, you demonstrated being a parent by conduct because you took care of him. A legal assumption is that you not only played father, you were one for 4 years, as provided by Section 25 (2) of the Children's Act. Therefore, based on this relationship with the boy, it seems your right to access him has been curtailed. Secondly, all the parties in this situation including you, the mother and the new partner must bear in mind that Article 53 (2) of the Constitution demands that all actions be motivated by the best interest of the child principle. It should also bother all of you, if parental care of the boy is compromised due to your differences. The law contemplates protection of the child irrespective of the disagreements between the parents. Remember this is his constitutional right captured at Article 53 (1-e).

You have asked two questions that are opposite of each other but like Siamese twins affect you nevertheless. What happens if you find out that this boy is not your son, and what if he is anyway? We would have advised you to talk to the mother of the boy to enable a consented to, paternity test, but the tone in your writing doesn't encourage such a negotiation. The situation is worsened by the refusal of the new partner in the mother's life to let you see the boy. In the absence of civility, the court becomes the most

appropriate platform of engagement. You may wish to file a petition in the children's court, citing Section 11, 82, 83 and 25 of the Children's Act and make the following prayers: the court decrees the boy to undergo a paternity test to ascertain the parentage; consequent to this finding a demand that you get visitation rights because the child requires fatherly love and care just as the mother's; and request for custody, though it should be known to you, courts rarely give actual custody to fathers when children are of tender age.

Should the court rule in your favour several scenarios may manifest. One, is that the boy is your son, and therefore a new frame of bonding with him, knowing he has been exposed to two men, both referred to as father. Second, the boy bears biology of another man, then the pain for you to experience as dejected and cheated parent seeps in. Third, is the unlikely custody but coupled with visitation rights to guarantee you access to him. Fourth, is a demand on the parties in this conflict, you, the boy, the mother and the man in her life to reach consensus on how to implement the court order. In the interest of the child, find a responsive psychosocial support scheme particularly counselling services to help the boy come to terms with the realities in his life. You have the ball to protect the boy, please act with diligence.

Question

Good evening?, My names are Simon Onkoba a Kenyan citizen by birth.

My problem is that, I have a wife whom we have stayed together for 14 years now and blessed with two children now 9yrs and the other 1 yrs of whom I pay school fees in an academy.

I secured a loan to buy a land and put up a home for my family to avoid rent. However, I have been having quarrels with my wife which are outlined as follows:

- i) She takes loans from microfinance which end up auctioning family property.*
- ii) As a wife, she is not submissive*
- iii) Her fidelity to me is in question*
- iv) She is full of lies*

Whenever I raise these issues, she becomes violent and provocative leading to fights.

I kindly request you to provide me with guidance since, she has threatened me and not long ago, I was locked for 3days in a Police cell for assault. Honestly, I feel there is no marriage here!!

I have made up my mind to keep off her though the fear is she might end up in the children department for other charges even though I need my children to be cater for.

I feel threatened and I can't stay in the same roof with her.

Kindly advise.

Answer

Investing both financially and emotionally in the institution that is marriage, for fourteen years and in that time, bringing forth and raising two children is not something to be scoffed at. To the contrary, congratulations are in order. Organically, marriages are meant to manifest bliss, symbiosis, and above all, love. Unfortunately, we don't live in an ideal world, and people enter into marriage for different reasons other than love, while others fall by the way side along the way. Granted, your situation calls for empathy.

While your current predicament legally points towards dissolution of marriage, we would strongly advise you to first explore social remedies. If, however, you strongly feel, formal dissolution is the only recourse, these of course, is on the assumption that, your union was officiated, the process entails the following: -

Marriage legally is defined as a voluntary union of a man and woman whether monogamous or polygamous and registered in accordance with the provisions of the Marriage Act 2014. The law further categorizes forms of marriages to include: Christian marriage, Civil marriage, Customary marriage, Hindu marriage, and Islamic marriage. Going by your name (Simon), we can only surmise, you fall under either, first, second, or third form of marriage as afore described.

