

# BETWEEN ILLEGALITY AND LEGALITY

## (In)security, crime and gangs in Nairobi informal settlements

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*This article analyses the informal security market in the Nairobi slums of Kibera and Mathare. It assesses how gangs manoeuvre between legality and illegality in the provision of security. This article argues that there is a need to move away from a traditional interpretation of crime and criminal groups so as to understand the deeper reasons for their existence, why they continue to exist, and how they operate as they tactically shift their nature to survive. This article thus advocates for a multilayered approach to security in order to identify how best Kenyans can meet their human security needs.*

The development of a human security framework by the United Nations Development Programme (UNDP) was a pioneering step. It shifted the focus of security from the protection of the state and its borders by military means, to the protection of individuals against a wider range of threats to their well-being. The UNDP defined human security as including ‘...safety from such chronic threats as hunger, disease and repression, and protection from sudden and hurtful disruptions in the patterns of daily lives, whether in homes, jobs or communities.’<sup>1</sup>

However, this broad definition of security has revealed the limitations of the state in providing security, especially in African countries. While most governments guarantee protection from external aggression, they cannot provide adequate internal security. The void has been taken over by non-state actors like criminal gangs, especially in urban slums. This is the situation that the Kenyan

government finds itself in today as it grapples with the growth of gangs in slums.

In the opinion of many residents in informal settlements, the police are generally slow, inept, corrupt and unlikely to properly investigate criminal cases for successful prosecution. According to the 2010 Global Corruption Barometer Report, at least 92% of Kenyans perceive the police force as the most corrupt institution of the state. Fifty-nine percent of the respondents said that either they or a member of their household had paid a bribe to the police.<sup>2</sup> Indeed, the police force has constantly been listed as among the top three most corrupt institutions in Kenyan urban bribery surveys.<sup>3</sup> Further, an encounter with a police officer in a slum will almost always end up with harassment, or paying of a bribe to avoid arrest and incarceration.<sup>4</sup> People complain of police failures in assisting them: ‘If you go to the police, they ask you to buy fuel for them to travel to the crime scene, or they ask you for airtime to call their seniors. Other times they tell you they will come to investigate but they don’t come. Most of the times, nothing is

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done or the criminals are set free for lack of evidence.<sup>5</sup> Consequently, people have resorted to gangs to provide security and other social services in the slums.

The majority of poor people in urban slums live on the margins of 'illegality', which is characterised by unlawful acquisition of housing, non-payment of taxes, and the illegal tapping of water and electricity, among others. The government has been unable to adequately provide these services to slum residents, who are consequently forced to rely on gangs for service provision, at a fee. They turn to the same gangs to resolve matters of justice, law and order. Gangs have therefore emerged as key players in the provision of security, less as contributors to the disorder in slums and more as actors that mitigate the absence of government.

Most of the research and analysis on gangs in Kenya has focused on the political and cultural elements of these groups.<sup>6</sup> Little research has been undertaken to study the economy of informal security in urban slums. This paper seeks to fill this gap by analysing how gangs operating in Kibera and Mathare slums manoeuvre between formality and informality, legitimacy and illegitimacy in their operations. Only by understanding how these gangs exist and operate can we avoid viewing them through the narrow, simplistic and sensational lenses through which they are often seen.

At the onset, it is important to note that the provision of security in informal areas is more complicated than simple supply and demand. Apart from use of force by the gangs, the social context and the relationship between local residents and the groups influence the operations of the security industry. A discussion of these relationships forms the heart of analysis of this paper.

In collecting primary data, roughly 15 people, including different gang members, were interviewed, using one-on-one semi-structured interviews. Further, six focus group discussions (FGD) of ten people each were held from

December to February 2011 in Kibera and Mathare urban slums (three FGDs in each area). Purposive sampling was used to select the FGD participants and the overriding factor was that they had to be residents of Kibera and Mathare slums.<sup>7</sup> The study has also benefitted from several security-related seminars and roundtable meetings that the researcher has attended.

Secondary data that have helped enrich the study were retrieved from books, newspapers, journals, non-governmental organisation (NGO) reports, and any other relevant published and unpublished information on informal security provision in Africa.

