



THE MATHARE MEMORANDUM

MEMORANDUM PRESENTED TO THE DIRECTOR OF PUBLIC PROSECUTIONS MR. NOORDIN HAJI DURING THE OCCASION TO RECEIVE PETITIONS FROM VICTIMS OF VARIOUS HUMAN RIGHTS VIOLATIONS IN MATHARE *MATHARE SOCIAL JUSTICE CENTRE, NAIROBI KENYA*

FRIDAY 26TH MAY 2023

This petition is in response to the recent skirmishes witnessed in Mathare where at least 3 people lost their lives, 6 persons were injured, over 50 homes razed to the ground and other property worth millions was destroyed.

HAKI Africa, in collaboration with Mathare Social Justice Centre, Vision Bearers Youth Group, Ecological Justice, Ghetto Foundation and other grassroots human rights organizations in Mathare and her environs are today presenting this petition to the Office of the Director of Public Prosecutions (ODPP) and other state and non-state criminal justice actors regarding the lack of response by the security agencies in addressing reports of delays in the administration of criminal justice, resulting from incidences of ethnic skirmishes, profiling of youths, enforced disappearances, extrajudicial killings, drug abuse and fraudulent acts by private citizens who attempt to compromise security agencies against taking action to tame criminal activities.

This forum has been held as a result of our belief that as leaders in our respective communities and spaces, we have a responsibility to serve our people and to present to the authorities actions of the government and private citizens which delay the wheel of justice from grinding.

RECOGNIZING that the Office of the Director of Public Prosecutions through the Director of Public Prosecutions Mr. Noordin Haji has been instrumental in engaging with local communities and the civil society in Kenya in general to listen and address their claims which relate to violations of fundamental human rights and freedoms;

NOTING that Article 157 of the Constitution of Kenya (2010) and the Office of Director of Public Prosecution Act (2013) give the Director of Public Prosecution (DPP) the powers to direct the Inspector General of the National Police Service (NPS) to investigate any information or allegation of criminal conduct;

AWARE that collaboration and solidarity among state and non-state criminal justice actors in responding to questions of human rights violations is paramount in the administration of justice;

DISTURBED that issues of profiling of youths through pseudo-social media accounts which target those who have been in conflict with the law, enforced disappearances, extra-judicial killings, and abuse of human rights mainly targeting community-based human rights defenders, and youths in informal settlements is continuing in Mathare;

COGNISANT that actions and/or lack of conclusively addressing claims against criminal justice actors contribute to criminalization of poverty hence destroying livelihood opportunities for thousands of young people struggling to reform and engage in economic activities in their communities; and

MINDFUL that the general lack of transparency and accountability in the management of public affairs is eroding public trust in public institutions especially the criminal justice system across the country.

After robust deliberations on the above issues, we the representatives of our communities and civil society organizations make the following observations and suggest our recommendations hereunder:

OBSERVATIONS

We observe that:

1. Profiling of youths from informal settlements especially those who have been in conflict with the law through pseudo-social media platforms such as Nairobi Crime Free and Saigonpunisher James Facebook accounts endangers their lives, exposes them to arbitrary life-threatening acts through state and civilian actions and destroys their engagement in and with the economic system;
2. Lack of transparency and accountability in processing allegations of complacency among the criminal justice actors in administering justice erodes public confidence in the state agencies and may encourage proliferation of criminal gangs in communities as alternative spaces for highlighting and addressing their claims;
3. Ethnicization of crime and insecurity is one of the greatest threats to state and non-state responses since, in the case of Mathare, two ethnic groups accuse each other of being responsible for

incidences of insecurity or for advancing the narrative that one ethnic group is responsible for crime while the other is responsible for working with security agencies to fix the other;

4. The security agencies are failing to decisively deal with crime including those related to proliferation of drugs in informal settlement which are partly responsible for destroying lives of several young people;

5. Bad blood and the lack of trust between communities and grassroots human rights defenders on one hand and security agencies on the other hand have neutralized the effectiveness of community-led intelligence gathering initiatives;

6. Part of security agencies using pseudo social media accounts with their nicknames instead of real names are frustrating efforts to bring to book officers who profile youths and destroy their lives and careers without subjecting them to the due process of law;

7. Lack of involving youths in peace and security initiatives including those who are reforming from crime has frustrated efforts to address crime and insecurity and has instead widened the gap between the youth and security agencies;

8. Lack of peace and security committees with representatives from the government, civil society and local communities has frustrated efforts towards multi-stakeholders' approach to addressing violations of human rights in Mathare and other informal settlements;

9. Addressing issues of drugs proliferation, corruption in the security sector and failure to engage reformed youths as peace and security champions in their communities is a weak link that needs to be addressed;

10. The announcement by President William Ruto that he will institute a committee or commission to investigate claims against extra-judicial killings by the police seem to have contributed to reluctance by the police to respond to reports of crime within their jurisdictions lest they be accused of acting extra-judicially.

RECOMMENDATIONS

Arising from the above observations, we collectively make the following recommendations:

1. Map and order the Inspector General of Police to investigate the faces behind pseudo-social media accounts allegedly being used to profile young people as a strategy for preparing the ground for their possible execution and/or enforced disappearance;

2. Order for the investigations of all cases petitioned during this forum to determine any incidences of culpability of any member of the criminal justice system with a view to instituting legal action against those found responsible for compromising the criminal justice system;
3. Investigate alleged involvement of political leaders, local elders and security agencies who are responsible for inciting the youth to get involved in conflicts and insecurity, including use of ethnicity as a card for polarization and incitement;
4. Investigate allegations of failure by authorities to address the problem of hard drugs trafficking and use, which the community considers as a factor which influences youth involvement in crime;
5. Apply your experience in collaborating with the CSOs fraternity to propose mechanisms for building and sustaining trust between communities and grassroot human rights defenders on one hand and security agencies and other criminal justice actors on the other hand, hence providing a space for effective use of community-led intelligence as a tool for fighting crime in Mathare;
6. Criminal justice actors in Mathare should agree on the formation of community peace and security committees with representatives from local communities, CSOs and government representatives to work together to fight crime as well as promote community cohesion;
7. Involve more youths and women in peace and security initiatives including those who are reforming from crime since they can be effective peace and security champions;

CONCLUSION

As representatives of grassroot human rights organizations and CSOs, we are glad that we have had the opportunity to welcome the DPP in our communities and engage actively with the ODPP. We would like to thank you for your efforts to nurture this framework for collaboration with non-state actors. We urge you to continue with this model should you become the next Director of National Intelligence Services (NIS). We shall be knocking on your door to pursue opportunities for collaboration with the NIS as we consolidate partnership among criminal justice actors in Kenya.

Signed on behalf of Petitioners on this 26th Day of May 2023