Legally speaking, a court can only issue a decree of divorce, if it is proved that, the marriage in question has irretrievably broken down. This means that, the petitioner or the person seeking dissolution cannot reasonably be expected to live with his or her partner and efforts to resuscitate the union would be an exercise in futility. However, the 'irretrievability' aspect of the union must be grounded on one or more of the following facts: -

- i) One or more acts of adultery;*
- ii) Cruelty to the partner of children;*
- iii) Neglect for at least two years immediately preceding the date of presentation of the petition;*

- iv) Voluntary separation or by court order for two years;*
- v) Imprisonment of a partner for life or a term of more than seven years;*
- vi) If one partner suffers from an incurable form of insanity proved by two physicians, and in their medical opinion, the disease cannot be cured during the subsistence of the union; or;*
- vii) Any other ground the court may deem fit.*

Important to note is that, divorce proceedings are complex, long, tiring and expensive owing to high fees charged by divorce lawyers, besides the excruciating mental anguish litigants go through. The complexity is further exacerbated by the questions of matrimonial property, spousal maintenance, and children.

Matrimonial property has been the subject of recent land mark cases across all court levels. The underlying principle is that, marriage is not a punishment to either of the spouse and as such, sharing of property, maintenance and responsibilities should be done in the most fair and equitable manner guided by levels of contribution, both direct and indirect as well as enabling laws like the Matrimonial Causes Act.

In deciding the question of custody of children, courts appreciate the fact that, divorce affects both the partners and the children. However, children suffer the most, due to their tender minds and innocence. In majority of cases, children of tender years remain under the custody of the mother, with the father receiving visitation rights. Divorce however, is not synonymous with abdication of parental responsibility, and as such, courts allocate parental responsibility on the strength of the partners' levels of earning and previous practice while the union was subsisting.

In view of the above, we would strongly advice exploration of other avenues geared towards reconciliation before proceeding to court. You may want to seek services of a marriage counsellor, mediator, or opt to take some time off to for purposes of retrospection.



Why Violent Extremism is our Business

Brenda Cheptoo and Paul Kauku

Violent extremism and defiance of global order cannot be divorced. Distinction between domestic and transnational terrorist attacks remains just that as the world has increasingly become a global village thereby blurring the line. Though to a larger extent effects of a terrorist attack or attacks are felt by the individual state, ramifications overtime assumes an international feel.

Kenya ranks 21st out of 138 countries globally and 10th in Africa in the 2019 Global Terrorism Index (GTI) according to Institute of Economics and Peace. The report indicates that the impact of terrorism in the country stands at 5.756 out of 10 (medium). The two countries most impacted by terrorism in Africa are Nigeria which scored 8.957 (very high) and Somalia scoring 7.8 (high).

Despite the differences in the scales of the impact felt by states highlighted in the GTI, the immediate effects of terror attacks are rather similar. Countries are left to deal with the immense loss of lives, massive destruction of property, scores of injuries and displacement of persons. The long-term effect is that victims suffer from psychological trauma that may last up to several years after the attack. Meanwhile, violent extremists continue to upscale the nature of attacks aided by the advancements in technology and meticulously planning.

In 2006, the Al Shabaab briefly took over central and southern Somalia and begun collecting taxes from traders and businesses in order to fund its operations. Ironically, the presence of the militants rendered Somalia insecure following introduction of the sharia law as the yard stick towards societal harmony. On the international front, many will remember the piracy threats along the Indian Ocean in 2010-2011. Hollywood attempted to recreate one such attack for its audiences in the 2013 biopic “Captain Phillips” (based on a true story). Statistics indicate that in the years mentioned, over 200 pirate attacks were reported with 218 million US dollars being paid in ransom in the year 2010 alone. This figure excludes revenues lost in consignments of goods being shipped to various destinations; and losses incurred by both shipping companies and recipient countries. Insecurity and political instability of this kind certainly discourages foreign direct investment.

