



The impact of informal justice systems on access to justice for marginalised communities in Patte Island, Lamu county, Kenya

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ABSTRACT

This study focused on the impact of informal justice systems on access to justice for marginalised communities in Patte Island, Lamu County, Kenya. It was necessitated by the need to examine the existing informal justice systems used on Patte Island, evaluate their effectiveness in resolving disputes, and analyse their perceptions compared to formal justice systems. Although previous studies have examined informal justice systems, this study is unique in its focus on culturally resonant, context-specific, and often primary justice access points where formal justice systems have failed. It presents both the positive aspects and the significant risks associated with informal justice systems. It bridges the gap between expectations and lived realities, navigating the complex interplay between informal and formal justice systems. The study adopted a mixed-methods research design combining a qualitative case study and quantitative surveys anchored on legal pluralism theory and the access to justice framework theory. The target population was the residents of Patte Island aged 18 years and above. The respondents were police officers, prosecutors and chiefs who were purposely selected. Other respondents were randomly selected, and they included religious leaders, community elders, community paralegals, and residents of Patte Island. The total sample size was ninety (90) respondents. Data was collected through interviews, focused group discussions, structured surveys and observations. The instruments used for the study were interview schedules and a standardised questionnaire. Quantitative data was analysed using the Statistical Package for Social Sciences (SPSS). In contrast, qualitative data was analysed by interpreting responses and aligning them to form identifiable themes and actual narratives. Findings indicated that the existing informal justice systems were chiefs, community elders, religious leaders, community paralegals, and the Bajuni council of elders. These systems relied heavily on Sharia law and local customs to solve disputes and were found to be effective due to accessibility, affordability, and familiarity. Despite the challenges of human rights violations and male dominance, the informal systems were filling a gap left by the absence of a formal justice system. The findings implied that informal justice systems were the primary and most embraced means of accessing justice for the residents of Patte Island. The study suggests that informal justice actors should be trained and given more power in professional mediation, human rights, and national laws, while still respecting the values and needs of local informal justice systems. It also recommends strengthening the collaborative approach where informal and formal systems complement each other.

Keywords: Access to Justice, Informal Justice Systems, Marginalised Communities, Patte Island, Lamu

I. INTRODUCTION

In many parts of the world, indigenous courts, councils of elders, and similar traditional authorities play a central role in resolving disputes. Informal justice systems have recently received much attention among rule-of-law theorists and practitioners. Kariuki (2007) defines them as a variety of institutions that serve to resolve disputes and relate to social practices distinct from official state policy. Kerrigan et al. (2012) posit that informal justice systems may be run by traditional or religious authorities, elders or other respected community members. They are informal in that they employ non-state methods of conflict resolution. Nonetheless, they may be obliged to adhere to the law of the state.

According to Kerrigan et al. (2012), informal justice system is the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary, as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law. According to Kariuki (2007), informal justice systems are also often referred to as “community”, “traditional”, “indigenous”, “customary”, “non-state”, “non-formal” or “non-official” justice systems. He adds that they have, for a long time, operated outside the formal justice system, without adequate recognition or legal protection. According to the United Nations Development Programme [UNDP] (2004), in many developing countries, around 80% of cases are resolved through such mechanisms. Informal justice systems tend to address a wide range of issues of significant concern to the



people, including personal security and local crime; protection of land, property and livestock; resolution of family and community disputes; and protection of entitlements, such as access to public services.

According to Röder (2012), informal justice systems can be regarded as part of the overall governance system, with many observers citing the practical needs of rural populations as a key factor in explaining their popularity and functionality. He adds that in large geographical areas, informal justice institutions are the only choice due to the absence of the state. In situations of armed conflict, informal justice institutions often become more important due to the breakdown of formal court systems. In post-conflict societies, they can play a crucial role in the stabilisation and reconciliation process (Röder, 2012).

According to Kariuki (2007), informal justice systems have a huge potential for enhancing access to justice, strengthening the rule of law and bringing about development among communities. He further states that they promote and achieve social justice and inclusion, particularly among groups excluded from the formal justice system. Their recognition is also borne out of the increasing acceptance of their validity and legitimacy of their adjudicative power, which is home-grown, culturally appropriate, easily acceptable by the communities, and operates on minimal resources (Kariuki, 2007).

1.1 Statement of the Problem

Access to justice is a fundamental human right and a pillar of the rule of law in democratic societies. Even though national constitutions and legal frameworks often promise equal access to formal justice systems for all citizens, these systems frequently remain inaccessible, costly, and culturally unsuitable in many marginalised rural areas like Patte Island. According to UNDP (2025), formal justice mechanisms commonly face challenges such as geographic remoteness, high expenses, complex procedures, language barriers, case backlogs, and widespread distrust among local populations. As a result, most community members rely primarily on informal justice systems to resolve disputes. These informal systems provide benefits including speed, affordability, cultural relevance, and the capacity to restore social cohesion within communities (Mumbi, 2015). However, heavy dependence on informal justice systems poses significant risks and challenges. Research shows that these systems are not a universal solution and often mirror existing power disparities and discriminatory social norms, disproportionately disadvantaging groups such as women, children, and ethnic minorities (Ahmad & Von Wangenheim, 2021).

There have been reports of human rights violations where informal justice systems enforce norms conflicting with national and international human rights standards, especially concerning gender equality and children's rights. Critics highlight the absence of procedural safeguards due to the lack of documented, standardised processes, which may result in arbitrary rulings and abuse of authority by local leaders. Vulnerable groups, particularly women, may be excluded from participation as litigants or witnesses because of intimidation or the lack of privacy in addressing sensitive matters like domestic violence. Excessive reliance on non-state actors can undermine state authority, risk the abdication of state responsibility, and create parallel justice systems that discourage engagement with formal institutions, thereby impeding state-building efforts. Despite the widespread acceptance and use of informal justice systems, a significant gap in knowledge and practice remains regarding their actual impact on the rights and welfare of marginalised populations. A detailed understanding of the interplay between formal and informal justice systems is essential to design effective interventions and policies that maximise the benefits of informal mechanisms while minimising their adverse consequences. Consequently, this study seeks to examine the specific impact of informal justice systems on Patte Island, Lamu County, to develop strategies for harmoniously integrating them with formal justice structures to improve access to justice for all.

