

# ANNUAL REPORT

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2011



**KITUO CHA SHERIA**

The Centre for Legal Empowerment

*We care for Justice*



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## List of Abbreviations/Acronyms

AGCP	Advocacy, Governance and Community Partnerships
ADR	Alternative Dispute Resolution
CEU	Central European University
CIDA	Canadian International Development Agency
COOPI	Cooperazione Internazionale
COE	Committee of Experts
COPA-K	Community Organization Practitioners Association of Kenya
COHRE	Centre for Housing Rights and Evictions
CLARION	Centre for Law and Research International
CIPAC	Cities in Partnership with Communities
CBOs	Community Based Organizations
CDF	Constituency Development Fund
CJPC	Catholic Justice and Peace Commission
CREAW	Centre for Rights and Education Awareness
CTD	
CSO	Civil Society Organization Network
DANIDA	Danish International Development Agency
DIG	Development Innovations Group
ECOSOC	Economic and Social Council
EACOR	East Africa Collaboration for Economic Social and Cultural Rights
ESCR	Economic, Social & Cultural Rights
ESCR-NET	Economic, Social & Cultural Rights Network
FIDA	Federation of Women Lawyers
FOYS	Friends of Yala Swamps
FMP	Forced Migration Programme
GTZ	Deutsche Gesellschaft Fur Technische Zusammenarbeit
GBV	Gender Based Violence
GJLOS	Governance Justice Law and Order Sector
HIAS	Hebrew Immigrant Aid Society
HRBD	Human Rights Based Development
ICT	Information Communication and Technology
ICJ	International Commission of Jurists
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEC	Information, Education and Communication
ILEG	Institute for Law and Environmental Governance
IMLU	Independent Medical Legal Unit
IDP	Internally Displaced Person
IRC	International Rescue Committee
JRS	Jesuit Refugee Service
KICODI	Kisauni Constituency Development Initiative
KENSUP	Kenya Slum Upgrading Program
KEMRI	Kenya Medical Research Institute
KISCOL	Kwale International Sugar Company Limited
KICC	Kenyatta International Conference Centre
KAACR	Kenya Alliance for Advancement of Children
KRCS	Kenya Red Cross Society
KGGP	Kenya Good Governance Program
K-HURINET	Kenya Human Rights Network
KNCHR	Kenya National Commission on Human Rights
KCBO - Net	Kamukunji Community Based Organization Network
KMJA	Kenya Magistrates and Judges Association
KTN	Kenya Television Network
LAED	Legal Aid and Education Department
LATF	Local Authorities Transfer Fund
LRF	Legal Resource Foundation
LSK	Law Society of Kenya
MoJCA	Ministry of Justice and Constitutional Affairs
MRC	Minority Reform Consortium
MUHURI	Muslims for Human Rights
MRC	Minority Reforms Consortium
NDFW	Nairobi Devolved Funds Watchdog
NHRF	National Housing Rights Forum
NPSN	Nairobi Peoples Settlement Network
NYAHURIADEN	Nyando Human Rights & Development Network
NCSC	National Civil Society Congress
NALEAP	National Legal Education & Aid Programme
OCS	Officer Commanding Station
PASUNE	Paralegal Support Network
PIL	Public Interest Litigation
RDE	Royal Dutch Embassy
PLWHA	People Living With HIV/AIDS
RCD/IT	Research Communications & Documentation/Information Technology
SIDA	Swedish Cooperation Development Cooperation Agency
TI	Transparency International
T-HURINET	Tanzania Human Rights Network
UDHR	Universal Declaration ON Human Rights
UNHCR	United Nations High Commission for Refugees
UNDP	United Nations Development Programme
URIP	Urban Refugee Intervention Programme
UPR	Uganda Peoples Defense Force
VOYA	Volunteer of the Year Award



**Sisi ni washindi!**

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## EXECUTIVE SUMMARY

Kenya is a country undergoing reforms, and KITUO's motto 'A Society of Justice and Equity for all' is coming to fruition as the organization continues to play an integral role in seeing to it that Kenya affords justice for all. The year 2011 saw KITUO continue to pursue its motto in line with the 2009-2013 strategic planning making several strides in areas of land, labour and housing as well as in community partnership and advocacy.

Kituo has managed to push for several legislation including the IDP Bill and an IDP policy advocating for the poor and marginalized access to justice, established linkages with stakeholders especially the police under the Nairobi Urban Refugee Rights Integration Activities (NURRIA) programme that seeks to guard refugee rights violation among other legal and advocacy interventions.

Legal aid programme through KITUO's in-house lawyers, Volunteer Advocates, paralegals and local and international law students, was able to incrementally achieve its set objectives for 2011 managing to screen a total of 6003 clients.

In 2011 the team at this illustrious department managed a mammoth task in areas of Single welfare litigation and client management, Public Interest Litigation, Alternative Dispute Resolution, Legal Aid Clinics, Volunteer Advocates' scheme and trainings

Kituo has also successfully ventured into local, regional and international partnerships managing to advocate for the reform agenda to embrace Industrial court to provide justice for workers and linking up with the Kenyan judiciary in a bid to establish a working discourse between the civil society and the judiciary towards reforms and access to justice. Kituo also pulled a first in partnering with Tilburg University to develop a micro-justice project aimed at utilizing Information Technology to help the poor and marginalized access justice.

Through a concerted effort between the government, stakeholders and clients, the Urban Refugees Intervention Programme (URIP) provided legal advice on a range of issues and represented refugees before courts. The Centre served as a resource centre for individuals and paralegal network to obtain information on a variety of legal matters.

URIP also sought to reach beyond the proximity of its offices organizing 10 legal aid clinics to achieve this besides having the organization replicate its activities currently in Nairobi to Mombasa under a pilot programme to help refugees access to justice. The programme has also extensively incorporated Police Stations, Prisons and the Department of Refugee Affairs to discuss refugee rights, refugee protection and the overall role of these institutions in the protection of refugee rights.

As one of the core programmatic areas of Kituo cha Sheria, Advocacy governance and community partnership programme has been at the forefront promoting good governance and advocating for the adoption of pro-poor policies and legislations both at the grassroots and national level geared towards ensuring recognition and fulfillment of rights.

Through several initiatives and networks Kituo has been able to build strategic partnerships with communities, increase access to Justice for the poor and marginalized, Promote good democratic governance at all levels, advocate for and monitor the implementation of pro-poor policies and legislations on land, labor, housing, access to justice and peace and strengthening programme leadership and team building.

As a special intervention under AGCPP, Peace Justice and Reconciliation Project (PJRP) in an effort to address the 2007/2008 Kenyan post-election crisis and the country's long history of human rights violations, has made considerable efforts to ensure victims' participation in the Transitional Justice mechanisms available in the country and the promotion of rights of victims of violence in general.

2011 encapsulates the ongoing effort of KITUO to help the poor and marginalized access justice, a sentiment that resounds among pro-poor actors in the country. It has seen great milestones achieved by the organization and continues to set the pace for better things to come





## MESSAGE FROM THE CHAIR OF THE BOARD OF DIRECTORS



The year 2011 marked the third and the mid year in the implementation of the Kituo Cha Sheria's (KITUO) strategic plan 2009-2013. During the year KITUO's strategic direction was largely steered towards legal empowerment of the marginalized in our society through legal education, strategic interest litigation and strengthening of the already established Community Justice Centres. This was also the year that saw the enactment of several bills to give life to the New Constitution passed in a referendum in 2010. The Acts were mainly to streamline governance at the national level, management of natural resources and the administration of justice. A mid-term review of the strategic plan was also carried out with the aim of taking stock of the achievements, challenges and re-strategizing for full implementation in the next two years.

KITUO maintained its traditional core areas of land, housing, labour and refugee rights.

However, through the Peace Justice and Reconciliation Project (PJRP), and support from DED and GIZ KITUO implemented a project to support the participation of Kenyans in the proceedings of the different Transitional Justice Mechanisms for victims of the 2007/8 Post Election Violence. This is aimed at promoting peace, justice and national reconciliation in the Country as we head towards the next general election. To achieve this mandate and create an impact on the Kenyan society KITUO works in partnership with Government Ministries, Government Agencies, Development partners, and other Non Governmental organizations.

KITUO's governance structure is composed of the General Assembly (AGM), the Board of Directors (BOD), Board of Trustees (BOT) and the Secretariat. The AGM meets annually to among other things, review the overall performance of the organization and receive the auditor's report. The BOD meets quarterly to receive programme and management reports from the Secretariat. I would like to thank all the Members of the three organs, AGM, BOD, BOT, for committing their time to serve KITUO and also remaining faithful to our vision and mission.

KITUO wishes to take this opportunity to thank its development partners notably, MISEREOR, UNHCR, OSI, NURRIA, DED, PACT, UNWOMEN, GIZ, UNODC, UNHCR, UNDP-AMKANI, PRO MARA and FORD FOUNDATION for providing financial and technical assistance towards the implementation of our various programmes. We also extend our gratitude and appreciation to the Government of Kenya for providing a conducive environment for our operations and for the collaborations that KITUO has enjoyed through the various Ministries and agencies. In particular, we wish to thank the Ministry of Justice, National Cohesion and Constitutional Affairs, Ministry of Housing, Ministry of Immigration and Ministry of Lands.



I thank very sincerely the members of staff at KITUO led by the Executive Director who worked tirelessly throughout the year. I thank my fellow Board members and do promise we will work even harder in 2012. The Kituo Justice House dream is still alive and we should see much more progress in that direction in the year 2012.

Finally, KITUO would like to laud the efforts of all the stakeholders who remain committed to the vision of access to justice for all.

**Ken Nyaundi**  
Chair, Board of Directors





## MESSAGE FROM THE EXECUTIVE DIRECTOR



Time and tide wait for no man or woman for that matter. 2011 was the third year of implementation of the Kituo Strategic Plan 2009 – 2013. Kituo staff in all the programmes worked hard to pursue the objectives of the Strategic Plan. The Board of Directors at Kituo led by the Chair Mr. Ken Nyaundi continues to offer the necessary support and guidance to the organisation. The ever hardworking staff continue to be diligent and zealous in their tasks.

During the year there was a midterm review of the Strategic Plan giving chance to include the work of the Peace Justice and Reconciliation Project that Kituo started as a response to the Post Election Violence and need to assist victims. PJRP supported by the German Development Services Civil Peace Service Programme had brought into Kituo aspects of peace building work and transitional justice. These themes would later be picked up in the Mombasa office through the Conflict Mitigation Project supported by ACT Kenya and implemented across the Coast Region. Kituo became a big player in the ICC work and transitional justice including engaging the Truth Justice and Reconciliation Commission. At Kituo we could not avoid engaging TJRC as we had some cases raising historical injustices especially on land that the courts could not deal with and in

any case chances of success in Court would in some instances be quite minimal.

It is in such a context that as the Kituo Director accompanied by our Mombasa office staff Kigen Korir and Titus Ogiwuor, I would have one of my most memorable hair-raising trips of the year and maybe in life to Kiwayu Island in Lamu. We travelled by speed boat in the Indian Ocean for over an hour at a cost of about Kshs. 30,000. We even picked up the area Councillor at another Island, matatu style. Being on Kiwayu Island was beautiful and spectacular but the case was such a difficult one. The Island is now Kenya Wildlife Services property since 1978 even as our clients showed us their Kaya shrines and explained that they had been there for ages. Some of our clients were quite old. We worked with Shungwaya Welfare and CEDMAC organisations on the case. As we wait for the TJRC to complete its work we are quite hopeful that some of the cases like Kiwayu Island will receive the necessary attention and redress recommendations. I enjoyed being in Lamu and the boat ride from the airport to the hotel we were staying in was also quite interesting. I did not get a donkey ride but I hope to do so in future.

During the year 2011 Kituo held its 38th Anniversary in which we had the Chief Guest at Prof Shadrack Gutto. The Chief Justice Dr. Willy Mutunga and many other judges and dignitaries attended. Ms. Jane Weru who I remain happy to second as a female director was present. Prof Gutto gave us an interesting keynote speech full of advice on what other areas we should engage in including pursuit of the Legal Aid Bill and Dual Citizenship Law in which he expressed personal interest. Prof Shadrack brought Kituo 60 free copies of his recently published text on Constitutionalism. The judges were the first to get copies. Kituo continues to celebrate its rich

history and alumni if we could call all those who have passed through Kituo its alumni. Kituo remains happy to be associated with Chief Justice Dr. Willy Mutunga and wishes him well in his work and hopes that access to justice will be a central theme in the judicial reforms task.

During the year 2011, the financial dream I had as the director came close to being achieved. Upon joining Kituo in 2009 and during the 37th Anniversary I had expressed desire to have our budgets grow and our annual turnover increase to Kshs. 100,000,000. At 100 million budget per year Kituo would be better able to perform on its core mandate areas and to hire and retain motivated staff. At the close of the year 2011 Kituo was very close to this dream. We had sufficient funding to run our programmes and pay administration fees and salaries. The year even saw substantial increase in staff salaries across board and more important we were now able to set our minimum payable salary at Kshs. 20,000. This is only fair as it enables all staff including the office caretakers to rent decent accommodation and pay children's school fees. There is no way human rights organisations of Kituo's ilk can have poorly paid employees to the point of living in urban slums. As the Director am happy we are not there.