In the first section of this article, I explore the theoretical framework of the study. In the second part, I give a short history of the proliferation of gangs in Kenya and lastly analyse the complicated nature of relations between residents of Kibera and Mathare, local gangs and the police.

## UNDERSTANDING GANGS

Kenya can be termed a 'hybrid state'<sup>8</sup> where state and non-state actors share the public goods of security. Boege *et al* argue that in a 'hybrid state', diverse and competing claims to power and logics of order co-exist, overlap and intertwine. 'In such an environment, the "state" does not have a privileged position as the political framework that provides security, welfare and representation; it has to share authority, legitimacy and capacity with other structures.'<sup>9</sup> As such, violence has been 'democratised',<sup>10</sup> ceasing to be the resource of the powerful or the police. It has, on the contrary, been utilised by a variety of actors to achieve their goals.

However, policing in a 'hybrid state' involves a complex pattern of overlapping agencies providing security, depending on the time of day, social status of the person involved and the economic activity they are engaged in. Those who work in offices are most likely to encounter private guards or state police securing office buildings. Commuters encounter gangs who control bus terminals and public service vehicles.

People who live in middle and upper class estates have private guards to secure their homes while dwellers in the informal settlements rely on gangs for security. In a day, a citizen can therefore encounter both formal and informal 'policing'.

In Kenya, formal policing is carried out by the Kenya Police Force and the Administration Police, who are guided by the Constitution and their operational acts of parliament. Informal policing however takes place mostly outside the regulatory framework of the state. Its actors include gangs and private security companies that bring the otherwise absent public good of security to situations where state organs are largely not present.

Informal policing has its share of critics and supporters alike. Some have associated informal policing with 'gangsterism', 'commodification', 'warlordism', terrorism, radicalisation, ignorance and abuse of basic human rights.<sup>12</sup> Other scholars have argued that informal policing is not only popular in the absence of formal police but it has been proven to actually work.<sup>13</sup> In some areas, it has been anchored in the local traditional systems of governance.<sup>14</sup>

Informal security networks, especially in slums, are a complex web of linkages of different groups that include gangs, youth groups and vigilantes. There is little in the way of a theoretical consensus in classifying them. This paper adopts the perspective that the youth providing informal security in Kibera and Mathare operate as gangs. Despite not having an agreement on the definition of a gang, scholars have widely accepted several characteristics of gangs.<sup>15</sup> It is generally agreed that gangs can be defined by their ability to organise as a group with clear names and symbols, and by having a clear territory in which they exert their power. They mostly have a shared ethnic, race or age group identity. Members view themselves as a gang, and they are recognised by others as such. Gangs are also said to be involved in an elevated level of criminal activity.

Most people view gangs as a group of young people with negative attributes, operating illegally,

and engaged in predatory practices like extortion, violence and human rights abuses. Some scholars have even suggested that what sets gangs apart from other youth groups is their routine association with violence, which the wider society sees as inherent to gangs.<sup>16</sup> This however ignores the fact that gangs are the product of particular social and political settings. The physical deterioration of poor neighbourhoods has a spiralling effect on the social control within these areas, and provides a fertile environment not only for crime and other deviant behaviours but also for the rise of gangs.<sup>17</sup> In addition, gangs can also play positive roles, for example by reducing crime levels and campaigning against drug abuse, prostitution and other negative social phenomena.<sup>18</sup>

Thus, in attempting to understand the operation of gangs in Kibera and Mathare, one needs to look at the complex relationship between the individual members of the gangs, their behaviour, and their influence over economic and social change in the areas where they operate. Violence is not the only defining characteristic of gangs. We need to recognise the other factors over which gangs hold influence in order to develop a complete picture of why they are able to operate between legality and illegality, legitimacy and illegitimacy.