1.2 Research Objectives

- i. To examine the existing informal justice systems used as a means of enhancing access to justice in Patte Island, Lamu County.
- ii. To evaluate the effectiveness of the existing informal justice systems in resolving disputes in Patte Island, Lamu County.
- iii. To analyse the perception of informal justice systems compared to formal justice systems in Patte Island, Lamu County.

II. LITERATURE REVIEW

2.1 Theoretical Review

2.1.1 Legal Pluralism Theory

This theory was proposed by John Griffiths in 1986. According to Griffiths (1986), legal pluralism is the presence of two or more legal systems within the same social field. This is the dominant feature of most legal orders worldwide (Swenson, 2018). This theory is relevant to this study because it challenges a state's claim to a monopoly on



the legitimate resolution of legal disputes and the ideal of the uniform application of the law. Rather than state-written law, the theory emphasises a “bottom-up” understanding of law, focusing on the “living law” that people actually use in their daily lives. It advocates the use of different types of law to address different types of disputes. The theory analyses the complex and fluid interactions between different normative orders, which can be cooperative, complementary, competitive, or even combative (Swenson, 2018). This theory, therefore, recognises the coexistence and interaction of the formal justice system and multiple informal justice systems within the same social field. It views the informal justice system not merely as an alternative but as the foremost, primary, living law for many communities (Swenson, 2018).

2.1.2 Access to Justice Framework (People-Centred Approach)

The World Justice Project, the United Nations Development Programme, and the International Development Law Organisation were the proponents of this theory. According to UNDP (2025), this theory focuses on the ability of all persons, especially the vulnerable and marginalised groups, to seek and obtain redress for grievances through impartial and effective mechanisms. It highlights barriers within formal systems (cost, distance, language) that push people towards informal justice systems. The approach ensures that people’s rights, needs, perspectives, and experiences drive the transformation of justice systems and their institutions to serve the people better, especially the most vulnerable, marginalised, and those at risk of being left behind (UNDP, 2025). It is relevant in this study because it is used to evaluate the effectiveness, affordability, and accessibility of informal justice systems from the perspective of the marginalised communities and to identify existing justice gaps. This theory promotes a broad understanding of justice and seeks to address the wider contextual factors that influence people’s ability to access and experience justice. It emphasises how justice systems can be more responsive to the needs of people and communities. These needs extend beyond legal and human rights to ensuring access to fair and just outcomes (UNDP, 2025).

The nexus between the two theories is that legal pluralism theory provides the underpinning understanding of society that makes a people-centred access to justice approach to informal justice systems both practical and necessary. The people-centred approach, in turn, offers an empirical framework for engaging with the complex realities described by legal pluralism, aiming to leverage the advantages of the informal justice system while addressing its shortcomings from the perspective of the justice seekers who are the end users. Eventually, a people-centred access to justice approach, grounded in the practical realities of legal pluralism, seeks to achieve comprehensive and effective justice by recognising, understanding, and constructively engaging with the diverse informal justice systems people rely on. By using these theories, the study will move beyond simply describing informal justice systems to critically analyse their benefits and limitations, and their overall impact on securing justice and rights for marginalised people in Patte Island.

2.2 Empirical Review

2.2.1 Existing Informal Justice Systems in Kenya

According to Chopra (2008), marginalised areas in Kenya face neglect in both governance and development. The poor infrastructure, harsh environment, navigation challenges and illiteracy render these areas almost inaccessible, making their development a difficult undertaking. Competition for natural resources, clan or family conflicts, inter-village conflicts, differing values, economic and social-political issues, land conflicts and crimes are some of the causes of conflicts found in these areas. The laws of Kenya have established the judiciary as the primary body for resolving conflicts between individuals, within communities, and between citizens and the state. However, in marginalised areas, the judiciary only plays a marginal role in addressing local conflicts. Several existing informal justice systems are utilised to resolve conflicts. The following systems are not specific to a particular community, but those that the researcher considers universal in many, if not all, marginalised communities. Most of them are used independently or in conjunction with those that are specific to a community.

Chiefs and assistant chiefs fall under the purview of national government administration officers, and one of their mandates is to maintain law and order in their community. While they are civil servants, they usually originate from the communities they serve. This provides them with background knowledge of the sources of conflicts within their areas. They often receive reports of property disputes, domestic disputes, and all other kinds of conflicts. The chiefs may then summon the parties involved and, after discussions, make appropriate decisions. They may or may not decide to involve the area elders. According to Chopra (2008), in complicated disputes, Chiefs often have no choice but to pass such conflicts up the chain of command within the National government administration officers (Assistant County Commissioner, Deputy County Commissioner) or to the police.

According to Chopra (2008), peace committees are a common feature in marginalised areas. Established at various administrative levels and comprising elders and other influential community leaders, they have the capacity to convene across villages, locations, and district or ethnic boundaries to negotiate solutions to conflicts (Chopra, 2008). He adds that, where conflicting parties are from different ethnic groups and adhere to other local systems, careful negotiations identify a common basis of agreement between the parties. In some of the most conflict-prone areas, peace committees meet and carefully negotiate general ground rules for conflict management. Some of these initiatives have



resulted in the drafting of 'Agreements' and 'Declarations'. Peace committees derive their strength from their deep roots in various local socio-cultural systems of marginalised communities (Chopra, 2008).

In Kenya, village elders play a crucial role in informal justice systems. They act as the foundation in dispute resolution for the majority of the population, particularly in marginalised areas. According to Mumbi (2015), village elders are respected and influential members of the community, chosen based on their reputation for impartiality, integrity, and knowledge of local customs. They act as mediators and arbiters in a wide range of disputes, including family matters (e.g., divorce, child custody), land and property disputes, debt and inheritance issues, minor crimes, cattle rustling and inter-ethnic conflicts.

According to Muthamia (2021), the traditional council of elders is a common institution in almost all communities in Kenya. Their role differs from one community to another, ranging from cultural, economic, and socio-political organisation to conflict management in the community. Traditional councils of elders play a central and vital role in informal justice systems by acting as impartial mediators and decision-makers focused on social cohesion, reconciliation, and the preservation of cultural values. Their main objective is reconciliation and restoring social harmony within the community, rather than merely administering abstract legal penalties. According to Mumbi (2015), the traditional council of elders have unlimited jurisdiction, and they occasionally sit to listen to matters that would have a great impact on the community.