I am grateful to all Kituo funding partners especially Misereor that has been supporting Kituo as a core grant for many years. In 2011 we had our 10 year assessment from 2000 to 2010. The deep and far-reaching evaluation conducted by a German expert Dr. Theodore and Kenyan expert Mr. Tom Chavangi Aziz was quite revealing. Kituo had done well but could do better. We are implementing most of the recommendations. With other Partners including ACT! We have engaged in Organizational Capacity Building. With UNDP Amkeni Wakenya supporting our access to justice and marginal justice work we continue to grow our capacity. We have especially increased our capacity in understanding and conducting Monitoring and Evaluation of our projects and activities. We thank all other partners UNCHR, OSIEA, Ford, and EU.

In summary 2011 was a great year for Kituo and its Director who was nominated for the second year as Top 40 under 40 Women in Kenya working to defend the poor and marginalized.

**Priscilla**  
**Executive Director Directors**



## Legal Aid and Education Programme

### Introduction

The Legal Aid & Education Programme offers legal aid, legal advice and representation to the poor and marginalized on its thematic areas of land, labour, succession, and housing and incrementally public interest litigation. Interviews are conducted every Monday, Tuesday and Wednesday from 8.00am to 1.00 pm, for new and returning (old) clients.

Through its in-house lawyers, Volunteer Advocates, paralegals and local and international law students, the programme was able to incrementally successfully achieve its set objectives for 2011, the third year of implementing the 2009-2013 strategic plan.

Other matters in other areas of law, especially, child maintenance, criminal and matrimonial were taken up on assessment that clients were extremely poor and needy.

Activities done in the year 2011 included;

- Single welfare litigation and client management
- Public Interest Litigation
- Alternative Dispute Resolution
- Legal Aid Clinics
- Volunteer Advocates' scheme
- Trainings
- Local, regional and international partnerships

### Single welfare litigation and client management

The programme attended to new and returning clients every Monday, Tuesday and Wednesday and reserved Thursdays and Fridays for drafting of their court papers and follow up. In 2011, the Programme attended to a total of 6,003, a clear increase by from 2010. The clients were advised on various issues; those with court cases were represented. The table below is a matrix of clients both new and return attended to by the programme in 2011.

### Matrix of clients attended by the legal aid Programme – 2011

MONTH	LAND			LABOUR			HOUSING			SUCCESSION			return
	male	female	group	male	female	group	male	female	group	male	female	group	
Jan	10	19		16	21		12	17		15	13		241
Feb	13	12	2	12	17		16	19		12	15		286
Mar	18	14	1	28	24		19	16		16	12		350
Apr	17	13	2	24	18	1	12	16	1	15	10		194
May	12	16	1	27	22		16	12		9	13		407
Jun	15	14		22	12		22	15		10	7		461
Jul	20	17	1	18	16		13	12		14	18		440
Aug	12	15		16	13		15	23		15	12		443
Sep	16	18	1	27	19		13	12		13	15		517
Oct	23	14	4	34	28	6	0	2		17	13		591
Nov	12	16		12	23		12	13		13	11	1	322
Dec													
Sub-total	168	211	12	236	213	7	150	157	1	149	139	1	4252
<b>Total</b>	<b>391</b>			<b>456</b>			<b>308</b>			<b>289</b>			

### LEGAL AID CLINICS

15<sup>TH</sup> NOVEMBER 2011 = 144  
 1<sup>ST</sup> MAY 2011 = 34  
 1<sup>ST</sup> SEPTEMBER = 129  
 307

**TOTAL NUMBER OF NEW AND RETURN CLIENTS SCREENED 1444 + 4252+307 = 6003**

### Matrix of clients attended by the legal aid Programme – 2011

**Ruth Gathongo & others v Joseph Gathuna Gathongo, HCCC NO. 2270/07 (Winnie Tallam Advocate)**

*This is a case that was filed in 2007 seeking the declaration of trust in a land matter. Our client's father had died, leaving his land to the wife. One of the male siblings took ownership of property without letters of administration. Our client's case was that the mother and the brother were holding the property in trust for themselves and the other siblings and therefore should be entitled to share. The matter came up on 5<sup>th</sup> April for Ruling before Honorable Justice Mbogholi Msaghab who held that the dealings of the two with the land was void ab initio and gave judgment in our client's favour, thereby upholding inheritance rights of the girl child.*

**Mike Karanja and others vs. the Republic of Kenya, HC Petition No.12 of 2011**

*This is a land matter where KITUO went to court through a petition seeking permanent injunction from the Government of Kenya through the City council from demolishing their homes and property which was earmarked for demolition.*

*The matter was heard at Machakos High Court whereby Hon. Justice Makhandia –Asike allowed the hearing to proceed in the absence of the Defendants. The court issued judgment in favour of KITUO clients, immediately barring the defendants from any future interference with the Applicants property.*

### Soaring ahead in Public Interest Litigation (PIL)

In 2011, six (6) PIL cases were filed in court; four (4) enjoined as amicus and interested party; one (1) was pursued through parliamentary engagement and four



(4) others were under preparation for possible action. Out of these, four (4) cases were successful or partially successful and others had conservatory orders in place, preserving the subject matter.

**Asserting the right to information; The Maasai Community claims their fundamental right in court - *Montet Ole Lesiamon & others vs. the County Council of Narok & 4 others Nakuru H.C Petition No.35/2011***

This is the first case by KITUO and within the Kenyan Courts claiming the right of access to information. KITUO filed this petition on behalf of the youth from Narok County and various groups acting in the interest of larger Narok residents. They are challenging concealed details of contract between the County Council of Narok and Equity Bank for collection of revenue from Maasai Mara National Reserve.

The residents claimed denial of access to details of the contract and the whole tendering process contrary to various constitutional provisions, *to wit*; National Values and Principles of Governance under Article 10, the right to freedom of expression and access to information under Article 33 and 35 respectively, the objects and Principles of Devolution under Article 174 and 175 and the Principles of Public Finance under Article 201 of the Constitution.

The prayers in the Petition were that the court declares the tendering process unconstitutional, order a production of the contract and issue an injunction restraining the Respondents from implementing the contract among others.

The Petition is successful in so far as the prayer for access to information is concerned as the County Council of Narok finally produced the contract. The case is however proceeding to full realization of the other prayers.

**Land at last for minorities; the Bulla Fot Clan gain their land rights after over 40 decades of agitation - *Musa Mohamed Dagane and 25 others vs. the Attorney General and the District Commissioner Garissa District, Embu Constitutional Petition No.697 Of 2006***

It all began in 3003, when the Kenya Government, through the Provincial Administration stated in April 2003 that it was repossessing public land taken over by private individuals. A notice issued ordered the clan to, within 14 days; vacate the parcel of land occupied by the village polytechnic. Later in August 2003, they were given a 3 day notice to vacate and just a week later, Administration police invaded the land they occupied at 4.00 am pulling down their houses and destroying property, harassing and assaulting men, women and children.

Following the outcome of the Petition herein, KITUO CHA SHERIA celebrates the beginning of realization of fundamental rights entrenched in the Constitution of Kenya 2010 on the right to adequate housing and the right to property. The ruling by Justice Warsame as delivered by Justice Ong'undi on the 16th of November 2011 in the Embu High Court is a reflection of a 'new face' judiciary that is independent and willing to embrace, up hold and enforce the Bill of rights and the rule of law.

Justice for the Fot sub-clan within the Abduwak clan of the Somali speaking people within Garisa District has been long over due. The population of the clan is about 3,000 people who have historically lived in a village known as *Bulla Fot*, a Somali word for *'The village of the Fot'* The indigenous inhabitants of the larger Garissa District have never been issued with title documents to the parcel of land they have occupied since time immemorial. The KITUO clients had experienced several evictions and displacements from their land by government since 1981 without compensation.



In his ruling, Hon. Justice Warsame noted that Constitutional violations were meted on the Petitioners, stating;

*"I have considered all documents filed by the applicants; I have also considered the able and well reasoned submissions by Mr. Ongoya learned counsel for the Petitioners. The Petitioners have demonstrated that their land was taken away in a manner contrary to the Constitution and International Convention against Forceful Eviction. It has also been demonstrated that they were evicted and relocated to an area which has no basic amenities. It is also clear that at the time of the eviction the Applicants lost valuable items which were destroyed in the course of the eviction by the Respondents. No doubt the state has a Constitutional obligation towards the applicants. The state must provide services to the applicants in a sustainable manner to promote social and economic development and encourage growth and sustenance of basic rights. The state must also respect, protect, promote and fulfill the basic rights enshrined in our Constitution in order that there is no violation or encroachment on the said rights on any entity or organ of the state. By evicting the applicants from their ancestral home, the Respondents engaged in acts and in a manner that is broadly at odds with the spirit and purpose of Constitutional obligations....Evictions result in individuals being rendered homeless or vulnerable to violations of other human rights.....that in such circumstances, the state must take all appropriate measures taking into consideration the available resources to ensure that alternative housing, resettlement and /or access to basic amenities is available."*

Indeed, the journey of a thousand miles of the 2010 Kenyan Constitution began with a step in the right direction. The Court granted all the prayers sought in the Petition, and *suo moto*, ordered for compensation.

*Around 1963, there was a debate on whether persons living in the North Eastern of Kenya would remain part of Kenya or secede to the Republic of Somalia. The Bula Fot was against the secession and this resulted to historical hatred of the members of the clan by the other Somali speaking communities in and around Garissa.*

*Due to the hatred, the members of the Fot sub clan, a minority suffered immense injustices since independence. This, combined with the general marginalization of the North Eastern Province, led to unfair acts of eviction, dispossession of their property and discrimination. To date, there is no even a single member of the Fot clan that has acquired university education.*

### Supreme Court Appointments in Violation of Gender Parity And Affirmative Action; Constitutional Petition No. 102 Of 2011, Fida & 9 Others

KITUO Enjoined the Petition as an interested party and as a representative of the Association of Media Women in Kenya, AMWICK. The Federation of Women Lawyers (FIDA) filed a petition contesting the 5 nominees the Judicial Service

Commission had selected to complete the Supreme Court. Of these nominees, 4 were men and 1 was a woman. Prior to that, the selected Chief Justice was a man, and the Deputy Chief Justice, a woman. The Judicial Service Commission's nominees would create a bench of 5 men and 2 women, clearly in violation of the Article 27(8). FIDA & 9 Others commenced litigation against the Attorney General (the first Respondent) and the Judicial Service Commission (the second Respondent). KITUO's injunction was based on the belief that it is vitally important for the Supreme Court's composition to abide by the Constitution, to set an example to all of Kenya's lower courts.

KITUO largely supported the Petitioners case on Article 27(8)'s requirement that not more than two-thirds of an appointed body, of which the Supreme Court is, be comprised of more one gender. In other words, the Constitution required affirmative action and urged the court to consider the historical context of passing the new Constitution. The Petitioners and interested parties relied on an Article annexed to the KITUO Executive Director's affidavit. In the Article, women comprised woefully little of the judiciary, as cited by a 2010 UN Report (created with information from the Second Respondent). KITUO emphasized to the Court that it should be guided by many principles, chief among them the promotion of gender equality and overall, through Advocate Angote Gertrude underscored the importance of affirmative action in the new Constitution.

On 25 August 2011 at 11am, the Honorable Court handed down a judgment, dismissing the petition. For KITUO and on behalf of AMWICK, we couldn't disagree more strongly with the court's decision and worry about what it means for women in Kenya. We are therefore on board, with the Petitioners to appeal against the decision.

### Parliamentary Engagement: Advocacy Strategy in Public Interest Litigation Cases; *the Albinism Case*

In June 2011, KITUO, in partnership with Albinism Foundation of East Africa petitioned the Parliamentary Budget Committee on Health to make budgetary allocation in the 2011/2012 budget for the purchase of Radiotherapy machines and sunscreen for Persons with Albinism (PWA). The rationale for this was the plight of persons with albinism, their vulnerability to cancer as a result of their skin pigmentation and the very expensive treatment for cancer or rather the unavailable facilities for treatment in the local public hospitals.

The decision to approach the Committee was a strategy of an out of court pursuit of the constitutional rights as opposed to direct litigation. KITUO also, took advantage of the wide scope of public participation provided for in the Constitution and managed to secure the audience of the Committee and a promise to factor the proposals in the budget.

KITUO took the guidance of Constitutional provisions under Article 43 (1) (a),



which gives Every Person the right to health and health care, Article 21(2), the State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43, including the right to health, Article 56, protection and recognition to minority and marginalized groups' right to access health services and Article 118, which requires public access and participation in the business of Parliament

The KITUO memorandum proposed the purchase of the radiotherapy machines, one to be placed at Kenyatta National Hospital and the other in one of the regional referral hospitals and that sunscreen be availed in all the hospitals by the Kenya Government.

The government recently allocated Kshs. 100,000,000 to albinism activities in the current 2011/2012 supplementary budget, operating under the Ministry of Gender and Children's Affairs, thanks to Kituo cha Sheria and the Albinism Foundation of East Africa under the stewardship of Executive Director Priscilla Nyokabi and Justice Mumbi Ngugi respectively.

### **The “De La Rue” and Money printing; Kituo Cha Sheria Vs. Central Bank of Kenya and 7 others, Petition No. 292 of 2011**

Kituo instituted this case challenging the award of a money printing contract by the Central Bank of Kenya to De La Rue Currency and Security Print Ltd. The respondents were the CBK, the PS to the treasury, the Minister of Finance, the AG and De La Rue companies. The basis of this case was that cabinet had issued a memorandum on 13<sup>th</sup> September 2011 directing the CBK to proceed and enter into a joint venture agreement which could then give way for the contract between CBK and De La Rue Currency and security print Ltd. In essence, this would be against the public procurement principles as there would be no competitive bidding

for the award of the tender as required in Law.