Violent extremist activities undoubtedly disrupt the ordinary mwananchi’s everyday activities. For some extremists this forms a major part of their strategy. Boko Haram was formed in 2002 in Nigeria and bears many similarities to the Al Shabaab. Its founder Mohammad Yusuf heavily consumed the teachings of a 14th Century Islamic scholar and was eventually radicalized into rejecting all Western and secular aspects of the Nigerian society. Initially, the group’s

primary targets were state and federal buildings i.e. police stations and prisons, but attacks were later turned towards civilian targets such as schools, religious institutions, markets and towns. In April 2014, Boko Haram caught the world's attention when the group kidnapped 276 female students from a secondary school in Chibok town. Today, six years later, it is reported that more than a hundred girls are still missing with survivors still struggling to piece their lives together. Boko Haram continues its attacks in Northern Nigeria and these have since spread to neighbouring Niger, Chad and Cameroon.

The 1998 bombing of the US Embassy in Nairobi is one occurrence many Kenyans are unlikely to forget. Since then, the country has been a target for violent extremists, exacerbated by Kenya's partnership with the UN and Somali military under the AMISOM platform and the porous nature of Kenya's borders. Kenya has since suffered and recovered from large scale attacks at the Westgate Mall and Garissa University among others. As a result, the Country has seen public funds being redirected to fund counter-terrorism measures. Private businesses have also had to contend with rising operational costs in order to beef up security in their premises. In fact, some have gone as far as taking insurance policies to cushion against threat posed by violent extremism.

The tourism industry has borne the blunt whenever the country has suffered a terror threat or attack. Tourism is a leading industry and a major contributor to the economy. In 2002, the Israeli-owned Paradise Beach Hotel in Mombasa was attacked resulting in 13 deaths and 80 injuries. Around the same time, two grenades were hauled at an Israeli airliner at Moi International Airport, Mombasa. Subsequent to these attacks, Western Governments led by the USA, UK and several other European countries issued travel advisories against Kenya. The British Government went ahead to suspend British Airways regular and chartered flights to Nairobi. Reports by the Kenya Tourism Board at the time indicated that these measures closed down access to 90% of Kenya's overseas markets. It was estimated that the country's revenue loss per week rose to over 1 billion Kenya shillings in addition to 500,000 direct employees and 2.5 million indirect employees standing a risk of losing their jobs.

While most urban centres tend to bounce back economically, the same cannot be said of smaller township particularly the North and North-Eastern parts of the country, home to the Somali population. Garissa county is the 2nd most hit by terror attacks in the country after Nairobi. The county has consistently suffered from dwindling human capital and extensive infrastructural damage characterised by relocation of skilled labourers such as doctors, nurses and teachers. Recently, the Kenya Human Rights Commission (KHRC) alongside 169 petitioners took the Teachers' Service Commission (TSC) to court (Petition number 104 of 2018) in an attempt to stop the commission from posting teachers to Northern Kenya citing security reasons.

Individuals, private entities and governments alike have responded to terror threats by increasing security and counter-terrorist operations in their countries; a commendable effort. While some people would say that it is impossible to negotiate with violent extremists, perhaps there are ways to prevent and avoid radicalization altogether. Members of the Boko Haram came together citing various common grievances against the Government i.e. being left out in the process of sharing revenue from oil resources and the Government's exploitation of oil reserves without considering the impact on the environment. Studies also indicate that Al Shabaab begun piracy operations protesting illegal, unreported and unregulated (IUU) fishing, toxic waste dumping and lack of concern over these issues by the international community.

All these grievances are legitimate. Therefore, Governments (African Governments in particular) must take seriously its citizens' complaints over resource management and exploitation. Authorities also need to develop ways of responding to such complaints and build a culture of inclusivity when discussing matters natural resources. These forums and mechanisms should be centred around looking out for the citizens' interests. Most importantly, it is the business of all and sundry to remain vigilant in countering violent extremism.

Brenda Cheptoo is an Advocate based in Nairobi. Paul Kaku is GCERF project coordinator at Legal Resources Foundation



Juvenile justice system did not anticipate children involvement in violent extremism?

Brenda Cheptoo

Until very recently, violent extremism was considered an adult only members' club. In 2015, the youngest violent extremist was sentenced to life imprisonment at the age of fifteen. Evidence presented before the court confirmed that the minor planned and gave instructions for the beheading of a police officer during a parade in Melbourne, Australia by sending thousands of text messages. He was fourteen at the time. Police described their discovery as "shocking" given the levels of brutality depicted in the text messages.