Religious leaders from diverse religious backgrounds often facilitate dispute resolution, drawing on the religious laws and customs of their respective communities. By acting as mediators, providing moral guidance, and offering a trusted community-based avenue for dispute resolution, religious leaders play a significant role in informal justice provision (Mumbi, 2015). Their influence is rooted in deep community trust, moral legitimacy, and widespread religious identity, which enables them to address local conflicts, provide social support, and advocate for justice. They use their moral authority to mediate disagreements related to family, petty crimes, land issues, and other community concerns.

According to the Paralegal Support Network (2005), a paralegal is a community-based individual who is not a lawyer but who has basic legal knowledge and skills. As community members, they educate people about the law or offer basic legal services. According to Maru and Gauri (2018), they are familiar with local power dynamics and customs, on one hand, and they are aware of modern law and formal institutions, on the other. With this knowledge, they devise unique, flexible, and innovative solutions to justice problems for their communities (Maru & Gauri, 2018). Paralegals work on a diverse range of issues in a wide variety of informal and institutional settings. Many paralegals work out of their homes or are based in modest local offices maintained by civil society or community-based organisations. Some are trained to take a generalist approach, aiming to respond to any problem that affects a given community (Maru & Gauri, 2018). According to Paralegal Support Network (2005), they may receive petitions or walk-in customers to learn about grievances, or they may send staff on fact-finding missions to investigate major needs. Most paralegals focus on specific thematic areas or marginalised groups. They are therefore involved in dispute resolution/reconciliation, accompanying clients seeking justice, e.g. to an administrative office, monitoring and offering basic legal advice on seeking remedies or resolving disputes in specific cases (Maru & Gauri, 2018).

2.2.2 Effectiveness of the Existing Informal Justice Systems

This refers to the degree to which informal justice systems are successful in achieving the desired result or success. According to Chopra (2008), Chiefs and assistant chiefs complement formal legal systems by resolving a vast number of disputes, particularly in marginalised communities where formal systems are distant or distrusted. Informal justice systems, often led by chiefs or assistant chiefs, are usually accessible geographically and linguistically. Their procedures are typically conducted orally in public, and they are non-adversarial, resulting in faster and more cost-effective resolutions than formal courts. Mumbi (2015) asserts that since Chiefs and their assistants are respected figures within their communities, their decisions often carry consequential social weight. This embedded role helps to ensure compliance with decisions while also promoting social harmony and cohesion, which is a primary goal of informal systems. Depending on the disputes at hand, Chiefs offer bespoke solutions to the specific circumstances and cultural norms of the community. Their contribution to the overall justice architecture is therefore crucial in reducing court backlogs in formal systems.

According to Kioko (2017), peace committees attain their strength and legitimacy from being implanted in local socio-cultural systems and engaging traditional leaders and community members. Community ownership is crucial for the sustainability of decisions made and community trust. He adds that these committees provide accessible forums for dialogue, where individuals use their local language to express grievances and seek solutions quickly. This prevents minor disputes from escalating into widespread violence, a role the formal system often fails to provide efficiently. According to Chopra (2008), unlike formal courts that focus primarily on legal judgments, peace committees often use negotiation and mediation to reinstate relationships and promote reconciliation. This strengthens social cohesion and prevents future conflicts. He adds that they serve as a functional early warning and rapid response medium for nascent conflicts, such as land disputes or cattle rustling. The government recognised the role of these committees through the

National Steering Committee for Conflict Management and Peace Building (NSC), though a comprehensive legal framework is yet to be developed (Chopra, 2008).

Village elders live within the community and offer justice that is easily accessible and generally free, as compared with the often expensive and geographically distant formal court system. As stated by Mumbi (2015), their legitimacy is grounded in the extensive knowledge of local customs, culture, and residents, as well as their reputation for integrity and impartiality. The trust that community members have in village elders allows them to handle serious disputes, such as land, family, and natural resources, in a culturally appropriate manner. Village elders have a thorough understanding of community dynamics and the primary causes of disputes, such as boundary disputes over land and water. This facilitates nuanced, viable solutions for justice seekers.

Traditional councils of elders are found in almost every community and are deeply rooted in local customs. This gives their decisions significant weight and ensures greater community acceptance. According to Muigua (2017), these systems prioritise reconciliation and restoration of harmony within the community, rather than punishment, which can lead to more sustainable resolutions. Even though they may focus more on inter-community disputes, cultural preservation, and social-political organisation, the traditional council of elders also deals with the resolution of disputes, dispensing justice that is often more accessible than formal courts, which can be intimidating, complex, and expensive.

According to Puteri (2021), the perception of religious leaders as “guardians of morality” and reliable community figures affords them substantial influence in moulding social norms and individual conduct, as community members are generally predisposed to adhering to their counsel. He adds that they use languages that resonate with community values, they are affordable, accessible and culturally familiar than formal courts. Their methods frequently prioritise forgiveness, restitution, and the rebuilding of relationships. This approach often leads to more sustainable peace and social cohesion compared to the formal courts, which focus on retribution. Religious leaders often act as mediators and peace brokers. Puteri (2021) further posits that their influence extends from local communities to national and international levels, helping to minimise tension, promote understanding, and foster peaceful coexistence. They also advocate for the poor, women, and other vulnerable groups, acting as the voice of the voiceless. They are also known to use their platform to address issues of discrimination, inequality, and other social justice concerns (Puteri, 2021).

According to Maru and Gauri (2018), community paralegals live in the communities they serve, enabling them to respond fast to issues at the grassroots level. Their immediate presence and accessibility help to democratize justice for individuals who may not be able to afford formal legal services. They educate community members about their rights and how to access justice, therefore empowering citizens to resolve disputes. This improves community harmony and can reduce the rate of imprisonment by resolving disputes outside formal systems. They can also act as a link to the formal legal process if informal methods fail. Maru and Gauri (2018) contend that their work is often integrated into community structures, allowing them to be flexible and address justice needs within their particular local context, including issues such as environmental disputes, violence against women, and land rights, among others. By combining several strategies (advocacy, mediation, organising, monitoring, and education), community paralegals can pursue creative and constructive solutions to justice problems. Paralegals can tailor their approach in any given case to the wishes of the communities with whom they work.