It would also be against the principles of participation, public finance and equity. The matter was filed on 1<sup>st</sup> December and heard on 2<sup>nd</sup> December 2011. The judge granted the interim conservatory order to stop the contract until the suit is determined. The case was to come for hearing on 6<sup>th</sup> December 2011 but on this particular date, the judge discharged the orders he had earlier issued *suo moto* citing non disclosure. This turned out to be unfair because during the hearing of the application, the judge did not allow the counsel to present his case to the end as he cut him short and as a result he did not fully exhaust the issues.

Kituo then proceeded to file an application for review of those orders which application is currently pending in court for hearing on 17<sup>th</sup> April 2012.

### **Enhancing training for a practitioner of public interest litigation is enhancing social justice; the 2011 PIL Colloquium**

KITUO, in conjunction with Katiba Institute held its 2<sup>nd</sup> annual PIL Colloquium between 20<sup>th</sup> and 21<sup>st</sup> May, 2011. This was preceded by a Judges Cocktail of 19<sup>th</sup> May 2011. KITUO uses the colloquium to facilitate exchange of expert information through a mix of lectures and experiential learning and resolutions recorded in annual colloquium reports.

KITUO acknowledges and thanks the facilitators of the colloquium

- *Prof. Yash Pal Ghai*
- *Jedidah Wakonyo, Advocate*
- *Prof. Kent Rotch*





- Prof Jill Ghai
- Hon. Justice David Majanja,
- Rubert Skilbeck,
- Lanyer Waikwa Wanyoike
- Korir Singoei, Advocate
- Harun Ndubi, Advocate
- William pike, Managing Director of Nairobi Star
- Kenneth Akide, Chairman-Law Society of Kenya
- Hon. Justice Musinga
- Hon Justice Ochieng'
- Hon. Justice Lenaola
- Priscilla Nyokabi-Executive Director, Kituo Cha Sheria

### **KITUO Replicates Public Interest Litigation Caucus in Machakos**

In June 2011, LAED programme replicated the PIL Caucus in Machakos. Previously, the caucuses were only held in Nairobi, where Volunteer Advocates' engage in teamwork to surgerize and discuss, and pursue the PIL cases. The spirit of replication is an attempt to instill the same across the country and to make the upcountry Volunteer Advocates' participate in these caucuses. Lawyers from Machakos town and Kitui, led by Mr. Onesmas Makau, managed to institute the 1<sup>st</sup> public interest case on Mutomo mining issues in Machakos High Court in June 2011.

### **Pre-Trial Detention; Unlocking the Criminal Justice System through PIL**

The Programme in partnership with the Open Society Initiative for East Africa (OSIEA) commenced the pursuit of Public Interest Litigation on Pre-Trial Detention. In November 2011 a PIL caucus was held with a view to unlock possible injustices that occur during pre-trial detention and that result into violation of fundamental rights and freedoms. This is a ground breaking move meant to expose the programme towards engaging in reforms within the criminal justice system, in which poor and marginalized persons get unfair treatment from the point of arrest, through trial and up to judgment.

Pre-trial detention serves to undermine socioeconomic development and is especially harmful to the poor, who are in more danger of conflicting with the criminal justice system and unable to pay bail. Detention of any sense pulls people away from their normal lives and in most cases results in loss of employment, sinking families into deeper poverty in cases where their bread winner is detained. The Kenyan situation is worse, following the overcrowding in prisons with the result that suspects in pre-trial detention end up in the same detention facilities as convicted criminals who are serving sentence. This exposes many pre-trial detainees to torture, violence and disease.

The project rolls out in 2012, and so far, six (6) PIL issues on pre-trial detention have been identified.

### **Alternative Dispute Resolution (ADR); the way to go in dispute settlement**

2011 saw more cases settled through ADR as opposed to litigation. Out of the settlements, Kshs 2,612,294.23 was collected through KITUO. The successes ranged from the payment of amounts as low as Ksh. 9, 260 to amounts as high as Kshs. 480, 758, labour cases being top on the list.

#### ***The case of Joram Waita Ndome, file Ref. No. Nkcs/32335/5/011***

This is a conveyance dispute between our client, Joram Waita Ndome and his debtor, Thomas Omanga Bonuke whereby our client had lent him Kshs. 480,758.48. The agreement having been properly drafted and executed, KITUO intervened, set up a meeting with both parties and explained the legal implications of the agreement to the parties. The debtor agreed and

began to pay the total amount in installments.

#### ***The case of Francis Mugendi, David Wambua and Paul Muiruri against Shengli construction Company Ltd.***

KITUO received many cases of unfair termination and claims of unpaid terminal dues against this company. Several demand letters were written, many phone calls made and some cases filed in court. Following the court filings, the employer (adgersary) approached KITUO for an out of court settlement. Successful negotiations saw the clients' payment of Kshs. 52,000.00, 66,000.00 and 31, 000.00 respectively.

### **Legal Aid Clinics**

In the spirit of access to justice for all, the Programme held 5 legal aid clinics; one during the Labour Day (May, 1<sup>st</sup>), another during the KITUO Anniversary celebration in Korogocho slum and three other in-house legal aid clinics, at KITUO offices. Out of the clinics, over 400 clients were interviewed and advised.

### **Volunteer Advocates' (VA) scheme**

In 2011, the LAED programme continued the revamping of the volunteer advocate scheme with VA recruitment exercises done in Thika, Murang'a and Embu which saw recruitment of 20, 7 and 9 volunteer advocates respectively. The online recruitment also went on well with more advocates sending online requests to join the scheme. Requests have also been received from regional and international lawyers of their intention to work with the scheme and to date, the scheme has over 800 advocates.

### **Empowering agents of access to justice through excellent legal training; the 2011 Trial Advocacy Training.**

For the third year running, Kituo Cha Sheria, in partnership with the Kenya School of Law (KSL) and Justice Advocacy Africa (JAA); an affiliate to the National Institute for Trial Advocacy (NITA), organized the 2011 Trial Advocacy Training that took place at the Kenya School of Law from 22<sup>nd</sup> to 26<sup>th</sup> August 2011. This was unique training as it involved the empowerment of some Kenyan Lawyers as faculty (trainers) unlike the previous practice whereby faculty were drawn from US.

In the same year, JAA invited some of the Kenyan faculty members to Seattle in the United States to be trained further as Faculty in March 2011. Twelve lawyers were trained and among them was the Director, Kituo Cha Sheria; Priscilla Nyokabi, the Legal Aid Coordinator; Gertrude Angote and 10 Volunteer Advocates. They then became trainers in this years' training in collaboration with trainers from America.

Previous trainings have seen over seventy (70) Kenyan lawyers undertake the training and the 2011 training was not just a replica but a bigger one as it had lawyers from the East African Region (Tanzania) undertake the training as well as the President of the Uganda Law Society, as faculty.

### **Aims and Objectives**

#### **The training was aimed at:**

- To equip participants with skills of conducting a case analysis
- To develop participants' ability to make convincing submissions
- To equip participants with skills of conducting effective examination in chief and cross examination
- To give participants working knowledge of how to produce exhibits in court
- To enhance participants' involvement in *pro bono* work with a view to increased access to justice.
- To sensitize participants on the latest legal developments with regard to matrimonial property rights in Kenya
- To provide an opportunity for networking between bar and bench, within Kenya and across Africa.



### *What about Trial Advocacy training (2011)?*

- a) Forty (40) lawyers across East Africa were trained in trial advocacy and effective communication skills and awarded certificates. Out of these, 6 were Kituo in-house lawyers, 9 were Kituo VAs, 8 were Kenya School of Law students and 17 were advocates from private practice.
- b) At the end of the training, 35 participants pledged to take up at least one pro bono matter.
- c) Fifteen (15) advocates signed up to the Kituo Volunteer Advocate Scheme
- d) Five students from Kenya School of Law also signed up to the VA Scheme.
- e) The programme also attracted international advocates, especially from Tanzania who have expressed interest to join Kituo VA scheme.
- f) NITA programme received requests to do a similar training in Tanzania.
- g) Two NITA faculty members got appointed judges of the High Court in the 2011 judicial recruitment exercise in Kenya; Judge David Majanja who was also a KITUO VA and Judge Prof. Joel Ngugi. Interestingly so, the news came in during the training and the NITA pioneers and Faculty felt very proud of their own.
- h) After the training, a taskforce was set up to oversee the training and possible domestication of the training.

## Local, regional and international partnerships

### Advocating for the reform agenda to embrace Industrial court - The Industrial Court: Justice for workers

In marking the Labour Day of 1<sup>st</sup> May 2011, the Programme organized a lawyer's forum where practicing advocates and judges of the Industrial Court were invited to an evening cocktail for discussions towards promotion of appreciation and use of Industrial Court.

The objectives were:

- To canvass the history and current status of the Industrial Court and;
- To highlight Labour rights under the Constitution 2010.
- To highlight gains in the new constitution for the industrial court
- To highlight the need of having a perception change and embrace the industrial court.
- To create a forum for interaction with judicial officers and staff of the Industrial Court, legal practitioners and other stakeholders in the Labour sector.
- To highlight the plight of the Kenyan Labourer.

### *What ails the Industrial Court?*

- The location of the Industrial Court; that it is only situated in Nairobi and litigants from other parts of the country have to file their cases in Nairobi, an aspect viewed to play out as denying the right to access justice.
- The numbers of judges of the court are few. The Judicial Service Commission was urged to increase number of judges.
- Status of the court. It was said to be perceived as a lesser court and many litigants and advocates shy away from it preferring to file labour cases in the other subordinate courts. There is need for sensitization of litigants and practicing advocates to make use of the court.
- Industrial Court judges are perceived as having lesser status to that of other judges of the High Court. There was consensus on the need for advocacy with JSC to increase number.
- The Judicial Service Act was viewed to overlook the court in terms of funding.

to justice. The crosscutting recommendations were with regards to the need to consolidate the relationship between the bench and human rights organizations in order to collectively embrace the necessary reforms.

### Access to justice through information technology; the micro justice project

In 2011, the programme entered into partnership with Tillburg University of Netherlands on legal empowerment of the poor in Kenya. This partnership seeks to provide better access to justice for fair and just outcomes for the poor living in urban and rural areas. The preference of the micro justice approach as opposed to bottom up justice( which means investing in laws, court and other justice formal institutions) was that outreach can be increased and sustainability can be promoted by using evidence based rules and tools, huge steps in accessibility, understandability and increase of dissemination of legal information and tap alternative sources of funding.

### *What does KITUO seek through Micro-Justice?*

- a) To sustainably provide affordable access to legal information that enables people to solve their legal problems by making use of modern information technologies e.g. internet and mobile telephones e.t.c.
- b) To sustainably provide affordable access to just and fair outcomes that work for the legal problems of the poor by using tools based on best practices e.g. dispute resolution skills.

## KITUO and Kenyan Judiciary

A judge's dinner on 7<sup>th</sup> July 2011 whose theme was "**The Role of Kituo in democratization in Kenya**" saw discourse on establishing a working relationship between the civil society and the judiciary towards reforms and access





## The Forced Migration Programme (FMP)

### Introduction

The objective of the Forced Migration Program continues to be the provision of assistance towards the enjoyment of rights by refugees under the Refugee Act -2006 and other related instruments. The program made significant progress on this front.

The Program provided legal advice on a range of issues and represented refugees before courts. Additionally, the Centre served as a resource centre for individuals and paralegal network to obtain information on a variety of legal matters. To that end the Centre served as a repository for booklets and manuals on legal issues but also produces its own materials on specific legal procedures such as self representation before the courts.

In the implementation of this Project, the Program co-operated with the government and various stakeholders for the benefit of clients.

In the last half of the year, a slight readjustment to the project saw the launch of a pilot project in Mombasa where the Nairobi office activities were replicated.

Under this pilot project, Kituo- Mombasa held community fora to discuss issues affecting refugees in target areas including issues of residence, registration and protection. Operational partners in refugee welfare and protection within the coastal area were identified. The Mombasa program too, facilitated networking meetings with these partners for enhancement of a joint and coordinated approach to protection of refugees and asylum seekers within the coastal area. Mapping out of the population of concern in this area was also carried out.

To address emerging concerns affecting the refugee community at the Coast, legal aid to refugees, asylum seekers and other persons of concern was offered together with legal representation in court. The mode of interventions adopted by the Nairobi office for release of individuals from detentions applied.

In Nairobi, bi-monthly Legal Aid Clinics to cover areas far off from Eastleigh were introduced within this period. These clinics formed a key highlight in community outreach efforts. Ten (10) Legal Aid Clinics targeting refugee communities living far from the office were conducted. These clinics were held in Komarock, Donholm, Kawangware, Rongai, Kitengela, Juja, Mlolongo, Kasarani and Zambezi between the months of September and December 2011. Each clinic targeted at least 50 persons of concern.



3,315 walk-in clients in the year 2011 were served, 1,185 of whom were given legal advice on various issues ranging from custody concerns, landlord and tenant disputes, labour disputes and arbitrary arrests and detentions. 358 of these cases received legal representation in court.

