

論文内容の要旨

専攻名 (課程名)	多文化社会学専攻 (博士前期課程)	氏名	MAHASI ADRIAN JEFF
題名	PROCEDURAL JUSTICE AND ARREST IN KENYA		
<p>This research takes a comparative research approach that investigates procedural justice in the context of warrantless arrests in Kenya and draws lessons from Japan to help improve arrest procedure laws in Kenya. The key focus of the research is on the challenges posed by police discretion, ambiguous laws, and the lack of judicial oversight over arrest procedures. The study aims to address three critical research questions:</p> <ol style="list-style-type: none"><li>1. How does the lack of judicial control over warrantless arrest processes impact its legality in Kenya?</li><li>2. How does the lack of procedural criteria in arrest laws compromise the rights of individuals?</li><li>3. What legal reforms can be introduced to ensure procedural safeguards over warrantless arrests and bridge the gaps in laws in Kenya?</li></ol> <p>Despite the constitutional protections guaranteed under Kenya’s 2010 Constitution, which safeguards citizens’ fundamental rights, the procedural justice in warrantless arrests remains underdeveloped. In particular, the lack of judicial control over warrantless arrests results in a system where police discretion plays a significant role in determining whether an arrest is lawful. This research examines the absence of sufficient judicial oversight in regulating police conduct, and how this lack of control undermines the legality of arrests and fosters potential abuses of power. The study further explores how the lack of procedural criteria in arrest laws compromises the rights of individuals. The current legal framework leaves room for subjectivity in police decision-making, increasing the risk of unlawful arrests, discriminatory practices, and violations of the right to a fair trial. In the absence of clear guidelines on when and how arrests should be made, law enforcement officers often operate without standardized protocols, which leads to inconsistent and unequal treatment of citizens.</p> <p>Drawing on the findings from this comparative study, the research proposes specific legal reforms to improve the procedural justice of warrantless arrests in Kenya. These reforms include the adoption of the warrant principle, which would require law enforcement officers to seek judicial approval for arrests in certain cases, thereby ensuring judicial oversight. Additionally, the study suggests the establishment of clear procedural criteria to guide police actions during arrests.</p>			

Lastly, the research proposes legal reforms to address these systemic flaws. By drawing on international best practices and comparative analyses Japan's situation, the study suggests reforms such as the introduction of clear procedural criteria for warrantless arrests, the establishment of judicial review mechanisms for arrest procedures, and the creation of independent oversight bodies to monitor law enforcement actions. These reforms aim to ensure transparency, accountability, and protection of individual rights during the arrest process, thereby strengthening the rule of law and aligning Kenyan arrest procedures with international human rights standards.

This research advocates for comprehensive legal reform in Kenya's criminal justice system to bridge the gaps in arrest laws, safeguard the rights of individuals, and ensure that police powers are exercised in a manner that is both fair and legally justifiable.