2.2.3 Perception of Informal Justice Systems Compared to Formal Justice Systems

According to the International Development Law Organisation [IDLO] (2019), informal justice systems are frequently perceived as more accessible, affordable and culturally relevant, with a focus on community reconciliation, while formal systems are sometimes viewed as slow, distant, expensive, and unfamiliar, though they are imperative for upholding human rights and standardised legal equality. Both systems face different challenges; informal justice systems can perpetuate discrimination, especially against women, and formal justice systems often grapple with reach and public trust.

Ahmad and Von Wangenheim (2021) posit that informal justice systems are frequently more accessible because they operate within communities, use local languages, and rely on familiar, less intimidating structures than formal courts. They assert that these systems are frequently perceived as faster and cheaper, unlike formal systems, which are deemed to be expensive, time-consuming, and with complex procedures, making access to justice difficult for many, especially the poor and vulnerable. A substantial cost is involved in filing a case in a formal court (Ahmad & Von Wangenheim, 2021). Given the complexities involved and delays in the formal system, this cost can multiply manyfold, therefore discouraging justice seekers. Formal courts are also perceived as inaccessible due to distance, legal jargon, language barrier and specialised knowledge that may be required (Ahmad & Von Wangenheim, 2021).

According to Ahmad and Von Wangenheim (2021), informal systems often provide relatively effective dispute resolution compared to formal systems, particularly relating to social legitimacy, user perceptions of procedural transparency, efficiency, quality of decisions, and lower administrative complexity. Formal systems often have larger caseloads, greater delays, and may likely face abuse of judicial discretion, further strengthening demand for informal systems. Adu-Poku (2021) explains that citizens primarily pursue crime and dispute resolution through informal avenues



of justice, reserving the formal justice system for serious crimes and disputes when informal avenues fail. He further contends that individuals who have used formal justice systems often hold negative views due to encountered shortcomings. He notes that the sustained utilisation of informal avenues depends on their perceived effectiveness in resolving problems.

According to Buscaglia (2015), marginalised communities depend on informal justice systems because they do not perceive formal systems as legitimate or effective. Many reasons abound for this, including corruption or dysfunctional, complex procedures. While formal systems mainly derive their legitimacy from both national legislation and partly from international law, informal justice institutions are often met with much more acceptance from and within the local communities. Röder (2012) claims that decisions made within informal systems are often perceived as more legitimate because they reflect community values and norms. These decisions prioritise restoring social harmony rather than administering punishment. The goal of informal systems often focuses on compensation and reconciliation, which some community members prefer over the retributive justice of formal systems. The process in formal systems is often adversarial, which can further damage relationships within a community. There is a widespread perception of corruption in the formal legal system that makes citizens resort to informal justice forums (Mumbi, 2015).

In the quest for justice, trust begets legitimacy. According to Ahmad and Von Wangenheim (2021), in informal systems, decisions are often made by respected community elders or figures, promoting greater trust and reliance on social pressure for enforcement, which can be more effective in certain contexts than formal enforcement. According to Mumbi (2015), the judiciary in Kenya suffers from perceptions of a lack of public trust, political interference, significant case backlogs and delays, which frustrate parties seeking a quick resolution. This discourages citizens, who then opt for informal systems.

Denney and Domingo (2023) aver that some practices in informal systems may be inconsistent with international human rights standards, particularly concerning the rights of women, children and minority groups. They contend that informal justice institutions are often male-dominated, and their decisions tend to be gender-biased. There is, therefore, a risk of bias and discrimination in informal systems, and this may perpetuate discriminatory outcomes and patriarchal biases. Lack of written rules or procedural safeguards can lead to the abuse of power, impartial hearings and other human rights standards violations. On the other hand, formal systems are backed by written laws, procedures and consequences in case of disobedience that guide each and every step in the justice process (Röder, 2012). One is guaranteed protection of rights despite the his/her gender or any other affiliation. They offer greater predictability and legal certainty in their outcomes compared to the flexible rules of informal systems.

According to IDLO (2019), formal systems have the coercive power of the state to enforce their decisions, ensuring compliance in situations where social pressure may be insufficient. They also provide an opportunity to appeal decisions made in a higher court if one is dissatisfied. This is a major drawback in informal systems, where there are no guaranteed ways to ensure compliance with decisions and opportunities to appeal in case of dissatisfaction with a decision. In informal systems, compliance with decisions usually relies on social pressure linked to the authority of the method used, and the shame associated with rejecting a fair decision and jeopardising group harmony, or spiritual beliefs (IDLO, 2019).

III. METHODOLOGY

3.1 Research Design

This research adopted a mixed methods approach combining qualitative case study and quantitative surveys to study the impact of informal justice systems on access to justice for marginalised communities in Patte Island, Lamu County. The method was best suited since it provided a comprehensive understanding of complex social dynamics while also allowing for measurable data on effectiveness and accessibility.

3.2. Target Population

The target population was the residents of Patte Island aged 18 years and above.

3.3 Sampling and Sample Size

The study was carried out amongst a cross-section of Patte Island population, including chiefs, religious leaders, community elders, paralegals, police officers, prosecutors, and residents (both users and non-users of informal justice systems). Patte Island is generally divided into nine areas (villages), namely Mtangawanda, Siyu, Patte, Faza, Shanga Rubu, Shanga Ishakani, Tchundwa, Mbwajumwali, and Kizingitini. 5 police officers, 8 chiefs and 2 prosecutors were purposively selected. All police officers in charge of Faza, Siyu, Kizingitini, Tchundwa and Mbwajumwali police establishments were selected. All chiefs from Mtangawanda, Siyu, Patte, Shanga (Rubu and Ishakani), Faza, Tchundwa, Mbwajumwali, and Kizingitini were selected. Likewise, all prosecutors based in Lamu, but who handle cases from Patte Island, were selected. 9 religious leaders were randomly selected from the nine villages of Patte Island. 9 community elders were randomly selected from the existing 'nyumba kumi' establishments in the nine villages of Patte Island. 5



community paralegals and 52 residents from all the villages of Patte Island were selected randomly. The total sample size was 90 respondents. Gender balance was considered while selecting respondents randomly.