237 asylum seekers and 73 refugees were detained for unlawful presence making a total of 310 arrested and charged this offence. The program was able to secure the release of over 90% of these asylum seekers who were eventually taken to the Department of Refugee affairs for registration.

We received reports of 30 persons of concern at risk of repatriation. Of these 23 had been convicted for unlawful presence. 11 persons convicted by the Makadara Court from Ethiopia had initially stated that they were asylum seekers but later denied this and identified themselves as economic immigrants thus their conviction stood and they were repatriated, leaving the total number of credible *refoulement* cases at 19. We filed an application in the High Court for the revision of the conviction. The application was granted. 63% of cases of repatriation were successfully prevented.

### POLICE STATION INTERVENTIONS

POLICE STATION	Pangani	Shauri Moyo	Kamukunji	Central	Muthaiga	Nanyuki	Industrial Area police	Jogoo Road	Chief's Camp	Others
Number of Visits	31	3	3	10	1	2	4	1	5	15*

\*JKIA, Kayole, Huruma, California Police Post, Nairobi Area, Makongeni police Thika & Buruburu Police

### ADVOCACY MEETINGS

ORGANISATION	UNHCR	Head Office	IRC	GIZ	CISP	Others
Number	34	63	22	7	11	81

DRA offices to sensitise them on their role in refugee protection were carried out in 2011

### OTHER INTERVENTIONS

ORGANIZATION	DRA	Immigration	Prison/Remand	JKIA	Others
Number	13	8	29	2	7



Increasingly, the judiciary became aware of asylum seekers' right to access territory and did not order repatriation for asylum seekers charged with unlawful presence on a high scale. Judicial officers occasionally called upon our office to take up ongoing cases in their courts. This trend was attributable to the sensitisation of judicial officers on refugee rights. Our officers facilitated at three (3) trainings on refugee law by the KMJA/ UNHCR targeting Judicial Officers in Nakuru, Kisumu and Mombasa.

On the litigation front, there was growth in jurisprudence. A good example is the landmark ruling delivered by Hon. Justice F. A. Ochieng' in a **Criminal Revision Case no. 137 of 2011** where he set out the standard the court should use when dealing with an asylum seeker arrested for unlawful presence.

Police around Nairobi were trained on protection of asylum seekers thus the incidences of arrest declined greatly. The program received an average of 60 court cases a month in January 2011 but by December the number had dropped to 6 persons per month. High incidences of arrest were reported outside Nairobi.

Our Officers visited Police Stations, Prisons and the Department of Refugee Affairs to discuss refugee rights, refugee protection and the overall role of these institutions in the protection. In 2011, there was 1 visit made to the Department of Refugee Affairs Shauri Moyo office, 12 visits were conducted to various police stations to discuss the role of police in refugee protection. The police stations visited include Shauri Moyo, Industrial Area Police and Prison, Kayole, Huruma, Buruburu, Pangani, Central, Eastleigh Chief's Camp and California Police Post. The number of arbitrary arrests went down within Eastleigh area.

The 12 visits done to police stations and prisons to brief them on refugee rights and protection together with the 104 visits to detention centres to intervene in cases also doubled up as monitoring visits since Kituo officers always inquired as to any other refugee or asylum seeker who may be in detention and the circumstances of their cases. There after Kituo also intervened in these cases.

Clients were referred to partners for services sought that are not provided by the program such as medical care, provision of material support, psychosocial counselling etc.

The program produced and distributed brochures, the Refugees Act, copies of

the Gazette Notice No. 1819 of 2008 which extends the validity of Refugee IDs issued by the government and were to expire in 2009, fliers explaining refugee rights published in English, Kiswahili, Oromo and Somali.

12 trainings and awareness workshops for refugee communities on refugee rights and obligations and on GBV matters were organized and held. These trainings have been conducted in Eastleigh, Rongai, Githurai, Kasarani, Komarock, Kayole, Ruiru, Pangani, Mathare, Kangemi and Kariobangi. Through these trainings, the Refugee community was empowered to stand up for their rights.

## **THE NAIROBI URBAN REFUGEE RIGHTS INTEGRATION ACTIVITIES (NURRIA)**

The FMP separately implemented the NURRIA - a European Union - funded Project for joint implementation with the International Rescue Committee (IRC) and Comitato Internazionale Per Lo Sviluppo Dei Popoli (CISP). NURRIA was launched on the 15<sup>th</sup> April 2011. The Project aims at strengthening of the existing protection and support system for urban refugees in Kenya as envisaged in the international conventions and Government of Kenya policies. NURRIA's specific objectives include, *inter alia*, supporting the Government in providing protection to urban refugees, increasing urban refugee awareness of rights, provision of refugee communities with a coordinated referral system and advocating for a durable solution for the refugees in Kenya.

NURRIA complemented the UNHCR -funded Project in many respects including the capacity building of police and other government officers on refugee rights as well as advocating for an expanded asylum space.

The FMP 's main achievement in 2011 under NURRIA was the training of 91 police officers in Nairobi which resulted in increasing awareness of refugee and asylum seeker rights among police officers within Nairobi and the establishment of a cordial working relationship between the organisation and the police service. The program also trained 65 lawyers in Eldoret. This helped in the creation of a network of lawyers to respond to refugee legal needs of refugees in that part of





the country. Kituo further continues to provide legal aid to urban refugees in and out of Nairobi especially in the context of increased arrests of refugees as part of the security crackdown following Kenya's incursion into Somalia to deal with the Al-Shabaab dubbed the 'Operation Linda Nchi'.

#### **Training of Police Officers on Refugee Rights and Gender Based Violence with 61 officers at Nomad Hotel, Eastleigh on 23<sup>rd</sup> July 2011**

Kituo trained police officers on refugee rights and gender based violence on 23<sup>rd</sup> July. The training had 61 officers present and were drawn from Central, Kamukunji, Pangani, Shauri Moyo, Embakasi Police stations and from the Administration Police, Eastleigh Division Administration Police station. The officers were keen to learn how to handle asylum seekers, and were happy to know the documents that refugees hold so that they know what to look for when handling asylum seekers.

The officers were taken through refresher training on 24<sup>th</sup> September at the same venue where the refugee rights issues were discussed further. The police had an opportunity to share their experiences with handling asylum seekers and refugees and the challenges they faced. Matters of child protection, gender based violence and sexual exploitation and abuse were also tackled in the 2 trainings.

#### **Results:**

A total of **91 officers** have been trained. This has resulted in increasing awareness of refugee and asylum seeker rights among police officers within Nairobi. The week after the first training we received phone calls from police officers asking us to take asylum seekers to Department of Refugee Affairs (DRA) for registration instead of having them charged with unlawful presence.

Our engagement with police has also resulted in existence of cordial relations such that when asylum seekers and refugees are arrested sometimes all that is needed is a phone call to the station to explain the situation and the persons are let go without charges.

#### **Training of Lawyers on refugee law and practice with 65 participants at Sirikwa Hotel in Eldoret Town on 31<sup>st</sup> August and 1<sup>st</sup> September 2011**

The Program had a 2-day training on refugee law and practise for lawyers in Eldoret Town on 31<sup>st</sup> August and 1<sup>st</sup> September. The training was attended by lawyers from Kitale, Kapsabet and Eldoret towns. The sessions covered definition of a refugee, asylum seeker, economic migrant and returnee. It also looked at the refugee status determination, the interface between the refugee law and immigration laws, a brief about the practical aspects of refugee law practice in the Kenyan courts and here we shared the ruling by Hon. Justice Ochieng'. We also disseminated copies of the Refugee Act.

#### **Results**

The training in Eldoret was a success with participants exceeding the 40 we had expected to up to 65 persons, of these 25 registered as part of our volunteer advocates.

Kituo has created a network of lawyers to respond to refugee legal needs of refugees in that part of the country. We have received reports of arrest of refugees from as far as Lodwar and these lawyers are able to follow up on our behalf.

Further, many lawyers are not familiar with refugee law and practice and the training provided them with the necessary knowledge and tools that enable them effectively represent the refugees and asylum seekers in court

#### **Analysis of the Draft National Refugee and Asylum Policy**

Kituo contracted a consultant who undertook to an analysis of the Draft Refugee and Asylum Policy to identify gaps even as the document undergoes stakeholder review. The consultant presented his critique of the Draft Refugee and Asylum



Policy on **12<sup>th</sup> October at Kituo Head Office** to the staff of Kituo. The critique was discussed and it was agreed that it was important to share the same with stakeholders. A breakfast meeting was planned for **19<sup>th</sup> October** with Urban Refugee Protection Network (URPN) members.

The breakfast with URPN members was held on **19<sup>th</sup> October at Silver Spring Hotel**. There were 24 persons in attendance. The consultant once again made his presentation which was well received by the members. It was agreed that the same was important to present to the Immigration Minister and the Department of Refugee Affairs.

Another breakfast meeting on the same was held on **7<sup>th</sup> November at Silver Spring Hotel** with the Acting Commissioner DRA and DANIDA Special advisor to the department. The critique was presented to them and it was well received. The partners were asked by the Commissioner to make concrete proposals on what they think should be in the document.

The 1-day workshop on the Draft Policy was held on **22<sup>nd</sup> November at Silver Spring Hotel** with 32 persons in attendance. The participants were drawn from different government ministries that are part of the Refugee Affairs Committee established under the Refugee Act 2006. The international and national NGOs working with Refugees were also represented. A review of the Refugee Bill 2011 was also incorporated into the workshop since the 2 documents are interlinked.

## Results

- The Policy making process had stalled as the review of laws under the new constitution took centre stage. The analysis put the Policy process on the forefront giving stakeholders time to give in their views.
- The various forums have brought out views that will inform a new draft of the Policy that will then be subjected to another round of review and analysis.

## Training and awareness-raising on relevant national laws and international refugee law, and services and entitlements available for refugees

The program held an advocacy outreach event with the Congolese of the Banyamulenge community on **16<sup>th</sup> August 2011** in Umoja where about 500

refugees were reached, they were informed about what Kituo does and the issue of peaceful coexistence was discussed.

## Provision of legal advice, counselling, referral and representation

In the months of July to November, the centre received a total of 1243 clients with 729 of them being new clients within this time. The clients sought various forms of assistance and advice ranging from seeking legal representation in court cases to information on durable solution and refugee status determination, work permits, movement pass and others visited the program's offices seeking material support. There was a high number of detention cases with charges of unlawful presence in the wake of the *'Operation Linda Nchi'* which is aimed at eliminating the Al-Shabaab.

## Results

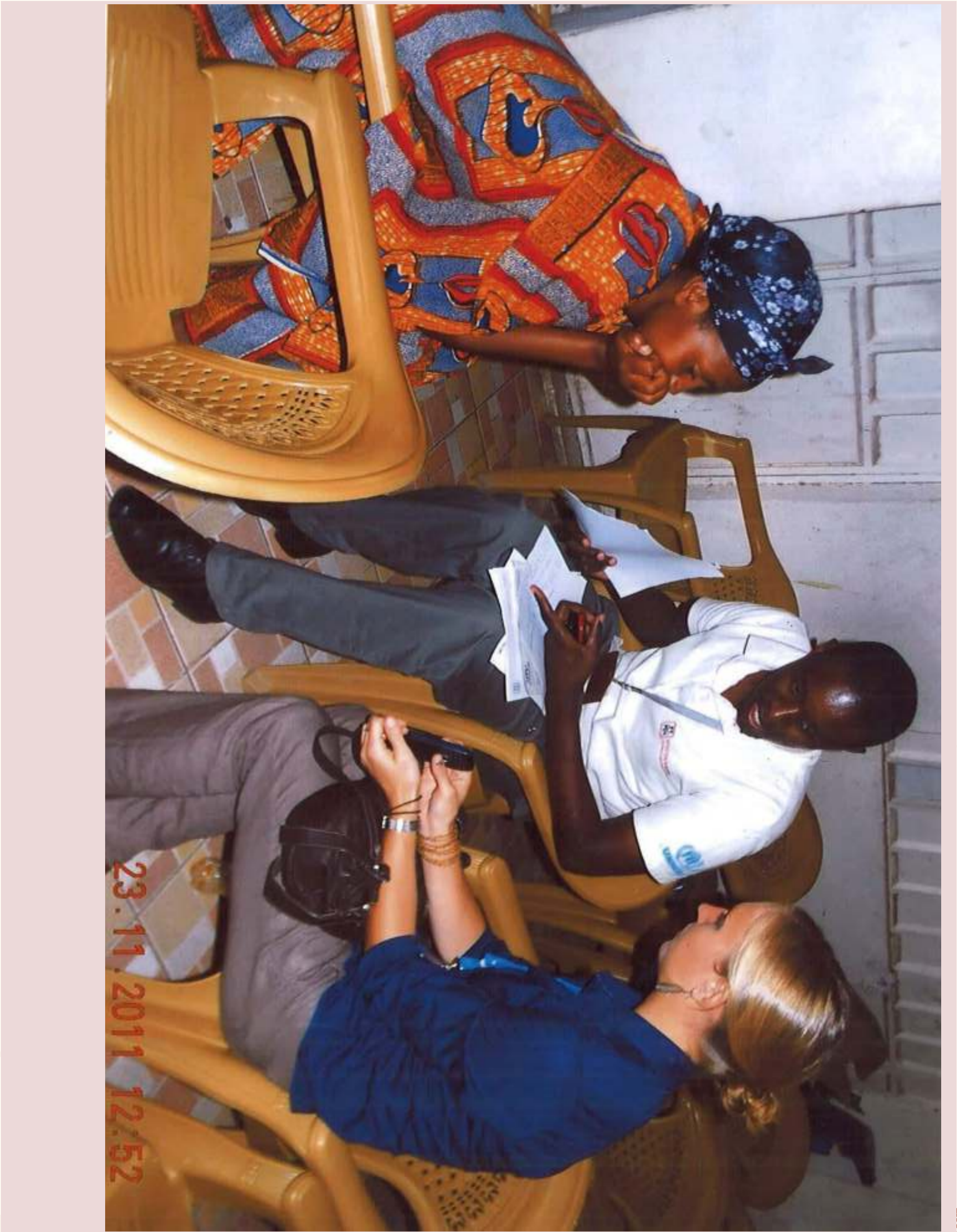
- We have our lawyers providing legal aid to clients at CISP and IRC offices thus bringing the service closer to the clients and allowing us to reach more clients needing legal aid.
- We have been able to exceed the target of 200 clients able to access legal services.