## SNAPSHOT OF GANGS IN KENYA

In March 2000, the Kenyan Police Commissioner outlawed nearly two dozen gangs active across the country. This did not stop them from operating, however. In August 2010, the Kenyan government enacted the Prevention of Organised Crimes Act 2010,<sup>19</sup> which outlines strategies to address organised crime. A month later, 33 gangs that were operating in various parts of Kenya were outlawed. Ironically, these included some of the groups that were banned in 2000. However, banning or outlawing the gangs did not stop them from operating, as they are very informally organised and hence hard to disband. Moreover, the instrumentalisation of violence and impunity within Kenyan society has also contributed to the continued existence of these groups. Some of

their leaders and sponsors, though publicly known, have never been prosecuted, giving them a sense of comfort. More fundamental is that the Kenyan government has not taken measures to address reasons why gangs exist, which is largely due to a lack of economic and job opportunities. The gangs play different roles in Kenyan society. When respondents were asked what activities the gangs engage in during a November 2010 national survey, 48% said they collect illegal taxes, while 42% cited violence. Another 14% said they provide services and 22% said they offer security for payment.<sup>20</sup> Further, when asked who they would rely on to protect them between the police and gangs, 75% of respondents preferred the police while 19% said it is important for both the gangs and police to protect them.<sup>21</sup> In another 2010 survey by the World Bank, residents of Korogocho slum in Nairobi were asked to name three groups that are doing the best job in reducing crime and violence. Fifty-six per cent named vigilante groups. The Kenyan police were ranked fifth with only 5% of responses.<sup>22</sup>

Thus, whereas the majority of respondents would rather have the police providing security, there are those who would opt to have them share this duty with the gangs. It therefore emerges that police are not the only recognised security providers. Although citizens would prefer to rely on a trustworthy police force for protection, they sometimes have to rely on gangs, due to the inefficiency and lack of legitimacy of the force.

Recognising the centrality of organised gangs, the 2010 Kenya Police Crime Report<sup>23</sup> notes that threats to national security are primarily posed by organised criminal gangs. The Ministry of State for Provincial Administration and Internal Security also notes that the emergence of gangs poses a significant threat to peace for most Kenyans.<sup>24</sup> Regrettably, police responses to gangs and gang-related violence has sometimes led to extrajudicial killings of youth suspected to be members of the outlawed groups. According to the UN Special Rapporteur on extrajudicial executions, 'killings by police in Kenya are systematic, widespread and carefully planned. They are committed at will and with utter

impunity'.<sup>25</sup> However, many Kenyans support heavy police tactics and argue that it is the only way to handle crime and the proliferation of gangs. A lack of trust and faith in the criminal justice system has led to these high approval ratings for the extrajudicial executions of suspects. Nevertheless, the killings have not translated into lower levels of crime or the demise of gangs.

The Kenya Police Force acknowledges that it has inadequate resources and personnel to effectively tackle crime and organised gangs.<sup>26</sup> The police citizen ratio is at 1:850, which falls below the recommended United Nations ratio of 1:450. The force is inadequately resourced in terms of, for instance, police vehicles and the relevant technologies to solve crime. Officers are overwhelmed by the wide range of policing duties, which further compromises the quality of investigations.<sup>27</sup>

The factors outlined above have thus contributed to the state's inability to adequately offer security, especially to the urban poor, forcing them to rely on gangs.

## **INFORMAL SECURITY IN KIBERA AND MATHARE**

Like other informal settlements in Nairobi, Kibera and Mathare slums are characterised by high population density, unplanned and crowded housing, and a lack of infrastructure.<sup>28</sup> Most roads are inaccessible to vehicles, drainage channels are often blocked, and heaps of uncollected garbage are scattered everywhere. In addition, insecurity is a big problem, and has forced residents to resort to the informal security offered by gangs.

Gangs operating in Kibera include Siafu, 12 Disciples, Kamukunji Pressure Group, Military, Yes We Can, Mungiki, J-10 and Debunchers. All of these operate in Laini Saba and Katwekera areas within the slum. Each has its own territory within these areas. In Mathare 3C and Kosovo areas, the most prominent groups are the Taliban and Mungiki. Despite the gangs having different names, their mode of operation is similar and

they have cross-cutting features. For example, most gang members interviewed said the groups are made up of young people.<sup>29</sup> In addition, one has to pay a registration fee, which varies from group to group, to become a member. Ethnicity is not necessarily a criterion for enrolment in the gangs and their members are from different ethnic groups.