Studies conducted indicate that adolescents and youth aged between 15-30 years are a ripe target for recruitment by extremists. People within this age group are strong, energetic and are presumed to be less likely to resist new ideologies. Upon joining the extremist groups, they are by and large conditioned and trained to carry out various forms of terror attacks. They are considered ideal operatives since they can move undetected, blend in and disappear into the thin air immediately after executing attacks.

Factors that contribute to radicalisation to violence among children range from poverty, social economic marginalization, unemployment, social injustice, peer pressure illiteracy among others. In Kenya, areas/localities that are known to harbour violent extremists and their sympathisers are equally considered fertile grounds for recruitment of children to violent extremism. Ordinarily, children come into contact with recruiters in schools, places of worship, streets and other public areas. In some cases, parents who are themselves extremists, home-school their children to further an extremist ideological cause. Increased internet connectivity and social media use to some extent increases this demographic's vulnerability to indoctrination. While limited studies have been carried out on the susceptibility of this demographic

to violent extremism in Kenya, those conducted so far suggest that, the said demographic is getting into extremist groups at an alarming rate and the number if unaddressed will only rise. With this in mind, one would wonder whether adolescents and young adults are put into consideration while designing counter-terrorism strategies. Besides that, levels of preparedness of the of the juvenile justice system in dealing with children suspected of terror-related crimes leaves a lot to be desired.

The Prevention of Terrorism Act was enacted to provide measures for the detection and prevention of terrorist activities. Out of the entire Act, only section 33(5) makes a mention of children. To be specific, the Act provides that: where the suspect is a minor the Court must determine that it is absolutely necessary and in the best interest of the minor's welfare that he/she be remanded in custody before making such a pronouncement. Reading this piece of legislation gives an impression that, the drafters primarily anticipated adults being involved in terror related activities. In effect, we may have to refer to the larger body of penal legislation to gain insight on how to deal with children suspected to have committed terror related offences.

Article 53 of the Constitution of Kenya 2010 guarantees various rights for children including the right to basic education, basic nutrition, appropriate shelter, healthcare, protection from all forms of abuse, and the right not to be detained except as a measure of last resort. Furthermore, the Constitution reiterates that a child's best interest is of paramount importance in every matter. Unfortunately, the lack of basic needs and increased cases of child neglect have contributed significantly to the increased risk of radicalization to violence.

Age of a child is an important factor in determining criminal responsibility. Section 14 of the Penal Code Act states that, children below eight years cannot



be held criminally liable, while any person under the age twelve cannot assume criminal responsibility unless it is proved that, at the time of committing the offence, he/she had the mental capacity to comprehend all aspects of the offence. Many countries the world over have set the minimum age at fourteen but have made exceptions for persons who are younger, much similar to the one stated in section 14 of the Penal Code. The question is, does this mean that minors who are twelve years and above should automatically be prosecuted? Is there room to revise this age upwards or vary it on a case by case basis for terror suspects? And if so, what elements should inform such variation? While the immediate response is to demonise and condemn terror suspects, it is important to remember that children are in the first instance victims before they are perpetrators of acts of terror. Children recruited and exploited by extremist groups are often victims of civil unrest, violence, human trafficking, forced labour, among other forms societal upheaval.

The Children Act establishes an elaborate system of dealing with children in need of care and protection as well as children in conflict with the law. The former category includes those whose parents or guardians are unfit to care for them, truants, children subjected to different forms of labour, among other forms of neglect. Children suspected of being involved in terrorism ought to be considered within both categories. Much like the Constitution, this Act demands that the best interests of the child take centre stage at all times.

A child may be considered an offender and a decision may be made to charge them in Court. Under the Act, a children's court may try a child for any offence except murder or an offence in which he/she is charged alongside an adult. Should children's courts try children accused of terror-related activities? If so, the Prevention of Terrorism Act may need to expressly state that.

Section 191 of the Children Act outlines methods of dealing with offenders. These include but not limited to: making probation orders; placing the offender to the care of a fit person; sending the offender to a rehabilitation school (for offenders between the age ten-fifteen years); sending the offender to a borstal institution (for those age sixteen and above); placing the offender in an educational institution or a vocational training programme; among others. Additionally, where evidence suggests that a child needs to undergo mental treatment, the Court may make an order to that effect. Despite all these variables, the fact of

the matter is that, violent extremism as the name suggest is all emblematic of negativity. For example, any kind of institutionalization may pose the threat of exposing other children to extremist ideologies. Second, for some of these children, their entire families subscribe to these extremist ideologies and releasing them back to their care does more harm than good. Last but not least, some of these minors have no family or guardians.