3.4 Data Collection Methods

The study used interviews to collect data from police officers, community paralegals, and prosecutors. Interviews yield rich, qualitative data and enable follow-up while capturing respondents’ nuanced personal emotions, attitudes, and experiences through one-on-one interaction and flexible questioning. Data from chiefs, community elders, religious leaders and 15 residents selected for the study was collected through focus group discussions. It enabled the researcher to gather collective perspectives and stimulate dialogue about perceptions, community norms, and challenges with both informal and formal systems. An interview schedule was the instrument used to collect data, which contained both open-ended and closed-ended questions. Structured surveys were also used to collect data from the other half of the residents selected for the study. The instrument used for the survey was a standardised questionnaire. It contained pre-set, closed-ended questions that were the same for every respondent and asked in the same order. It was used on the larger sample of residents to gather quantitative data on cost, time taken, usage rates, outcomes of disputes, and satisfaction levels. With informed consent, the researcher also used observation to monitor actual informal justice system proceedings, aiming to understand power dynamics, procedural fairness, and decision-making processes in practice.

3.5 Data Analysis

The study produced both quantitative and qualitative data. Quantitative data was organised, cleaned, coded and analysed using the Statistical Package for Social Sciences (SPSS). Qualitative data was analysed by interpreting the responses and aligning them to form identifiable themes and actual narratives. The data underwent rigorous examination to ensure the analysis produced highly cogent, reliable, and credible conclusions. Data was interpreted through percentages and tables.

3.6 Ethical Considerations

All respondents were guaranteed secrecy and anonymity before and after the study. They all gave their informed consent and participated willfully.

IV. FINDINGS & DISCUSSION

4.1 Background Information

Patte Island is the largest island of the Lamu Archipelago, inhabited by the Bajuni community and a few other tribes, mainly from the coast region of Kenya. It is a significant historical and cultural site with a rich Swahili past and is predominantly Muslim-dominated. Educational levels on Patte Island were found to be relatively low. Most respondents (61%) had finished secondary school. However, university graduates accounted for only 7%, and those in technical and vocational education and training (TVET) accounted for just 4%. A total of 18% had primary education or less, including those who had dropped out or never attended school. In terms of occupation, the majority of respondents (34%) worked as fishermen. Small-scale farmers made up 15% of the group, while 4% were students enrolled in technical and vocational education and training (TVET) institutions. Other respondents were (15%) civil servants (police officers, prosecutors and chiefs), (17%) community leaders (religious leaders and community elders) and (5%) community paralegals. The study did not ask about the personal income of the sampled residents, which is a sensitive issue, but it can be inferred from their education and employment that they had low and inconsistent income due to the type of employment they had. These findings are critical in establishing the integrity of the overall study.

Table 1

Background Information (Level of Education)

Respondents	Level of education			
	Degree	Technical and vocational education and training (TVET) institutions	Secondary school education	Primary school education/Drop out/Never attended school
Patte Island residents	2	3	38	9
Police officers	2	0	3	0
Area chiefs	0	0	8	0
Religious leaders	0	1	6	2
Community elders	0	0	2	7
Community paralegals	1	0	4	0
Prosecutors	2	0	0	0
Total Percentage	7%	4%	61%	18%



Table 1 above shows the level of education of the various respondents involved in the study. The highest number of respondents (61%) had a secondary school level of education, 7% had a university degree, while only 4% had a university degree.

Table 2
Background information (Occupation)

Respondents	Occupation					
	Civil servants	Fishermen	Community leaders	Small-scale farmers	Students	Community paralegals
Patte Island residents	0	34	0	15	3	0
Police officers	5	0	0	0	0	0
Area chiefs	8	0	0	0	0	0
Religious leaders	0	0	8	0	1	0
Community elders	0	0	9	0	0	0
Community paralegals	0	0	0	0	0	5
Prosecutors	2	0	0	0	0	0
Total Percentage	15%	34%	17%	15%	4%	5%

Table 2 above presents the respondents’ occupations at the time of this study. Most of the respondents (34%) were working as fishermen, 17% were community leaders (religious leaders and community elders), while the least were students in local national and county technical and vocational education and training (TVET) institutions.

4.2 Access to Justice: Cost, Time Taken, Usage Rates, Satisfaction levels, Accessibility and Effectiveness of the Existing Informal Justice Systems in Patte Island

The cost of informal justice systems was found to be lower than that of formal courts. It often involved minimal or no direct costs. Costs incurred, if any, included transportation (minimal since they operate locally), lost work time (time spent in meetings), and unofficial tokens, which pale in comparison to formal court expenses. Respondents indicated an average of Kenyan shillings 150. The average time taken in an informal justice system was generally short. Cases were resolved in a day, days, or weeks, depending on their seriousness. The efficiency of the process stemmed from its local accessibility, simplified procedures, and emphasis on community restoration. According to respondents, as in many developing and post-conflict states, the usage rates of informal justice systems in Patte Island were found to be 80 to 90 per cent of all disputes. 70% of residents surveyed expressed satisfaction with the outcomes provided by existing informal justice systems. Satisfaction with the use of informal systems averaged 74%, since the outcomes featured restorative solutions such as restitution, compensation, and reconciliation, which prioritise healing and harmony over punishment. 96% of the sampled respondents agreed that informal justice systems were easily accessible. Regarding effectiveness, 82% of respondents asserted that informal systems were more effective than formal systems. After a thorough consideration of the aforementioned factors on affordability, rapid justice, high usage rates, high satisfaction levels, easy accessibility, relatability and effectiveness, it can be inferred that informal justice systems have provided a platform for people in Patte Island to access justice easily through dispute resolution and upholding rights, especially due to the absence of formal systems.

This study highlights the opportunities presented by informal justice systems due to their unique features and widespread diversity. According to IDLO (2019), a key dilemma is how to harness the potential of informal systems to increase access to justice without causing harm or legitimising rights-abrogating practices. They contend that a comprehensive understanding of the value of informal justice systems must take into account both their merits and their limitations.

4.3 The Existing Informal Justice Systems in Patte Island

The study found that existing informal justice systems in Patte Island used a blend of Islamic law (Sharia) principles with local Bajuni customs. They also relied on alternative dispute resolution mechanisms, including conciliation, consensus building, compensation, restitution, arbitration, mediation, mini-trials, early neutral evaluation, and facilitated negotiation. Respondents averred that Sharia law is not only a legal system, but a complete way of life for them. It not only guides personal conduct and dispute handling, but the community also appreciates it because they understand it. Bajuni or Swahili customs are traditional rules that were developed from the bottom up, and even though they are constantly evolving, they guide how conflicts are resolved. They are specific to the Bajuni community and are widely accepted and mutually recognised. They are rooted in wisdom, born of concrete daily experience or more intellectually based on great spiritual or philosophical traditions.