## Challenges:

The key challenge was lack of public awareness on Refugee Documentation. Most government departments are not familiar with the documentation issued to refugees by the Department of Refugee Affairs- case in point is the Refugee Certificate that is issued to refugees in lieu of the Alien Certificate. This document has been issued to refugees since late 2009 yet it remains widely un-recognised.

The need for capacity building of officers of the Department of Refugee Affairs -which has taken over the role of registering asylum seekers from the UNHCR – remains valid. These officers too ought to be sensitized on the need to cooperate with other stakeholders and participate in the cases where the asylum seekers have been arrested and charged with unlawful presence.







## Advocacy, Governance and Community Partnerships Programme (AGCP)

### INTRODUCTION

Advocacy Governance and Community Partnerships (AGCP) Programme, is one of the core programmes of Kituo Cha Sheria (KITUO) that enhances equity and justice for all through outreach and empowerment of the poor and the marginalized communities by organizing them into formidable advocacy forces. AGCP promotes good governance and advocates for the adoption of pro-poor policies and legislations both at the grassroots and national level which are geared towards ensuring recognition and fulfilment of rights.

### AGCP GOALS

- Goal 1:** Building strategic partnerships with communities.
- Goal 2:** Increase access to Justice for the poor and marginalized.
- Goal 3:** Promote good democratic governance at all levels.
- Goal 4:** Advocate for and monitor the implementation of pro-poor policies and legislations on land, labor, housing, access to justice and peace.
- Goal 5:** Strengthening programme leadership and team building.

### IMPLEMENTATION OF THE GOALS IN THE YEAR 2011

#### 1. Building Strategic partnership with Community Networks

KITUO through AGCP continued the partnerships with the community networks through their respective networks of community based organizations (Nyando Human Rights, Advocacy and Development Network, Nairobi Devolved Fund Watchdog and Kamukunji Community Based Organisations Network) and the community Justice Centres that are managed by the networks. Through the justice centres there was continued provision of legal aid by the volunteer paralegals of the justice centers. Further during the period under review KITUO furthered its partnership with the Kituo Paralegals with the aim of establishing a Justice Centre to serve the larger Kitui County.

The Kibera and Kamukunji justice centres in Nairobi through AGCP forge a partnership with the respective provincial administration in their area that is the District Commissioner's Office. The meetings that were facilitated by AGCP were aimed at developing ways in which the Provincial Administration can work together in with the paralegals on areas issues that affect them on a daily basis.

During the period under review AGCP held reflection and planning meetings with the Justice Centres where experiences were shared and identified gaps that have been there through the implementation of the justice centres.

During the reporting period AGCP conducted managed to conduct an M&E workshop with the NYAHURIADEN paralegals. The purpose of this workshop was to:

- Analyze and assess the relevance, effectiveness, impact, efficiency in terms of adequacy and sustainability of the objectives and activities.
- Analyze and assess NYAHURIADEN progress against its mission and

vision

- Recommend changes of strategy and emphasis that should be incorporated in the future plans/work of NYAHURIADEN
- Analyze challenges and come up with a way forward to overcome these challenges
- Compare actual project impacts against the agreed course of action

During the period under review AGCP continued to work with the Civil Society Coalition on Housing and the Land Sector Non-State Actors Coalition. From the Housing coalition KITUO through AGCP engaged the Ministry of Housing on the Draft Housing Bill for purposes of recalling the Draft Bill to be re-looked in terms of the new constitution as the same was done before coming of the new constitution. The Ministry of Housing responded by calling a meeting of the stakeholders where KITUO presented a position paper on the need to realign the Draft Housing Bill with the Constitution and later a retreat was held where KITUO was represented in the committee that re-looked into the Draft Housing Bill.

#### *Fact finding mission in Laikipia East (Sunguroi community evictees)*

AGCP together with LAEP undertook a fact finding mission of the Sunguroi community who were evicted from Kabarak farm and are now living in deplorable conditions. The fact finding mission was covered by the media from the Nation Media. Following the fact finding mission, we addressed letters to the area MP and the Minister for Special Programmes highlighting the state of the community and need for quick action to provide humanitarian assistance.

#### *Kamati Prison Fact finding*

AGCP conducted the first fact finding mission at the Kamiti Maximum prison, where fourteen (14) inmates were interviewed on their various cases and sentences. The inmates highlighted that they had not been given fair trials since they were sentenced to death without any legal representation. They also raised the issue of not being given opportunities to provided mitigation before sentencing which should influence the sentencing and also which would used by the advisory committee on prerogative of mercy. The lack of this made the sentences unconstitutional. The fact finding led to our partnership with Kamiti Maximum prison and establishment of a prison justice centre at Kamiti Prison come the next reporting period.

#### 2. Increase access to Justice for the Poor and Marginalized

In line with KITUO's relentlessness at increasing access to justice for the poor and the marginalized AGCP worked together with the LAEP at organizing the public lecture on increasing inclusion and protection of rights of persons with albinism. AGCP was more involved in the mobilization attendants to the public lecture and we managed to mobilize civil societies and community based organization that we work with. Also through our community justice centres we distributed posters for the lecture in Kamukunji and Kibera.

Further on access to justice through our partners we came to learn of an intended

demolition by the National Youth Service of an informal settlement in Mathare (Jangwani) together with other developments. Fortunately the private developers near the settlement went to court by way of Judicial Review to have the decision of NYS quashed, and got orders which protected the entire parcel of land which includes Jangwani.

Further on cases AGCP has been acting for KITUO and 6 other NGO's sued in Case No. 559/2010 involving the leadership of the National Council of NGOs and was successful in stopping the plaintiffs/applicants from obtaining an injunction against KITUO and the 6 NGOs from holding a meeting for the elections of the NGO Council.

On housing rights we assisted in a matter that some civil servants houses along Nyeri Road in Kileleshwa were been threatened with repossession of their houses. The matter is about houses that were offered to civil servants at a price of Kshs. 4.5 Million who applied and their offer was accepted but later informed that delays in completion occasioned changes in material costs and other related costs and the sale price would have escalated by not less than 60%. The Scheme wrote to the civil servants informing them that the houses would now cost Kshs. 7.6 million. We engaged the Civil Servants Housing Scheme Fund through the Ministry of Housing had the matter resolved amicably.

#### ***Eviction Guidelines Forum at Muthurwa***

AGCP held a forum on the Eviction Guidelines at Muthurwa where is the subject

matter of Public Interest Litigation (P.I.L) that KITUO is undertaking on behalf of its residents. The PIL case is on the ***Right to Housing*** as envisaged under Article 43(1)(b). The objectives of this forum were to:

- Encourage public participation in development of policies and laws designed to ensure the progressive realization of the right to housing
- Create an opportunity to the public to access information on Eviction Guidelines and Housing Rights.
- Create opportunity to the public to learn land and housing laws in order to minimize evictions and exploitation by government officials and landlords
- Increase the realization of access to justice towards promotion and protection of the right to housing.

The forum was attended by a Hundred and Fifty (150) Community residents from different areas in Nairobi and representatives of the civil society organisations.

#### ***Workshop on Women's access to land, management and ownership***

AGCP participated in a workshop to discuss the plight of women around land in terms of ownership, access and control. Despite the Constitution, 2010 and the National Land Policy giving women the right to own land, the patriarchal nature of the Kenyan society and cultural practices hinder women from owning and controlling the proceeds from cultivating such land, keeping in mind that women form 50.5% of the total Kenyan population.





### ***Kamukunji legal Aid clinic***

The programme through the Kamukunji Justice together with LAEP carried out a legal aid clinic in Kumukunji at Eastleigh. The purpose of the legal Aid clinic was to continue with free legal aid provision with the spirit of enhancing access to Justice to the poor and the marginalized. A total of 65 clients were screened with 5 matters being identified for PIL.

### ***Kibera Legal Aid Clinic***

AGCP through the Kibera Justice Centre together with LAEP held a legal aid clinic at Kibera near the District Commissioner Office. Volunteer advocates were present during the legal aid clinic together with paralegals. A total of 62 clients were screened and most of them were on KITUO core areas.

In the build up to the legal aid clinic AGCP held a radio talk show with Radio Pamoja in Kibera where the topic for discussion was ***“Landlord/Tenant Issues and the Rent Restriction Tribunal”***

### ***Korogocho Legal Aid Clinic***

AGCP together LAEP with and through the Korogocho paralegals held a legal aid clinic during KITUO's 38<sup>th</sup> anniversary. The Korogocho Paralegals provided good mobilisation of the clients and the community of Korogocho.

During this legal aid we managed to screen 67 clients:

- Land: 17 matters
- Labour: 7 matters
- Housing: 4 matters
- Eviction: 1 matter
- Succession: 6 matters
- Criminal: 5 matters
- Accidents: 6 matters

In this invent we partnered with the Provincial Administration who work closely

together with the paralegals.

We had a radio talk show with KOCH FM as a build-up to the legal aid clinic

### ***Women and Paralegal trainings on Women Land Rights***

Under the reporting period AGCP trained women and Paralegals on women lands land rights. The programme held Women Land rights awareness workshop in Nyando, Kapolet, Kisauni, Taveta. Through this initiative a total of 80 women and 80 paralegals were trained women rights to land. The trainings incorporated the chiefs from the target areas and representatives of land tribunals. The forums created a lot of interest among communities targeted especially on women's ownership rights to land as property. This exposed to a great extent the way customary and religious practices continue to marginalize women despite the constitutional rights and International instruments that protect and promote women's rights and have been domesticated by the Kenyan government. From the trainings the women representatives and paralegals held public forums to educate on the women land rights. KITUO also held legal aid clinic at the targeted areas to assist with legal advice and representation on the? land cases. Further to this KITUO held Radio talk shows on land issues affecting women.

From the awareness workshops the participants later developed memorandums on the National Land Commission Bill, 2011.

### ***Human Rights Vigil on Forced Evictions***

KITUO through AGCP and in partnership with Amnesty International held a Human Rights Vigil on issues of evictions and highlighting the high instances of forced evictions in informal settlements. Through this we organised a moot court on an eviction case to highlight the grave human rights violation of forced evictions and also increase the understanding of the court processes to the community people. The vigil and the moot court were held at the Freedom Corner and the



Judge of the moot court was Professor Yash Pal Ghai.

### ***Race for Peace and Justice***

During the period under review AGCP in partnership with KCBONET organised a Race for Peace and Justice event during the International Human Rights Day. The theme of this event was ***“Bringing legal empowerment closer to the people”***. This day was marked by various sports activities, performances from various artists and a legal aid clinic.

### ***Paralegal Refresher Course***

During the period under review AGCP facilitated a one (1) week refresher training course for 40 community paralegals from Kamukunji, Kibera and Korogocho communities. The paralegals were further trained on Land law, Land Registration, Labour Laws, Criminal Procedure, Civil Procedure and Employment Law.

## **3. Good Democratic Governance**

### ***Parliamentary aspirants debate forum.***

AGCP in partnership with KCBONET organized a platform debate with Kamukunji aspirants for the by- elections. The goal of the forum was to promote public participation as enshrined in the constitution by giving Kamukunji residents this rare but timely opportunity to constructively engage and dialogue with parliamentary candidates on pertinent issues that affect them. The main issues for discussion that were identified by Kamukunji residents were as follows:

- Eviction , land grabbing and housing
- Public participation on devolved funds and project prioritization of public funds
- State of roads in Kamukunji
- High cost of living
- Police conduct

The candidates invited were eight in total but only Four (4) turned up David Wahiga (Agano), Brian Weke (NARC-K), Catherine Muthoni (GNU) and James Matagaro (Kenya Social Congress). From the public debate the aspirants signed Memorandum of Understanding to commit themselves to the promises they gave at the forum and have quarterly meeting with constituents of Kamukunji if elected.

### ***Validation of paralegal code of ethics***

AGCP under the reporting period held a discussion forum with the paralegals to discuss the issues they face in their line of duty as paralegals and to validate the paralegal code of conduct. This was done on the spirit of addressing the issue of commitment by paralegals as per their duties expected of them to discharge at the community level and also to come up with strategic ways of addressing the sustainability issues that is very critical. A total of 31 paralegals validated the code of ethics and appended their signature. The initiative behind this is to regulate paralegal conduct in the field and to instill the spirit of accountability and transparency in work.

#### 4. Advocate for and monitor the implementation of pro-poor policies and legislations on land, labour and housing, access to justice and peace.