It has been agreed universally that, where a child is convicted of any offence, any sentence passed should be rehabilitative and not punitive. This should be the case especially because statistically, very few children convicted of terror-related offences have engaged directly in violent acts. Most are criminalised for activities such as glorifying terrorism. Therefore, there is a need to integrate such measures with anti-terrorism and de-radicalization programmes tailored for the offenders themselves.

A preventative approach that involves parents and the community at large is also important. In today's society where parents spend less time with their children, they are left vulnerable as most of the time, they are glued to the television, smart phones, or digital games. The technological space provides new opportunities for radicalization to violence, right at the comfort of one's home. Parents and guardians therefore need to be more vigilant of what their children are consuming from the mass media. Communal parenting should also be encouraged to enable early detection of exposure to radical ideologies.

Religious leaders should also intensify sensitization programs on true religious beliefs with a view to countering the ideological propaganda of extremists. It must be ensured that, the kind of learning and teaching that takes place in places of worship doesn't encourage radicalization to violence.

The Government and other stakeholders also have a responsibility to address socio-economic grievances by empowering communities through enhanced livelihood focused programmes. Similarly, a research is a needed targeting affected areas with a view to identify the social economic reasons that drive children to radicalization to violence for purposes of designing practical and relatable programmes meant to inform disengagement.

Brenda Cheptoo is an Advocate of the High Court practicing in Nairobi



Extractive sector in Kenya: will we hack it?

By Paul Kauku

The discovery of oil in Turkana County, Northern Kenya and ongoing exploration and production activities in other parts of the country have been viewed with excitement and hope on one side, and anxiety on the other. To some, the Country has already won a golden ticket to economic and social prosperity considering some of the largest economies in the world like Saudi Arabia earns about 50% of Gross Domestic Product (GDP) and about 70% of export earnings from the extractive industry. In hindsight, petroleum and mineral resources could contribute more than 5% to the Kenya's GDP in the medium term and surpass traditional exports such as coffee as the key foreign exchange earner. In fact, preliminary estimates from various experts indicate that Kenya holds approximately 64.2 billion USD worth of rare earth. To others, there are valid concerns that failure to adequately manage the non-renewable natural resource may prevent Kenyans from enjoying the potential benefits of oil revenues including significantly expanding the economy to middle – income status as envisioned by Vision 2030 economic blue print and boosting social economic status of the local communities. Forgive my pessimism, but judging by increasing levels of corruption scandals, my confidence on proper management of the extractive industry is rather low.

Kenya can avoid the theory of resource curse. This theory speaks to resource abundant economies that tend to grow less rapidly and are more prone to conflict in resource-scarce economies. It has been argued that, resources abundant economies tend to suffer from Dutch disease; insufficient economic diversification; rent seeking and conflicts; corruption and undermined political institutions as well as loose economic policies. Ring a bell?

To contextualize the possibility of resource curse its necessary to compare Kenya with another country that has effectively and successfully managed natural resources. Botswana becomes a viable comparative. Botswana, is one of the World's largest producers of diamonds. It is one of the few that has managed to turn its resources into a blessing rather than a curse. Botswana went from being one of the 25 poorest countries in the World to becoming an upper –middle-income economy in 1998 reaching a per capita Gross Domestic Product (GDP) of 9200 USD in 2004 (Transparency International) and in 2017 Focus Economics placed Botswana's GDP per capita at 8051 USD. How did Botswana escape the pitfalls of the resource curse? Over and above sound economic strategies, Botswana pursued good governance policies.