4.3.1 Religious Leaders



The study found that religious leaders (Imams and Sheikhs) were almost universally regarded and highly respected within Patte Island. They were important in solving almost all types of conflicts, from land issues to inheritance, from marital disagreements to child support and many other disputes. Religious leaders were primarily using Sharia law to address conflicts and administer justice to the aggrieved parties. The respondents considered Sharia law relevant, significant and practical in their daily lives, and this could only be achieved through addressing disputes through religious leaders. Religious leaders were seen to be relevant when all parties to a dispute were Muslims.

One community elder said,

“Our Islamic religious texts, the holy book Quran, and hadith (Prophetic traditions), lay down principles of justice, love, compassion and understanding. These guidelines guide our elders; those seeking justice, and also ensure fairness and justice for the accused party.” Respondent Z, 5th October, 2025.

4.3.2. Community Elders

Respondents indicated that community elders were respected local and community leaders who play a crucial role in mediating disputes in Patte Island. Their authority stemmed from their experience, wisdom, and moral standing within the community. They understood the local architecture of conflicts and were easily accessible and preferred by residents to formal courts because of the use of the local language, lower costs, and faster dispute resolution. Respondents also indicated that the respect elders commanded gave parties to the dispute confidence in the fair adjudication of their disputes. These elders may belong to ‘nyumba kumi’, be village headmen, community policing committee members, or even selected respected elders in the community.

A police officer commented,

“Community elders leverage their wisdom, community respect, and knowledge of local customs to achieve results such as compensation and agreements, often working to restore broken social ties within the community.” Respondent Y, 5th October, 2025.

4.3.3 Chiefs and Assistant Chiefs

Respondents expressed deep faith in the administration of justice as delivered by their area chiefs and their assistants in Patte Island. Having come from the same community, chiefs played a crucial role in dispute resolution by acting as mediators and arbitrators for the local community. The study found that chiefs primarily handled civil disputes like land and domestic issues while referring criminal cases to the police. Chiefs were also critical in maintaining order, facilitating community-based solutions, and ensuring that justice was accessible to the marginalised and poor population who may not be able to afford formal court proceedings. Chiefs mediated conflicts through community engagement, using local customs and values to maintain social harmony. They often worked with village elders to resolve civil conflicts.

A resident lamented that

“Chiefs and their assistants act as mediators; they help parties in a dispute find a mutually agreeable solution. Our chief has been known for fostering win-win solutions and involving affected families in the process to promote community harmony.” Respondent X, 5th October 2025.

4.3.4 Bajuni Traditional Council of Elders

The study found that there exist a Bajuni Council of Elders, which is a traditional body that aims to unite the Bajuni community. Its role is to bridge the geographical divide between the various areas where the tribe is found, mediate disputes, maintain order, provide counsel, and help to enforce community rules. Established in the year 2020, the Council of Elders has been instrumental in solving disputes within Patte Island, and they sit occasionally to listen to matters that would have a great impact on the community as a whole and have unlimited jurisdiction. They command respect and honour even though they are not widely used by locals on Patte Island.

One resident commented,

“Our traditional council of elders leverage cultural knowledge, community trust, and wisdom to resolve disputes such as resource issues, land conflicts, and cultural conflicts. They uphold our ancestral African justice mechanism that relies on reputation, not formal qualifications, but one that focuses on restorative outcomes that uphold community cohesion.” Respondent W, 5th October 2025.

4.3.5 Community Paralegals

Respondents indicated that community paralegals provided a critical avenue for dispute resolution in Patte Island. They were bridging the gap in accessing formal courts, especially in marginalised areas like Patte Island. Most of the paralegals had been trained by local non-governmental organisations and certified as local mediators to resolve community conflicts. Some paralegals felt that their work is rooted in principles of altruism, volunteerism, and community service. The study found that paralegals were particularly effective in Patte Island because they typically

reside within the community they serve, building trust and rapport that lawyers often struggle to establish. They focused on assisting minorities, vulnerable, and disadvantaged groups in Patte Island who faced significant barriers to justice due to distance, poverty, and lack of information. They were also creating awareness of rights through community outreach programs and campaigns to increase legal literacy, thereby preventing conflicts and empowering residents to assert their rights confidently. They used negotiation and mediation to resolve minor disputes locally, such as family, land, and inheritance conflicts. Respondents indicated that paralegals acted as intermediaries between the community and formal justice institutions, such as police and courts, by translating the formal, technical language of legal documents, making appropriate referrals, and preparing paperwork. The paralegals were also documenting human rights cases and violations regarding police excesses and gender-based violence, which provides evidence for potential formal action and helps to hold authorities accountable.

One resident said,

“Community paralegals have a strong connection to the community and local knowledge that allows them to customise remedies and ensure justice is administered based on the specifics of the case, rather than adhering strictly to formal procedures.” Respondent V, 5th October 2025.

This study highlighted informal justice systems that the researcher considers universal in many, if not all, marginalised communities. Most of them are used independently or in conjunction with those that are specific to a community. On the other hand, Mumbi (2015), in her study on the effectiveness of informal access to justice in the Kajiado North and West constituencies, specifically examined the informal justice systems that are unique to the Maasai community. This included the roles of village elders, chiefs, Barazas, and the Maasai Council of Elders.

4.4 The Effectiveness of the Existing Informal Justice Systems in Patte Island

The study found that the existing informal justice systems on Patte Island are easily accessible to residents. Respondents estimated that about 80% to 90% of disputes in Patte Island were resolved through informal justice systems. Geographically, Patte Island is only accessible through the Indian Ocean, with Lamu Island, which is two hours away, being the biggest and nearest town with all administrative and government offices. There is no functioning formal court on Patte Island. The formal court based in Lamu Island only visits and sits in Patte Island once every two months, where formal matters are heard. Those people who need their matters heard and concluded fast must travel by boat to Lamu Island, which is far, costly, and time-consuming. Patte Island has no single tarmacked road. The road and mobile phone network are poor, making transport and communication costly. Informal justice procedures were taking place within the community, eliminating the need for time-consuming and expensive travel to the Lamu Island formal court.