All the gangs have leaders who are usually the founders. Whenever there are unresolved disagreements, the aggrieved parties often break away and start their own group in a different area, where they continue carrying out the same roles.<sup>30</sup> Two gangs rarely operate in the same area, as each jealously protects its turf.<sup>31</sup> Though banned by the state, all of them still organise people to attend political rallies in their areas of operation and provide security at the meeting venue. They also regularly take part in crime, solve disputes in the slums, provide social services like illegal water and electricity connections, and extort money from slum dwellers.

Most shelters in the slums do not have piped water or electricity. However, the gangs install illegal connections without meters to tap into the main water and power supply lines.<sup>32</sup> A minimum of KES3 (30 cents USD) is charged for a 20-litre gallon of water, but this price increases in the event of a water shortage. To connect electricity, the gangs charge between KES300 to KES1000 (3-11 USD), depending on the size of the house, paid once after connection. Water and electricity companies disconnect the illegal supplies whenever they discover them. This sometimes leads to violence in the slums with the gangs coming together to chase away officials carrying out the disconnections.

Gangs in both Kibera and Mathare charge a security fee of KES100-200 (about 1-2 USD) per month depending on whether residents occupy a permanent or semi-permanent house. Businesses pay KES300-500 (about 3-5 USD) per month depending on the size of the business. For tourists and filmmakers there is a flat security fee of KES5000 (55 USD) that is only paid once. These

fees are set by the gangs, and are non-negotiable and paid on demand. Failure to pay results in harassment and makes it impossible to live in the area or operate a business.

It is thus arguable that by providing and charging for security, these gangs have altered the nature of state power at the local level. They have renegotiated and blurred the boundaries between state operations and those of the gangs.<sup>33</sup> The gangs are the 'government' and charge 'taxes' through extortion or protection fees. The state no longer commands the monopoly of force it once had. The gangs have evolved new normative structures and modes of operation and organisation with far-reaching consequences for economic and social welfare.<sup>34</sup>

Nevertheless, the relationship between the community and the gangs is complicated. According to one of the gang members, they have a 'love-hate relationship' with the community, which is also symbiotic.<sup>35</sup> The gangs benefit from the community by being given a safe haven when the police are pursuing them. They are also tolerated and given space to conduct their activities since 'they are not outsiders; they are the children of the community, born and raised there and are products of the environment they have grown in.'<sup>36</sup> Unemployment, idleness, poverty and lack of opportunities have led to crime and violence in the informal settlements. This has sometimes led people in the slums to empathise with the gangs and to blame the government for not doing enough to create jobs. The youth are left with little or no choice but to turn to organised crime to eke out a living.

In turn, the community benefits by getting security and other social services that the government fails to provide. 'The people support them because of providing such things like water, toilets and electricity which the government does not supply.'<sup>37</sup> However, the gangs are also supported because of the fear they instil among the people, compelling them to pay for services rendered. According to a resident of Mathare, 'the groups take advantage of this fear to unreasonably extort money from us.'<sup>38</sup>



An ambiguous relationship exists between the gangs, the police and provincial administration as they operate along a continuum of legality and illegality. At times the police kill gang members, which serves as a daily reminder that the state is not entirely absent in the informal settlements, and that it is also powerful. Gang members have been used as police informers, in the long run establishing a system of mutual tolerance, co-existence and co-operation in solving crimes.<sup>39</sup> However, police also have been known to protect the gangs when they commit crimes, since they may receive proceeds of extortion.<sup>40</sup>

Residents of Kibera and Mathare report crime to both the police and the gangs, depending on its seriousness. Murder and rape are considered serious crimes and are reported directly to the police.<sup>41</sup> Petty crimes, including muggings, theft, housebreaking, fights, brewing of illicit alcohol and domestic violence are reported to the gangs. According to one Kibera resident, they do not like reporting petty crimes to police 'since they will not solve the crime or recover stolen goods'.<sup>42</sup> If a suspected criminal is apprehended, the gangs may choose to hand him over to the police or not, or may subject him to mob justice to 'teach him and others a lesson'. Other forms of punishment include banishing the suspect if he or she comes from within the community. By doing this, the social relations between the gang and the community are enhanced.