Coming back home, signs of conflicts manifested in March 2017 when President Kenyatta toured the arid County of Turkana. Turkana Governor Josphat Nanok sparked an angry reaction from the President after he criticized the government plans to amend the Petroleum and Exploration Bill to reduce local communities' 10% oil share benefits earlier proposed to 5%. Two months later, the County government of Turkana and the National government struck a deal at State House in Nairobi, clearing the way for Implementation of the Early Oil Pilot Scheme. Alarmingly, the community share which had been the bone of contention was retained at 5%. Other than people feeling shortchanged in revenue sharing model, Turkana County government yielded and accepted an arrangement to have her share of oil revenue capped should it exceed her annual budget. The same was revised on 19th May 2018 and capping on revenue was removed.

The deal and the subsequent revision places Turkana community members at the short end of the stick. The arrangement is contaminated with hallmarks of capitalistic imperialism and is akin to a case of the elite speaking with their stomachs. It further offends the spirit of the Constitution of Kenya 2010, which placed natural resources governance and management in the hands of Kenyans (managed for them by the State). The political class may argue that, the 75% revenue share to the National Government and 20% revenue share to the County Government, will form part of the national revenue and eventually translate to development. Such an arrangement does not exude any form of confidence, given the Kenya we are in today.

When announcing the deal between the National and County governments, the President expressed confidence that; oil production would proceed without hindrance and transportation of crude oil to Mombasa would be rolled out in earnest. In support of the President, Governor Nanok confirmed the leadership and people of Turkana were in full support of exploration and production of oil. He also added that the Council of Governors was satisfied with the manner in which the issue was resolved. Turkana community expressed dissatisfaction by the manner in which the deal was struck minus their input. The government demonstrated total disregard for the mwananchi and by all accounts defiled the spirit and letter of the Constitution under Article I, which places the sovereign power to people of Kenya. To add insult to injury, the government had a few months prior to the deal signed a production agreement with Tullow Oil and an early Oil Pilot Scheme Agreement with Tullow Oil, Africa Oil, and Maersk Oil and Gas for exportation of Crude oil. To date, the community has never interacted with these agreements and Tullow Oil gives limited information.



The deals are the genesis of conflicts. At one point, Tullow Oil was unable to export 40,000 barrels of oil, as they could not access Ngamia 3 and 8 Oil fields due to insecurity. Further, one of the Companies contracted to upgrade the Kitale – Lodwar Road, which leads to the Oil fields suspended work after attack on three of its employees .

Turkana people who communally own the land now find themselves having to compete with private investors. The land surface from Lodwar to Lokichar has largely been marked for exploration. Oil installations have displaced pastoralists' community from their grazing land and migratory routes. During exploration, 13 acres of land were fenced off for each of the oil field resulting to livelihoods difficulties and anxiety . Consequently, there have been conflicts among members of the community fighting for grazing land and water. Majority of adult males in Turkana own guns largely used for cattle rustling. There are concerns over the fact that the oil discoveries near Pokot – Turkana border may fuel violence between the Turkana and Pokot communities after mineral explorations established that there are large deposits of oil in the region. The pokot have laid claim on the discovered oil fields.

There is also a general concern by the community over environmental degradation, which in future may precipitate conflicts. Even though the mining industry is still at its nascent stages, there are already signs of negative impact on the environment. National Environmental Management Agency (NEMA) has initiated cultural talks

to protect sacred shrines of the Turkana people after destruction of a few to create room for exploration. It has been documented; oil extractions can have adverse effects on the environment particularly in relation to possible oil spills, which could release dangerous carcinogenic hydrocarbons into soil that subsequently could reduce plant growth adversely affecting the eco-system

There is minimal government intervention on conflict mitigation arising from presence of extractive industries. In 2017, Legal Resources Foundation Trust (LRF) a not for profit civil society organization piloted a project in Turkana East and South Sub Counties focusing on raising awareness on community land laws, extractive industry, and environmental rights. The project has so supported founding of an Environmental and Land Court (ELC) Court Users Committee to facilitate deliberation of pertinent issues relating to land and extractive industry, and established an Alternative Dispute Resolution Mechanism (ADR) model to enable community members resolve conflicts amicably.

To realize the full potential of Oil industry, both tiers of government need to involve the community more in development of legislations and policies. Establish public participation structures that are compatible with Turkana community aspirations. The national and county government as well as oil companies owe Kenyans constitutional obligation to share information on Turkana oil deals.