Most of the respondents (83%) indicated that informal justice systems were affordable. They typically involved little to no monetary fees for the whole process. Respondents were also calculating the opportunity cost whenever they decided to consult a formal court, noting that proceedings in informal systems were typically less expensive since they were concluded much faster. Considering that most of the residents of Patte Island were mainly fishermen and had little income, affordability for them was a major consideration in order to spare their income for the next meal.

There was a general feeling of acceptance of the existing informal systems due to their relevance to the culture of the people in Patte Island. Respondents argued that these systems used Sharia law and Bajuni cultural norms, making them more familiar and trusted by the community. They also added that the systems were administered by trusted community members such as religious leaders and community elders, who were highly respected and who had a thorough understanding of the dynamics of disputes in the community. They also considered the decisions made in informal systems socially relevant because they originated from local knowledge, shared community standards, and the immediate context, making them familiar and appropriate for the local population.

The study found that the existing informal systems were effective because of their restorative, peace-building and cohesion role. Like elsewhere, informal systems in Patte Island were focused on prioritising restorative justice, which helped mend relationships and strengthen social cohesion after a dispute was resolved. This focus on reconciliation and restoring social harmony resulted in pragmatic solutions such as compensation, which were more flexible and manageable for the parties involved than punitive measures like incarceration, which can have a severe negative economic impact on families. Respondents felt that in a close-knit community like Patte Island that is faced with continuous challenges in economic opportunities, infrastructure, illiteracy and many others, it was important to cultivate community cohesion by leveraging shared values of forgiveness and reconciliation to transform worldviews and ensure people lived peacefully to focus more on how to earn their daily bread.

The study established that there was a general perception of legitimacy and trust with the existing informal justice systems in Patte Island. Community elders expressed that the conduct of informal systems relied heavily on the cultural, religious, procedural and substantive norms and practices of the Bajuni community. The proceedings were conducted in the local Bajuni language, and residents felt familiar with the elders, the procedures, and would not wish to be condemned or isolated from their culture; hence, they would cooperate fully. They therefore enjoyed a high degree of trust and legitimacy from the residents. It was established that most residents had intermarried from one village to



another, had relatives elsewhere on the Island or had ancestral relations that made them familiar with each other. This made them submit their disputes to the existing informal systems with confidence that a just solution would arise and that no one would be intimidated by the proceedings.

Respondents were satisfied with the speed and flexibility of informal systems in solving conflicts. They posited that this led to quick resolutions, as seen in examples where cases were resolved in a matter of a day, days or weeks. There were no complicated procedures or rules, and both the aggrieved and the accused person were treated fairly. They said that when disputes are resolved quickly, those involved can easily return to their work, avoid straining relationships further, and ensure community harmony is maintained. In cases where chiefs and paralegals are involved in dispute resolution, residents indicated that they benefited from the dual application of informal and formal knowledge, resulting in a balanced, well-informed decision and, in serious cases, an opportunity for referral to the formal system.

According to Chopra (2008), the most prevalent problem undermining the work of formal systems is that official laws and legal processes do not reflect the ideas and value systems of local populations, which define crime and prescribe how conflicts should be resolved. This study went further to establish the unique desires of marginalised communities, such as cultural relevance, legitimacy and restorative justice, as ingredients that ought to be present while accessing justice.

4.5 The Perception of the Existing Informal Justice Systems Compared to Formal Justice Systems in Patte Island

Respondents indicated that the informal justice systems they were using were easily accessible, unlike the formal courts. They were located within the community, and they used their local Bajuni language, making them easier to reach than the formal court, located on Lamu Island, which is two hours' distance from Patte Island, while using a boat. The use of the Bajuni language made them feel more familiar with informal systems than formal courts, where only English and Kiswahili were the official languages. Because of the unavailability of courts in Patte Island, which is a marginalised area, informal systems were the only viable option in dispensing justice.

Most respondents (85%) felt that formal systems were expensive and slower than informal systems. They asserted that from when a report is made to the police station up to when a matter is concluded in court, there were many expenditures that they could not afford. Even for civil cases, there was a cost of filing cases, transport costs, advocates and court fees that were out of their reach. Unlike in informal systems, where there was little or no expenditure by the parties in a conflict. In terms of speed, respondents argued that informal systems were faster in resolving disputes, unlike the court process, which they deemed lengthy and tedious.

The study found that respondents perceived informal systems to be culturally relevant. Since most of their informal systems were grounded in Sharia law and local Bajuni customs, it aligned with their culture and belief system. Accordingly, procedures and substantive norms of their informal systems were more in line with their local culture and the social relations of people compared to those of formal justice systems. Respondents felt a cultural disconnect with the formal system. They felt it was alien and imposed external laws that lacked local legitimacy. Formal court procedures were complicated and only known to educated people or lawyers, therefore discouraging them from using the courts. The outcomes in informal systems were culturally more resonant than fines or incarceration given by formal courts.

Respondents perceived their informal systems to be restorative in nature since they emphasised restoring peace and social harmony through negotiation and consensus, rather than adversarial punishment that was administered in formal courts. They posited that, whether through negotiations, conciliation, or arbitration, the goal was always to ensure an outcome that would bring cohesion and harmony between the parties to a conflict. They were mindful that the community must remain cohesive and coexist together. They perceived formal systems to be retributive, harsh and adversarial, where one party wins, and another party loses, which is not good for the community since they must live together.

The study found that respondents had deep trust in informal justice systems. They posited that elders were well-versed in the history and context of community conflicts, how they evolved, and their potential consequences, and would devise a flexible way to address them. They felt that the legitimacy of their informal justice systems depended on their trust and confidence as end users. Formal systems were perceived as corrupt, influenced by state interests, with long, complicated procedures, and requiring special qualifications to understand and use them. This demoralised their interest in using them.

Police officers and prosecutors expressed concerns about human rights aspects in informal systems. On the issue of gender inequality, they argued that informal systems mirror patriarchal societal norms and disadvantage women and children in matters of inheritance and property rights. The minority tribes that do not belong to the Bajuni community may also feel disadvantaged. They further argued that informal systems have the potential of entrenching existing societal discrimination, making them inherently problematic if not carefully assessed. Prosecutors also pointed out the issues of absence of due process and fair trial, noting a lack of impartial hearings, protection from arbitrary decisions and lack of legal counsel, which are well embedded in formal systems. Police officers sighted the potential of corruption, impunity, abuse of power and lack of oversight in informal systems. Those running informal systems can easily overstep



their boundaries, leading to unfair outcomes or extortion, especially for the poor and vulnerable. Weak monitoring mechanisms may allow abuses to go unpunished, unlike in formal systems where checks and balances exist and there is the opportunity to appeal if one is dissatisfied with a decision.