Under the reporting period AGCP together with the paralegals from the Justice Centres attended forums that were held by the task force that was appointed to work on the devolution structure under the current constitution. Also through the Civil Societies Coalition on Housing we engaged in a forum dubbed “**PEOPLES FORUM ON RESOURCE ALLOCATION BETWEEN THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENT**”

The purpose of this activity was to;

- To develop strategies on how to have a greater influence on the budget process at both the national and county governments
- To look at the relevant polices and legislations and the implications of the provisions within the new constitution on ESCR and how they can be integrated in the national plans.
- To critically examine the spaces that are existent for CSOs engagement and how best these can be broadened in the budget process

The outputs were as follows;

- The participants were made aware of the relevant polices and legislations and the implications of the provisions within the new constitution on ESCR and how they can be integrated in the national plans.

- The forum will come up with strategies on how to have a greater influence on the budget process at both the national and county governments.
- Possible spaces that are existent for CSOs engagement and how best these can be broadened in the budget process will be identified.

#### **Review of National Land Commission Bill (NLCB)**

AGCP also participated in the review of the NLCB which will provide a guide to the implementation of the National Land Policy. AGCP also engaged in a breakfast meeting organised by Kenya Land alliance (KLA) on Legislative and Administrative Framework on Land Reform agenda. At the meeting we made our position on the NLPB and the Land Bill.

Further on the NLPB we engaged in a forum for young leader on the NLPB organised by Pioneers for Change (P4C), where we also gave our position on the NLPB and the Land Bill. At both forums we presented a position paper on the NLPB.

#### **Devolved Government Paralegal training**

Due to a need of assessment from our community partners on the need to capacity build them on Devolved government AGCP with the facilitation of the representatives from the Taskforce on Devolved Government held a training with paralegals from Kanukunji, Kibera, Kikodi and Nyando on the devolved government. The training experience managed to:

- Have a proper understanding of the Devolved Governments to be able to





disseminate the knowledge to the community.

- Understood the ESCR in the devolved system under the Report of the Taskforce Devolved Government.
- Understood the Human Rights provision in the Devolved system
- Understood resource /revenue allocation process under devolved systems
- Understood the opportunities for community participation under devolved government.
- Give the paralegals an opportunity to interact with other paralegals from other areas and share ideas and experiences.

From the training the paralegals would educate their respective communities on devolution and the opportunities for them to participate in the devolved system.

### ***Peace Policy Advocacy***

Under the period under review AGCP undertook a robust of activities on advocacy initiatives within and without Nairobi to advocate for the adoption of the National Policy on Peace Building and Conflict Management. Campaigns were held to advocate for the adoption and implementation of the policy and also to sensitize the community on the content of the policy with an aim of promoting public participation.

The peace policy campaigns were targeting the collecting of a million signatures

in support of the peace policy adoption and implementation. These efforts saw the creation of awareness for the policy and hence great interest by the citizenry for its adoption.

AGCP also through the campaigns developed, published and disseminated of 10,000 brochures on the draft Peace Policy.

As part of strategy in advocating for the adoption for the Peace Policy, AGCP partnered with National Steering Committee on Peace Building and Conflict Management (NSC) secretariat and held monthly meetings with the NSC in order to strategize a road map for the realization of the projects goal.

### ***Engage with Parliamentary Committee on Land and Natural Resources***

AGCP together with other organisations under the Land Sector Non-State Actors (LSNSA) and community members presented a memorandum to the Hon. Mutava Musyimi joint parliamentary committee that was investigating the demolitions in Syokimau, Kyangombe, Maasai Village, Mitumba Village and Eastleigh. Our memorandum included proposals that the Land Bill, The National Land Commission Bill, The Land Registration Bill and the Community Bill should be fast tracked to avoid cases of demolitions and forced evictions.



## 5. Strengthening programme leadership and team building.

### *Advocacy Strategic Plan*

AGCP held an internal **capacity building for the program staff** on what is advocacy and what are the key issues to consider when making a strategic plan.

During the capacity building the team was able to:

- Identification of strategies that KITUO can use in advocacy
- Identification of areas that KITUO ought to focus for their advocacy work
- Identification of existing opportunities that KITUO can take up for advocacy

The programme holds monthly internal meetings to strategize and plan for project implementation and coordinated efforts towards achieving the above goals. Capacity building of staff members through workshop attendance also added a lot of value to the work done in the year 2011.

## PEACE JUSTICE AND RECONCILIATION PROJECT (PJRP).

The Peace Justice and Reconciliation Project (PJRP) is a special intervention of KITUO under AGCP. The project was set up as a small pilot project in December 2009 in cooperation with GIZ / Civil Peace Service Programme Kenya in reaction to the 2007 post election violence which left more than 600 000 persons displaced and made thousands suffer. The crisis following the December 2007 presidential elections brought into focus the urgent need to review the structures of governance as they relate to security, human rights, the rule of law and democracy. The efforts to address the 2007/2008 Kenyan post-election crisis and its causes have provided the country with an opportunity to address its long history of human rights violations.

KITUO in its mission to offer legal aid, empower and represent poor and marginalized individuals and groups in Kenya decided to support these efforts to deal with the past and to promote Kenyans transitional justice agenda. In line with this vision, PJRP aims at ensuring victims' participation in the Transitional Justice mechanisms available in the country and the promotion of rights of victims of violence in general. Target group of PJRP are Internally Displaced Persons (IDP) and other post 2007/8 general elections violence victims. The overall goal is to ensure effective and meaningful inclusion of the key target group in ongoing truth and justice processes as well as to establish a referral mechanism to improve their devastating situation. KITUO would work closely with them and relevant stakeholders from the grassroots to the national level in the developing policies and promoting Peace, Justice and National Reconciliation.

Since then PJRP assisted the TJRC to reach out to victims groups all over the country, the victims to give statements to the TJRC and informed them about the intervention of the International Criminal Court (ICC). Moreover, PJRP advocated in order to address historical injustices and post-election violence for domestic accountability as well as for an IDP policy / legislative framework. PJRP has played an active role in ensuring community awareness and victim participation and collaboration among civil society engaged in the process. The draft national IDP policy is ready but not yet adopted by cabinet and parliament. KITUO has been pushing for the adoption of the draft policy, ratification of the Kampala Convention and enactment of necessary legislation. KITUO was actively involved in the promotion of the IDP bill and cooperated therefore with the Parliamentary Committee for Internal Displacement.

## ACHIEVEMENTS 2011.

- Consolidation and growth of the project with regard to human and financial resources as well as partnerships with national/international organisations
- Kituo has become the key organisation for the promotion of rights of post election violence victims
- Promotion of the IDP policy
- Draft of an IDP bill
- Facilitation of a participatory development of and advocacy for the Peace Building and Conflict Management Policy
- Information of more than 5000 persons about the ICC process and the two Kenyan cases
- IEC material on the ICC process (4 fact sheets, 2<sup>nd</sup> edition of the booklet victims' participation and reparation in the Hague)
- Assistance to more than 1800 post election violence victims to fill in an application form for participation/reparation in the ICC proceedings
- Assistance to IDPs for inclusion in the compensation scheme of the MOSSP
- Capacity development of lawyers in international criminal law
- Establishment of a grassroots network to support PEV victims
- Training of 10 field assistants on the ICC intervention/filling in application forms/security and risk management
- Training of 80 persons on the mandate of the ICC, the two ICC cases
- Kituo was represented at the NGO roundtable of the International Criminal Court in April 2011

### Our Inspiration

*"A community is democratic only when the humblest and weakest person can enjoy the highest civil, economic, and social rights that the biggest and most powerful possess."*

**-Philip Randolph**



## Coastal Region – Mombasa Office

### The legal aid and Education Programme (LAED)

#### Legal Aid through Advice and Alternative Dispute Resolution

The Mombasa office through the Legal Aid and Education Programme (LAED) attended to clients on a weekly basis from Monday to Thursday being days set aside for new and return clients. On Fridays, the Department attended to clients on appointment basis only. In total, 3,557 clients were attended to in 2011.

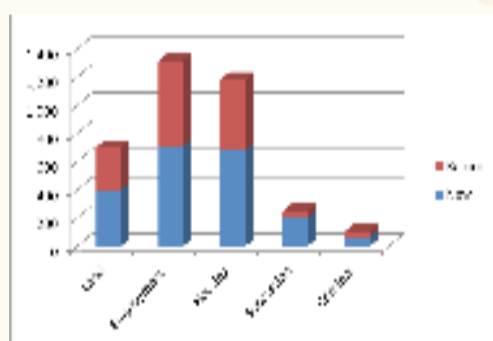
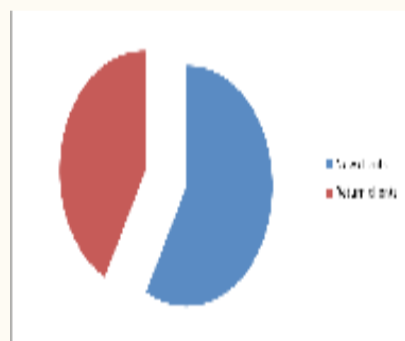
The statistics reflect a triple increase in the number of clients served by Kituo compared to 2010 which had a total of 1074 clients. This trend can be attributed to increased awareness of Kituo Cha Sheria's services which are of utmost quality. There have equally been a number of outreaches to the grassroots and organized forums which also explains the influx of the clients at the office.

Out of the 3,557 clients attended to, 2,057 were new cases reported to KITUO for the first time, while 1,500 were return clients. In terms of gender, 71% were men and 29% were women. The core areas include employment, housing, land and succession among other matters. This information is tabulated and graphically demonstrated below:

#### TABLE SHOWING THE BREAK DOWN OF CLIENTS AND NATURE OF CASES HANDLED

NATURE OF THE CASE	NEW	RETURN	TOTAL
LAND	400	301	701
EMPLOYMENT	710	605	1315
HOUSING	680	504	1184
SUCCESSION	200	50	250
CRIMINAL	67	40	107
<b>TOTAL</b>	<b>2,057</b>	<b>1,500</b>	<b>3,557</b>

New clients versus return clients      Clients versus nature of the case



#### Legal aid clinics

In an attempt to take Kituo's services closer to the people, the programme in partnership with the Advocacy, Governance and Community Partnership Programme (AGCP) organized legal aid clinics in Taveta (Taveta, Chumvini, Kimala), Bangladesh informal settlements (Kilindini), Kisauni, Mwakirunge, Kilifi, Kidomaya in Kwale, Marereni in Malindi and Garsen in Tana Delta. A total of 337 community representatives comprising of 174 men and 163 women received legal advice. While the initial plan was to hold four clinics, the inclusion of Kidomaya and Marereni were however in response to calls by communities in the two areas for Kituo to conduct legal aid clinics in the areas which are largely rural. Kituo also partnered with organizations like Haki Yetu, Kisauni Constituency Development

Initiative (KICODI), Malindi Rights Forum (MRF) and Kidomaya Community in organizing the legal aid clinics. Through the clinics, three cases were identified for public interest litigation. These include: the Kidomaya adverse possession case, Taveta land case against Basil Criticos, and the Takaungu case.

#### Out of court settlements

During the year, the legal aid team had 24 successful out of court settlements, occasioning a total of **Kshs 281,411** thus far being awarded to our clients following our intervention to resolve disputes through mediation and negotiations. Some of the top five settled cases in terms of money paid to our clients include:-

- **Kshs 42, 250 Tsuma Kalama Maziya -vs- Shatish Shah (employment):** In the matter, our client was demanding for the payment of his final dues and after some correspondences were exchanged, the same led to a consensus and a sum of Kshs 42,250/= was paid settling our clients claim.
- **Kshs 39,335 Mutisya Monye-vs.-TSS (employment):** Our client in the matter was demanding to be paid his final dues which had been paid to the Union in which he was a member. The Union in turn withheld the payments until our office intervened and the money was released to our client.
- **Kshs 35,000 Joshua Nyariaro -vs- Hassan and Another (housing):** This is a case that involved land lord and tenant whereby the land lord cut off the tenants padlock and locked it with his own padlock. It was later realized that some items and money was missing in the house after opening it up. The tenant had defaulted in rent payment but he had the agreement between himself and the landlord that he will pay the same in installments.
- **Kshs 34, 009 Mohamed Bausi Fumo -vs-Mombasa Maize Millers (employment):** The issue in question was that our client had been told to vacate the rented house without being issued with a notice. We had the mediation on the same and it was agreed that a proper notice be issued but meanwhile our client should continue staying there.
- **Kshs 28,000 and certificate of service Ammarah Abdulatif -vs- Madrassa Munawwarah (employment):** These payments were made in relation to the final dues of our client who had unfairly dismissed from her duties without the issuance of notice.

#### Legal Representation

In instances where diplomacy fails, Kituo invokes the courts to make sure that our client's access justice and their interests are realized. In this connection, 71 cases were filed during the year. Out of these, 26 were labour related matters filed in the Industrial Court, 14 were land matters, 8 were children matters, 11 housing matters, 1 divorce case, 2 succession matters and 9 were criminal in nature.

In the course of the year, two criminal pauper briefs were successfully concluded. Our clients were discharged on grounds of no case to answer and set free after languishing in prison for four years. Mr Tsuma Bagala and Mr. Bambo Dziro were charged with murder contrary to section 203 and 204 of the Penal Code. Mr. Bagala was alleged to have murdered his father following a claim of witchcraft. He is alleged to have confessed to the police. However, during the trial, the police failed to comply with the Evidence Act in proving confession. Consequently, the accused was acquitted.