Paul Kauku works at Legal Resources Foundation



Pictorial – paralegals at work

Legal aid in Kisii - **Esther Mabeya**



Many inmates cannot afford legal representation. Nonetheless Legal Aid Act expands opportunities for access to legal aid and information through paralegals. Paralegals offer support to unrepresented persons by training them on self-representation to build their capacity to engage the criminal justice system in their trial and in the event of conviction in the post-conviction processes.



Case screening is part of the legal aid and assistance offered by paralegals. Minors who come in contact with the criminal justice system are vulnerable and require special attention to navigate the system. They are entitled to legal aid as a matter of right under the Constitution and the law.





Children in conflict with the law are entitled to legal information and legal representation. Esther, based in Kisii shares legal information with young offenders at the Children Remand Home.



Legal Aid at Nairobi City Court

The City Court handles criminal cases referred to the court from the Milimani Chief Magistrate's Court. The court majorly deals with cognizance/state regulated offences related to City County laws. Some of the offences include dumping, unauthorized constructions in city estates, obstructions in traffic, parking related offences, business licences and related offences among others. Oftentimes a high number of individuals are arrested and some end up in penal institution leading to congestion. This prompted LRF to seek a working relationship to address the challenges experienced by accused persons in custody to foster stakeholder collaboration

through Court User Committee. The court under leadership of the chief magistrate held the first Nairobi City Court CUC meeting in June 2020 to find solutions for challenges bedeviling access to justice.

Court Users Committees are a platform that brings together actors and users in the justice sector in order to enhance public participation, stakeholder engagement, develop public understanding of court operations, and promote effective justice sector partnerships; for a coordinated, efficient, effective and consultative approach in the administration of justice.

During the launch, the members suggested that there was need to establish a paralegal desk to provide legal aid. A paralegal desk was then piloted in the month of September 2020 which is usually active two days a week. The desk has been helping litigants by providing legal aid and assistance on Mondays and Tuesdays before the suspects take plea. The desk assists suspects to gain knowledge on how to conduct themselves and represent themselves while in court. The suspects improve capacity to make proper applications and from a point of knowledge on the consequences of pleading guilty or not to the charges.



Nairobi City Court CUC Members during the launch in 2019





Paralegal officer at the paralegal desk at Nairobi City Court having a conversation with one of the City Court staffs.



A paralegal officer conducting legal aid at Nairobi City Court before suspects take their plea





By: Salome Monica Kioko

Name: Titus Munyoki
Status: convicted
Prison: Kitui Main Prison
Court: High Court
Appellate Number: Kitui High Court
Criminal Appeal No. 8/2019
Offence: Robbery with violence
c/sec 296 (2) Penal Code Act

Following commutation of all death sentences to life sentence by former President Mwai Kibaki in 2009, the client was given a new lease of life, which in effect motivated him to remain positive.

Success story of Paralegal Intervention

Case Preamble.

The client was remanded in custody in 2000 by Kitui Law Courts after pleading not guilty to the offence of Robbery with violence c/sec 296(2) Penal Code Act having been arrested on 6th February 2000 together with three of his accomplices. In 2001 the three were convicted and sentenced to death and afterwards transferred to Kamiti Security Maximum Prison. In March 2001, the client lodged an appeal at the High Court sitting at Nairobi and the decision of the Magistrate's Court was upheld. In his quest to secure liberty, the client lodged a second appeal at the Court of appeal and the decision of the High Court was also upheld.

Following commutation of all death sentences to life sentence by former President Mwai Kibaki in 2009, the client was given a new lease of life, which in effect motivated him to remain positive.

Lady luck would come lurking the moment the Supreme Court of Kenya declared the mandatory nature of death sentence unconstitutional in December of 2017. At this juncture, the client filed a sentence resentencing application with Kitui High Court which remained unattended until the client encountered Ms. Monica Kioko, a Paralegal Officer under the employ of Legal Resources Foundation Trust and attached to Kitui Prison on 19th July 2020.