Part of the reason Mathare and Kibera residents prefer handing the suspects to gangs is to make it difficult for the suspected criminals to take revenge against them. Secondly, the gangs are trusted to protect the identity of witnesses, unlike the police who sometimes name them while conducting investigations. The other reason citizens will hand crime suspects over to gangs is because of the generally high level of mistrust the public have of the police, which is reinforced by high levels of police corruption (police sometimes takes bribes in exchange for not apprehending criminals).<sup>43</sup> This results in a loss of public trust in the police and a blurring of the line between the police and the gangs.

Since citizens refer to gangs to solve problems, this might suggest a good social relationship between gangs and the community. However, the relationship is more complicated than this. On the one hand, the gangs are violent and will most likely resort to using violence to solve problems. Hence, they are a source of violence and criminal actions. On the other hand, they have a reputation of solving problems more quickly and efficiently than the police. Since the members of gangs are also inhabitants of the slums they are not generally considered to be 'bad people' but rather victims of circumstances they grew up in.

Nevertheless, it is clear that the community seeks the services of gangs because there is no other effective institution to turn to. If the police were effective, and inspired trust, there would be less need to involve gangs in problem solving. While the state is not completely absent in Kibera and Mathare, its ineffectiveness makes residents turn to gangs for their security needs.

Considering the role that the gangs play in the informal settlements like Kibera and Mathare, it can be argued that they are an invisible state and represent the real state of polity.<sup>44</sup> This invisible state receives praise when it is working well, ensuring norms and sanctions that resonate with local needs, but is criticised when it engages in human rights violations. The gangs are thus sub-political institutions exercising political authority, despite not being part of the formal state. They influence social order in response to the limitations of formal politics.<sup>45</sup>

The linkages between the informal and formal state, however, are complex. Importantly, therefore, Kenya must adopt a model for addressing human security needs that suits its local conditions, while at the same time undertaking security sector reforms. The Organisation for Economic Cooperation and Development (OECD) has recognised that the reform of the justice and security sectors requires a multilayered approach that provides assistance to a wide range of legitimate state and non-state actors. Undertaking a multilayered approach will give people a chance to build on their local

resources and knowledge in security provision. It will offer an opportunity to untangle the complex linkages between the invisible and visible state, leading to the formation of a strong state that is able to provide both national and human security. In addition, forming linkages with non-state actors will strengthen the state's legitimacy in ensuring people are safe, since all providers would be seen as an integral cog in the government security machinery.

However, this needs to be done hand in hand with police reforms, which need to build on a framework based on principles of accountability. Clear standards should be established, and appropriate sanctions put in place for those who transgress. Already, the Kenyan government has started implementing provisions on security sector reforms as outlined by Chapter 14 of the Constitution promulgated on 27 August 2010. Parliament has approved the National Police Service Bill. The new legislation will set the stage for the replacement of the entire police leadership, in line with the new Constitution. The remaining bills that are in draft form include the Independent Policing Oversight Authority Bill, which is intended to establish a police oversight body, and the Private Security Industry Regulation Bill, which will create synergy between the government and private security providers.

However, no major reform has been undertaken in the police force. Attitudinal change among the police and political commitment are required for comprehensive police reforms. Furthermore, reform must be comprehensive in order to encompass all sectors and actors within the justice system.

## CONCLUSION

This article has attempted to demonstrate that the existence and operation of gangs in Kibera and Mathare is a result of complex factors. There are interesting and symbiotic linkages between citizens and informal law enforcement groups. If properly utilised, these linkages could provide opportunities for a multilayered approach to policing and the provision of other services in the

slums. In order to do this, the government should adopt an enabling approach that supports and regulates the local security governance mechanisms.

Considering the roles that gangs play in slums like Kibera and Mathare, it is necessary that security reforms take note of the operations of informal policing. This might mean incorporating their good elements and utilising the already existing network to strengthen formal security structures. Disbanding the gangs without providing adequate measures to fill the security gap will not solve crime in slums.



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