In the case of Bambo Dziro, the accused was alleged to have murdered a pastor on grounds that the victim was having an affair with his wife. He is alleged to have confessed to a witchdoctor whilst seeking cleansing. Again, the court refused to rely, and rightly so, on the testimony of the witchdoctor to convict the accused of murder. He was acquitted forthwith.

In furtherance of litigation, Kituo secured the release of 10 refugees following



their arbitrary arrest and prosecution by the Police, despite being in possession of the UNHCR mandate or DRA card.

An average of 153 court attendances was made by the two advocates in the programme.

## Public interest litigation

Regarding public interest litigation, it is also worth noting that 3 public interest matters were filed in the year, two (2) of which were labour related, while one concerned land.

The public interest case on land concerns the Kidomaya community in Lunga Lunga. In this case over, over 1000 families have been in occupation of parcel of land for over 20 years which is registered in the names of one Samuel Nduati Mwangi and Kwale International Sugar Company Ltd. Through Kituo Cha Sheria, the community filed a suit for adverse possession against the registered proprietors. Service of summons were initially problematic but it was eventually done. The Community has a chance to finally legally own the land on which they occupy and potential land related conflict has been averted.

For the employment cases, Kituo filed a public interest case involving casual employees of Packaging Manufacturers. The matter seeks to challenge the constitutionality of the Income Tax Act with respect to casual workers. The suit is founded on the right to fair labour practice as provided in the Constitution. Our argument is that by requiring that casual employees be taxed in the same manner as permanent and contract employees, the Income Tax Act imposes an unfair labour practice. The suit also seeks to upgrade our clients' terms of service with the Respondent Company as they have been employed for more than the stipulated six months. The matter is ongoing.

The other employment matter concerns former employees of KUSCO (2006) Co. Ltd who seek to recover their terminal benefits from their employer. The challenge has been that these employees were previously workers of KUSCO that went under liquidation, and was acquired by Ugandan company and renamed KUSCO (2006). Our clients were absorbed to work shortly for the new acquisition, but

were later terminated. The matter is ongoing with the Defendant raising a number of legal technicalities in an attempt to dismiss our suit.

In conclusion, an environmental audit of the quarrying project in Ng'ombeni area to which Kituo had filed a public interest case against a quarrying company was scheduled to be undertaken by experts hired by Kituo during the year, but failed to take off as planned due to resistance from a section of the community. The audit was meant to beef up facts in support of the case. The process is expected to be concluded the following year to pave way for the continuation of the matter.

## Promoting a Responsive and Vibrant Volunteer Advocates' Scheme

To ensure a responsive volunteer advocates' scheme, the Mombasa office organized the 1st Annual Public Interest Litigation Colloquium and Caucus in Mombasa, at the Nyali Beach Hotel. A total of thirty five (35) volunteer advocates attended the event themed **"Enforcement of Constitutional Rights through Public Interest Litigation."** The participants were privileged to have very eloquent and well versed experts on constitutional matters to grace the event. These Speakers included Priscilla Nyokabi, the Executive Director of Kituo, Prof Yash Ghai and Jill Cottrell-Ghai, US Federal Court Judge Marsha Pechman, Prof Joel Ngugi of University of Washington and JAA, Steve Fury from JAA, Hon. Justice Mohammed Ibrahim, Supreme Court, and Mr. John Chigiti and Mr. Anthony Mulekyo of the Kituo-Nairobi Public Interest Caucus. On the second day, the volunteer advocates were divided into caucuses and specific cases of public interest were allocated for discussions. The event was very successful as it not only improved Kituo's relationship with its VAs but it also played an important role in interesting Mombasa based advocates to take up more PIL matters.

Similarly, Kituo Cha Sheria and the Kenya School of Law trained 4 volunteer advocates from Mombasa on trial advocacy skills for pro bono work. The one week intensive learning by doing training was life changing for the advocates and played an important role in enhancing their effectiveness in handling cases referred to them by KITUO.

In November 2011, the legal aid team organized a round table meeting and dinner for volunteer advocates. The purpose of the round table meeting was to share and discuss the contents of the Land Bills. Dr. Mohammed Swazuri, a land economist from the Mombasa Polytechnic University College facilitated the discussion in partnership with Kituo's Chairman Mr. Ken Nyaundi. The turnout was very good with 25 volunteer advocates being present for the meeting. After the very lively discussions, the volunteer advocates were treated to an end of year dinner as appreciation for their support to Kituo cha Sheria throughout the year 2011.

In conclusion, the legal aid team continued to hold public interest meetings with the volunteer advocates to discuss cases on land that had been identified by Kituo. A total of four meetings were held with a panel comprising of five volunteer advocates who have a special interest on land and housing cases.

## Legal Empowerment of communities

In an endeavor to empower communities on legal issues affecting them, 300 clients were empowered to represent themselves in court through drafting of pleadings. One of such cases involves a matter filed by *Jerry Odiambo* who was helped by Kituo to prepare pleadings and was given instructions on how to represent himself in court. He filed a case relating to property that was about to be sold and he managed to get the orders stopping the said sale.

On the other hand, the programme in partnership with AGCP conducted a paralegal training for inmates at the Shimo La Tewa Prison between 11<sup>th</sup> and 14<sup>th</sup> October 2011, at Borstal Institution Shimo La Tewa. The training sought to build on the number of paralegals providing legal services at the Shimo La Tewa Justice Centre given the acquittal of some of the paralegals. The topics that were taught included; pre-trial/trial process and trial advocacy skills, preparing the defense case, law of evidence and appeal process, death penalty and the Power of mercy bill. The inmates were very active during the sessions facilitated by both Kituo lawyers and volunteer advocates. 20 male Inmates, 2 female inmates from the Shimo Women Prison and 4 Warders were trained.

Likewise, in an attempt to address some of these concerns at the Coast, Kituo

through LAED and AGCP organized six (2-day) forums on the land legal regime and Alternative Disputes Resolution Mechanisms (ADRs) in Mombasa, Kilindini, Malindi, Kilifi, Kwale, Taveta and Tana Delta. The fora covered the National Land Policy; Land Adjudication procedures and complaint mechanisms; logging of caveats and cautions; handling land related transactions including requisite details such as drafting Land Sale Agreements; Alternative Dispute Resolution Mechanisms (ADRs); lodging complaints through the District Land Tribunals and the District Land Controls Board; and the draft National Land Commission bill and the Public Land bill. A total of 205 community representatives comprising of 123 men and 82 women were empowered. An emerging trend in the Ministry of Lands requiring a copy of the title before conducting search was also raised in the Kilifi land forum and echoed in the Mombasa forum. Kituo in partnership with members of the CLNSA engaged the Ministry on this matter and the Ministry promised that no one with a valid reason would be barred from conducting a search.

Twelve (12) Radio talk shows were also held on the land legal regime in three main regional FM stations namely: Radio Kaya, Pwani FM and Baraka FM, to further empower communities on their rights to land. Some of the shows were held in partnership with the Kenya Land Alliance. In the same vein, Kituo produced 7,000 copies of Swahili IEC materials on the National Land Policy with a focus on Coast and land adjudication procedures and complaint mechanisms. So far, 6,300 of them have been disseminated through partner organizations, fora, public events and through the office.

In the same period, the program was invited to facilitate in a meeting organized by FIDA in relation to a land dispute at Kibarani and Kilifi Sea Horse. 120 community representatives from Kilifi Seahorse and Kibarani area attended the forum. The background of the problem discussed concerned a huge parcel of land owned by former politician John Keen. The community members alleged that the Moi administration purchased this parcel of land from Mr John Keen for purposes of their resettlement thereon. However, despite Mr. Keen being paid handsomely, he declined to cede the parcel of land to indigenous community members for



purposes of subdivision and issuance of title deeds. As a result, the community has remained squatters and most of them have been threatened with written eviction notices from either Mr. Keen, his company Coast Development Company or other private individuals to whom he has transferred the parcel of land.

## 2. The Advocacy, Governance and Community Partnerships Programme (AGCP)

### Kituo revealed as the pioneering organization in Paralegalism in Kenya

A paralegal research study conducted between February and April 2011 revealed that Paralegal work in Kenya was started in 1973 in Shauri Moyo estate in Nairobi by Kituo cha Sheria even earlier than in Sierra Leone. The first paralegal training was conducted in Korogocho in conjunction with the local Catholic Parish. The programme became very successful and was replicated in other parts of the republic. The goal of the research was to establish the relevance and importance of paralegals in the community, Challenges that paralegals undergo in the process of dispensing their services and also to document possible recommendations for enhancing the work of paralegals in the society. The African Institute for Health and Development (AIHD) with support from World Bank, was the lead organization in the survey and partnered with Kituo Cha Sheria (Mombasa), International Commission of Jurists (ICJ) Kenya chapter, Federation of Kenya Women Lawyers (FIDA) Kenya chapter, Legal Resources Foundation Trust (LRF) and Plan International as organizations that had trained paralegal to carry out the study in 6 regions in the country, namely Nairobi, Western, Eastern, Coast, Central and the Rift Valley.

Kituo took lead in Coast region and had **Kisauni** and **Mtwapa** as Paralegal and

non-paralegal sites respectively. The focus in Kisauni was on KICODI Justice Centre supported by Kituo. A total of 68 interviews were successfully carried out which included community members and community leaders encompassing women leaders, SUPKEM coordinator Kilifi-Kikambala, Chiefs and assistant chiefs and various opinion leaders from the two areas. Among the key findings from the study were the disparities and gaps in the manner in which different CSOs conduct paralegal work, and that paralegals in Kenya can be categorized broadly as community paralegals and Institution bases paralegal. The other observation made was that paralegal work was largely voluntary. Some of the recommendations made by the study include the adoption of a uniform standard of training mode, and the issue of financial motivation for paralegals which need to be addressed.

## Enhancing access to legal services through community justice centres

### Shimo La Tewa Community Justice Centre

In the year 2011, the following appeals were lodged in various courts with the support of paralegals at the Shimo Community justice centre:

Type of Court	Outcome			Total
Lower courts	1032 Acquitted	2136 convicted		3,168
High Court	672 lodged	240 allowed	432 dismissed	672
Court of Appeal	22 lodged	2 allowed	20 dismissed	22



During the international human rights day, KITUO took the opportunity to commemorate the event with the Shimo la Tewa prison paralegals. The most outstanding paralegal in terms of assisting other inmates with their appeals and pro activeness in the paralegal project was given a special award. The event could not be over before sharing Christmas goodies with the rest of the paralegals.

**Sharing the Shimo La Tewa Experience in Nyeri Main Prison (King’ong’o)**

The penal institutions access to justice project has been pivotal in ensuring access to justice among prisoners in Shimo La Tewa. The testimonies from the prisoners and prison authorities clearly indicate the faith that prisoners have placed in the paralegals who are fellow inmates, to surmount the legal hurdles facing them. The ability of the paralegals to draft written submissions and to devise innovative ways of approaching different cases has increased the trust of other inmates in them to an extent where a majority of them argue that they don’t require lawyers to handle their cases. Against the backdrop of this innovation, Kituo Cha Sheria shared the Shimo La Tewa experience in Nyeri main (King’ong’o) Prison, an exercise that sought to further open up opportunities for access to justice among prisoners in Kenya. Prior to the initial and consultative meeting with Prison authorities in Nyeri, KITUO liaised with the Officer in Charge of the Shimo La Tewa Prison for general introduction and sharing of the concept with the officials in Nyeri Prison. There was an experience sharing forum to introduce KITUO to the in-mates and to share the Shimo La Tewa experience. In attendance were two paralegals and former inmates in Shimo La Tewa who shared their experience with the Nyeri inmates. This meeting formed a basis whereby KITUO will work with the Prison Authorities on the modalities of training paralegals in the Prison as well as setting a justice centre.