Paralegal Intervention

The client looked old, dejected and disoriented. Upon being screened, it was established that, the resentencing application had been pending at Kitui High Court since 2018. The paralegal followed up the matter with Kitui High Court to no tangible result, since at the time, the Presiding Judge was indisposed. In September 2020, Kitui High Court welcomed a new Presiding Judge



The Supreme Court of Kenya

Hon. Justice Robert Limo. The Paralegal welcomed the new Judge by presenting a memorandum of all pending resentencing applications. Of note, the paralegal approached the Officer in Charge Public Prosecution for guidance on the manner in which the aforementioned pending cases should be presented. Resultantly, the applications were redrafted, presented to the court, and new date slated. The paralegal impacted self-representation skills to the client and indeed, the client never disappointed. He confidently addressed the court, presented certificates acquired during his stay in Prison just to demonstrate his journey to rehabilitation, besides showcasing his singing and guitar playing skills to the court.

The Presiding Judge requested the County Probation Officer to submit a social inquiry report to allow the court make an informed decision, which was duly compiled and submitted to the Court.

Court's decision

The court made reference to the fact that, the client had been in Prison for 21 years and the fact that, he was now 68 years old, there was a very high probability he could not resort to his old habits. In addition, the client expressed profound remorsefulness and regret. He confided to the court that, if granted liberty, he would record music aimed at creating awareness to the youth to desist from crime.

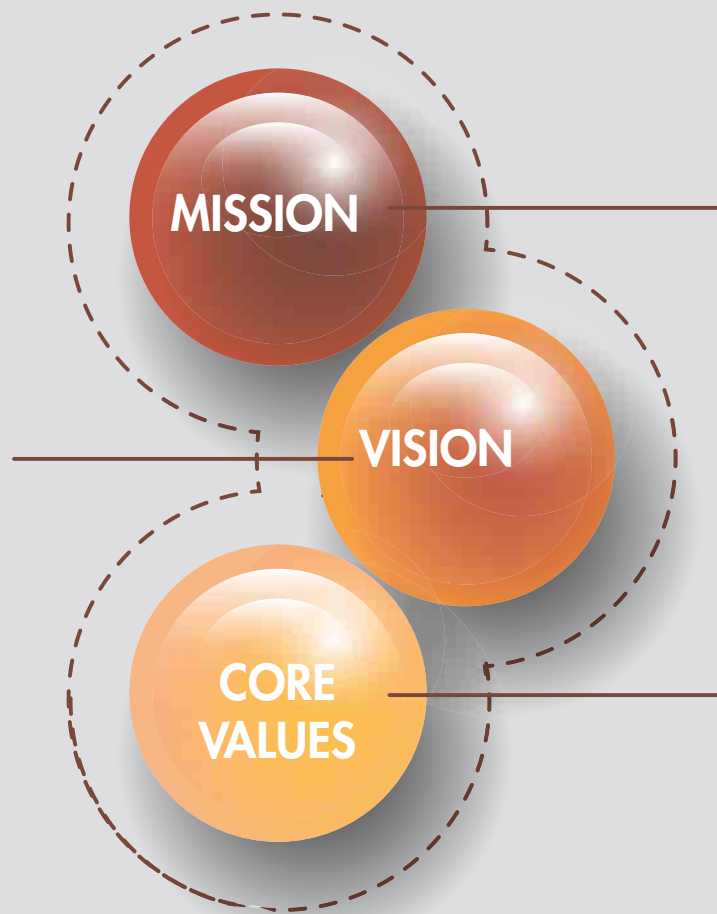
Learned Counsel for the State supported the applicant's application for resentencing by stating that the applicant had exhausted all avenues of appeal and further based his non-objection to the Judiciary's sentencing policy, pointing out the long period served by the applicant in Prison.

The social inquiry report compiled by the Probation Officer was quite favourable to the applicant as it demonstrated that, the time spent by the applicant in jail was enough punishment, and therefore recommended to the court to revise the sentence imposed on 8th January 2001 to period already served.

On the 2nd day of November 2020, the client was released



At LRF, we envision a just and equitable Society. This vision depicts the state of the society, primarily within Kenya and beyond, that LRF as a human rights organization is working towards. The institutional vision of LRF is therefore: "A premier catalyst institution for a just and equitable society."



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- INTEGRITY
- RELIABILITY
- INNOVATIVENESS
- EMPATHY
- TEAM WORK



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