In terms of constitutional recognition and the interplay between informal and formal systems, prosecutors cited Article 159(2)(c) of the Kenyan Constitution, which requires tribunals and courts to promote alternative forms of dispute resolution, including traditional justice mechanisms, provided they do not contravene the Bill of Rights, be repugnant to justice or morality or contravene any written law. This provided the legal basis for the formal recognition of informal systems. Chapter ten of the Constitution of Kenya sets out the formal justice system in Kenya. The Judiciary of Kenya developed and launched the Alternative Justice System Baseline Policy as a bridge to provide a legal framework. This policy institutionalised and structured the use of various alternative justice models, and aligned them with constitutional principles and human rights standards.

The study found that there is an established referral mechanism system, namely the court-annexed alternative justice system. This creates a formal link where community leaders in informal systems can refer matters to the courts and the court can refer matters to accredited informal systems, in matters such as family or civil cases, based on a mutual referral system. The study found that there were instances where parties resolved a dispute in an informal justice forum and went to court to adopt that decision as their own. In other instances, the matter can be referred to informal systems when a dispute is pending in court, either on application by the parties or the court's own motion. Since it is a constitutional duty of courts to promote informal justice systems, the interaction of formal and informal systems is not only unavoidable, but courts are duty-bound to ensure that the interaction is a reality. The Alternative Justice System Baseline Policy also provides direction on how to ensure that decisions made by informal justice systems, once validated, can be enforced by the formal courts, adding legal weight and accountability to community-level resolutions.

The perception of most police officers and chiefs was that excessive reliance on informal justice systems by the community would create parallel legal orders that would operate outside the formal state framework, and it could undermine the principle of a singular, uniform legal system applicable equally to all citizens. There was also a perception that informal justice systems may challenge the legal supremacy of the formal justice system because it is locally perceived as ineffective, inaccessible, and irrelevant, compared to informal systems. This perception was seen to diminish the state's monopoly on the legitimate use of judgment and force and its claim to legal supremacy.

Respondents perceived the heavy reliance on informal systems by the community as a gap in service delivery by the government. The state was seen to have abdicated its core responsibility to provide justice and security to its citizens, as Patte Island was a marginalised area with no formal court. Informal justice systems filled this gap. There was a feeling that by allowing informal systems to handle most disputes, the state was ceding direct engagement with its population on critical issues of conflict, property, and rights. This was seen to reduce the territorial reach of state authority and weaken its overall political legitimacy.

Mumbi (2015) agrees that despite heavy investment in the formal system, lack of trust has been the major challenge that makes people opt for informal systems, especially in rural settings. According to IDLO (2019), well-functioning justice institutions play a key role in preventing conflicts from igniting and ensuring they do not relapse or escalate. They add that developing institutions at all levels to deliver justice services and resolve disputes is a priority to prevent instability and generate a level of trust and confidence in the state. This study goes beyond trust to examine the impact of informal systems in areas without established formal systems, the interplay between informal and formal systems and possible ways of reinforcing their collaboration to ease access to justice and strengthen mechanisms for human rights safeguards, while establishing appeal avenues for justice seekers.

V. CONCLUSION & RECOMMENDATIONS

5.1 Conclusions

With over 80% of disputes being resolved through informal justice systems, their practicality and use cannot be ignored. Most residents of Patte Island have experienced and interacted with justice through these mechanisms. Informal justice systems have proved more accessible than formal systems and provide quick, relatively inexpensive and culturally relevant remedies. Particularly where formal justice systems are weak or lack capacity, they enjoy widespread community legitimacy and support. While formal systems aim for universal legal rights, informal systems often deliver immediate justice for everyday disputes, though sometimes at the cost of some rights. Yet it is also important to recognise that formal justice systems are not exempt from flaws – indeed, these flaws are the reasons that citizens opt for informal justice systems.

Given this central role, it is important to build an understanding of informal justice systems, their impact and interplay with formal justice systems to ensure synergy in the access and delivery of justice. The judiciary has provided official forms of collaboration with formal systems through the Alternative Justice System Baseline Policy. To actualise legal pluralism, and for the state authority to remain robust, a balanced approach is often needed, where informal justice

systems are ideally recognised, monitored, and linked to the formal justice system to give them recognition. Careful navigation of both informal and formal justice systems is essential to ensure that they advance substantive, people-centred justice aligned with human rights principles, rather than entrenching existing structures of inequality, discrimination, and marginalisation.

5.2 Recommendations

To effectively harness the positive impact of informal justice systems, there is a need for training and capacity building for the actors, such as chiefs, community elders, religious leaders, and peace committees, on professional mediation, human rights norms and practices, and national laws, while respecting the value and needs of the local informal justice mechanisms. The perception of the patriarchal systems entrenched in informal justice systems must be changed to promote inclusivity and encourage the inclusion of different community representatives, including youth and women, in decision-making structures to help address the inherent power imbalances. There is a need to empower marginalised communities on their rights and obligations through awareness campaigns that target the poor, minorities, women, and children, so that they can effectively participate in and benefit from informal justice processes. Community members should be sensitised on the availability of both formal and informal justice systems, and when it is appropriate to use each system.

Non-governmental community benefit organisations should help the existing informal justice actors in documenting their procedures and outcomes to facilitate better monitoring and evaluation of their impact, and help identify and address human rights concerns. The government, through the judiciary, should, as a matter of policy, strengthen the collaborative approach where informal and formal systems complement each other. The emphasis should be clear and known pathways for review or appeal of informal justice systems decisions by formal courts, and recognition and enforcement of certain informal justice systems decisions by formal courts, as long as they adhere to human rights standards established in law. An acknowledgement by the government that informal justice systems are the most primary, affordable, accessible and widely used avenue for justice seekers in marginalised communities will go a long way to engage them as a comprehensive nationwide strategy to ensure access to justice while encouraging adherence to set human rights safeguards. The government should also consider offering free legal representation services for vulnerable, marginalised community members who may need to challenge discriminatory informal justice system outcomes or navigate the formal system.

Declaration of Interest

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