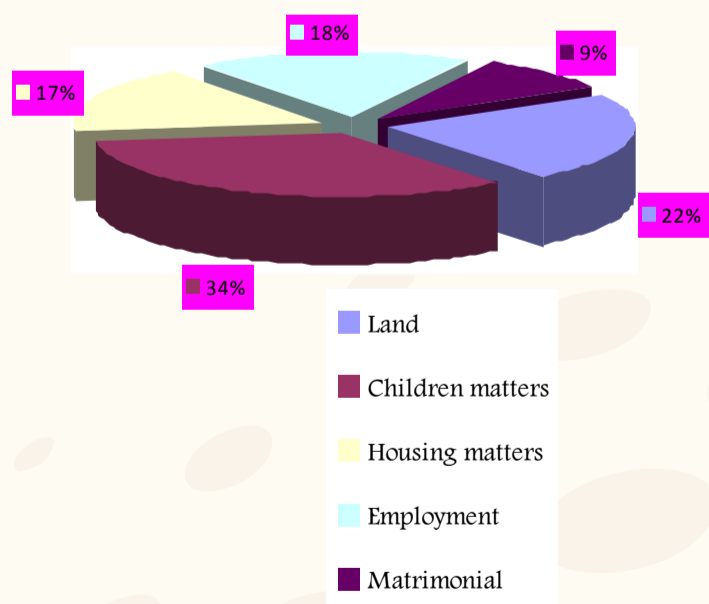
**Kisauni Constituency Development Initiative (KICODI) Community Justice Centre**

270 cases were handled by the centre for the period ending Dec 2011. Among the cases handled include: 30 children matters out of which, 26 were filed at the children’s court resulting in the granting of Custody and maintenance orders. 20 of the matters received by the centre were land related; 16 were employment cases; 15 were housing related matters and 8 were matrimonial in nature. The remaining cases were largely criminal and were forwarded to the police. During this period, the centre filed 8 injunctions at the high court with the assistance from Kituo out of which, 4 were successful. 10 housing matters were filled at the Rent Restriction Tribunal while the other cases were settled at the Justice Centre through ADR. This is graphically depicted below:

**Advocacy**

**Million signature campaign in support of the Peace Policy**

Kituo cha Sheria through the AGCP programme spearheaded the million signature



campaign in support for peace policy in the Coast region. The campaign began with a sensitization programme targeting 120 community representatives drawn from the District Peace Committees in 10 Districts where the policy document was interrogated and recommendations developed and forwarded to the National Peace Policy Advocacy Project (NAPPAN) team spearheading the national

campaign. Signatures were then collected from within and from without the DPC membership through fora and public events such as the International Day of Peace, LSK week and Mombasa ASK-week. A total of 510 signatures were collected from the region. An examination of the latest version of the peace policy indicates that recommendations such as the need to include the land policy and the youth policy as policies which are closely related to the peace policy were incorporated

**Campaign in support of the ICC process.**

Kituo through the programme participated in organizing a peaceful demonstration in Mombasa with the aim of pressurizing the government against the move to pull Kenya out of the Rome statute. The peaceful procession which was organized in partnership with other Coast Based CSOs ran from Marikiti to Koblenz hall where a public forum was held. Similarly, Kituo collected 800 signatures as part of the million signature campaign in support of the ICC process. Two interactive radio talk shows were also organized in Baraka and Pwani FM to sensitize the local community and the entire region on the ICC process in Kenya. Victims of the post elections violence in Likoni and Kisauni were sensitized on ICC process in Kenya with support from Kituo’s Peace Justice and Reconciliation Project (PJRP). Through Kituo’s interventions, Kisauni IDPs received their compensation.

**Community based advocacy interventions**

**Takaungu**

Takaungu village is based in Kilifi. The area was declared an adjudication area in the late 1980s but the process was later stopped by the Mazrui family who filed a suit challenging the government’s move to repeal the Mazrui Act. Given the uncertainty around the case, the Mazrui family decided to lease the land to Mombasa Cement factory, which has been doing cement mining in the area. The entrance of the Company in the area has been a thorn in the flesh of community members in the area who have more often than not been harassed by the Company to either sell of the land or to stop any quarrying activities in their own land parcels. The area chief has been accused by the community as being the main person behind the coercion and intimidation of communities over their legally entitled land parcels. He has been accused to falsifying people’s deaths and using the information to illegally transfer land to people claiming to be the deceased next of kin and eventually transferring the same to Mombasa Cement. Towards this end, Kituo petitioned the Permanent Secretary in the Office of the President over the matter and as a result, the PS asked the PC to investigate the matter and give him the information by the 15<sup>th</sup> January 2012. It is our hope that this matter will be resolved amicably to give some reprieve to Takaungu residents. We also hope that the TJRC will give far reaching recommendations towards the resolution of the historical injustices surrounding the area as a result of the application of the Mazrui Act. Kituo assisted the community in packaging a memorandum for submission to the TJRC.

**Taveta Squatters**

Taveta District is home to thousands of squatters largely occupying private land. One of the famous land owners in the area is Basil Criticos who once served as the Member of Parliament. During the year, some community representatives living in Basil’s land approached Kituo for representation in the meeting convened by the District Land Board to decide on the application made by Basil Criticos for





consent to divide and eventually sale part of his land. Given the short notice and the urgency of the matter, Kituo through AGCP drafted a petition to the District Land Control Board against the proposed subdivision and sale of the land which would have resulted in eviction of thousands of residents and would have equally affected school going children in two primary schools located in the land. Through this intervention, the Board refused to grant consent for subdivision giving the residents some temporary reprieve. Kituo intends to file a PIL case in relation to the matter in the event that the community is threatened with evictions.

#### **Mwachabo settlement scheme**

The programme successfully petitioned the land office in Wundanyi and the Project manager- Mwachabo settlement scheme over allegations of irregular allocation and demarcation of parcels of land in the scheme. This had undermined the rights of over 100 residents and threatened the peaceful coexistence among the community members. The programme gave recommendations on guidelines to be followed to ensure that the process is above board to mitigate eruption of eminent conflict as a result of the process. Through the petition, a new committee of 15 members was elected democratically and currently, the process of demarcation and adjudication continues under new management that enjoys a lot of trust from the community.

#### **Likoni IDPs**

The programme assisted Likoni IDPs network comprising of 590 members to petition Ministry of special programmes on the fate of their compensation as IDPs and their recognition as IDPs following reports from the government that it was not aware of any IDPs existence in the Coast region. The group also complained of outright discrimination and unfair treatment in comparison to IDPs from other areas. Through the petition, the Ministry acknowledged and indicated positively their intention to look into the issues affecting the group. The group however awaits commitment from the government following the reply.

## **Campaigns in support of land reforms:**

### ***Kituo holds its 1<sup>st</sup> annual forum on land at the Coast themed “eyes on the Coast”***

Kituo in partnership with the Coast Land Non State Actors (CLNSA) an umbrella organization bringing together organizations like Haki Yetu, Kituo, CJPC, Action Aid, Minda Trust and COWERAT organized its first annual forum on land

bringing on board participants from all over region to interrogate the process of land reforms and the opportunities provided by devolution to address land issues in coast province. Various experts on land issues addressed the forum and the audience got the opportunity to ask questions and give presentations. The speakers of the forum were Mwenda Makathimo, Ken Nyaundi, Mercy Deche, William Wameo, Prof. Swazuri and Prof Saad Yahya. In a nutshell, the forum sought to explore the journey through land reforms, the historical context of land disputes in Coast region and the overview of the Legislative framework on land; to explore case studies in the region, the community struggles against perennial land dispossession and legal framework on communal land ownership; and to interrogate issues of women and land at the Coast and gender sensitivity of land laws. A total 81 people were in attendance.

### ***Marking the international human rights day with a focus on land reforms***

This year's International human rights day offered a perfect opportunity to reflect on the ongoing land reforms and its implications on people at the Coast. With this in mind, the Coast Land Non State Actors (CLNSA) in partnership with Haki Jamii from Nairobi, organized a public forum in Kilifi on the eve of human rights day. The forum which brought on board community representatives from the entire Kilifi County offered an opportunity for the community to be taken through the proposed land bills. The following day, a huge procession was held from the main gate of Pwani University all the way to the Kilifi Municipal Stadium, where the crowds had gathered for the main agenda of the day which was themed “*real land reforms must involve the people*”. The event kicked off at about 10am with speeches from community representatives from Mombasa, Kilifi, Kwale, Nairobi, Garissa, and Kisumu. This was followed by speeches from various leaders and representatives of the organizations in attendance. In between, the crowd was entertained by various groups who relayed information on land reforms. The colorful event ended with a declaration read by a community representative from Malindi calling upon the government to expedite the establishment of the National Land Commission and to clear the mess in the Ministry of Lands.

### ***Community empowerment on land reforms***

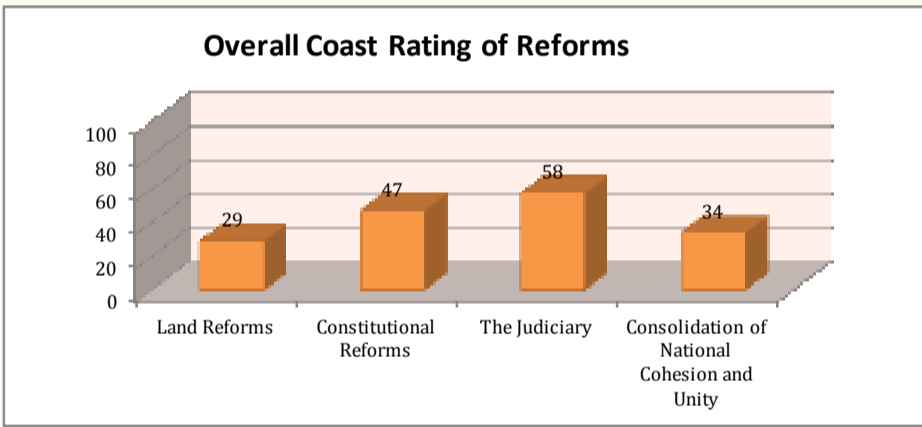
In the same period, Kituo through AGCP and LAED empowered 205 community representatives comprising of 123 men and 82 women on the provisions of the National Land Commission bill and the Land bill. A memorandum on the National Land Commission bill and the public land bill was developed. However, due to changes in the public land bill that led to the development of a land bill, the programme submitted the memorandum on the NLC bill to the Commission



on Implementation of the Constitution. Towards the same course, AGCP hosted members of the CLNSA for a round table discussion to critique the Land bill. Through this discussion, the members were able to understand the various provisions of the bill and a draft position paper was developed that shaped discussions with key stakeholders.

**Tracking the reforms around Agenda 4 using the citizen score card**

As a way of keeping the government on toes in the implementation of Agenda four, Kituo Cha Sheria in partnership with communities in 6 Districts at the Coast developed a citizen score card tracking the government progress in the implementation of land reforms, judicial reforms, constitutional reforms and national cohesion and integration. The process which began with empowerment of community representatives on Agenda four discerned that most community members were dissatisfied with the pace of implementation of reforms around land at 29%. This was followed closely by National Cohesion and Integration at 34%; constitutional reforms at 47%; and lastly judicial reforms which ranked highest at 58%. The scorecard which was done between 15<sup>th</sup> and 30<sup>th</sup> June was launched in July, with representatives from the Ministry of Lands, National Cohesion and Integration Commission and the TJRC in attendance. The launch provided a platform for a feedback process between the community and government stakeholders. Among key recommendations that were given by the community included: vetting of land ministry officials, lifting the requirement to produce original copy of title before conducting a search, hastening the process of setting up the National Land Commission and legislations on land



*Community rating of government progress on reform implementation*



**Enhancing community participation in the TJRC process:**

Having already empowered communities to participate in the TJRC process through the fora, Kituo through the Mombasa office embarked on sensitization programs using local FM stations. Four live radio talkshows were held at Pwani FM to rally communities with historical injustices to present them before the Commission. The director of legal services at the TJRC and the TJRC coast coordinator participated in two of the shows. Likewise, Kituo developed 3500 copies of IEC materials on TJRC to complement its capacity building efforts. 2900 of these materials were disseminated during the year. Kituo further profiled over 14 public interest cases for follow up with the TJRC. One of the most interesting cases profiled involved a community in one of the remote Islands of Lamu called **Kiwayuu**. The case involves an injustice meted on the Bajuni community where the KWS declared their land a conservancy area and despite this aspect, huge chunks of land have been hived off by powerful individuals. Kituo in partnership with the Consortium for the Empowerment and Development of Marginalized Communities (CEDMAC) and the Shungwaya Welfare Association conducted a visit to Island with the aim of documenting the historical injustices surrounding the locals and to work with the community in developing a memorandum for forwarding to the TJRC. As a result, a memorandum was developed with the guidance of Kituo, CEDMAC and Shungwaya welfare Association and forwarded to the TJRC. It is our hope that a solution will be found to these long standing issues.

**Fact finding missions and preparation of communities for PIL**

**Kidomaya**

Kidomaya village is located along the Kenyan South Coast, next to the Kenyan-Tanzania border. The area is largely made up of thousands of peasants living as squatters in large tracts of land that they have been living in for over 20 years, but currently registered in the name of private developers. Being part of historical injustices characteristic of the Coastal region, Kituo discerned the need to file an adverse possession case with the object of securing the land rights of these residents who have all along been living in fear of forced evictions, having once borne the brunt of this heinous act. Towards this end, Kituo conducted a fact finding mission to the area to ascertain various facts necessary to put up a strong case in favour of the community. The Kituo team was taken round the farm by



some community representatives and later held a meeting with the community who turned up in large numbers for this important exercise. During the meeting, the community was taken through the various steps and requirements of the case, as well as the expectations of each party in the case. Thereafter, the community members who would represent the community in the case were chosen and the authorities to act developed and signed by the community members in attendance. Throughout the exercise, the community played a major role in ensuring that the trip was a success. Despite the area being largely remote and without electricity, they secured a generator that facilitated typing and printing of the requisite documents. The team completed its work at around 7pm, and embarked on a journey to Mombasa. The case was later filed in Mombasa.

### ***Mpeketoni***

On 4<sup>th</sup> August 2011, Kituo Cha Sheria upon request from Mikinduni residents of Mpeketoni Division of Lamu District embarked on a fact finding mission to the area to establish facts relating to eviction and arrest of community members by the provincial administration. These residents were forcefully evicted without any prior written notice or court order, and their property was demolished, destroyed and/or damaged on 30<sup>th</sup> September 2011 and on 1<sup>st</sup> April 2011. Although the 7<sup>th</sup> Respondent, Madhi Swaleh Madhi, claimed that the land in question belonged to him, a title search revealed that it did not. Officers from the Administration and Regular police particularly the Officer Commanding Station Mpeketoni Police and Base Commander Mpeketoni Administration Police with the area D.O. had been using excessive and brutal force against the community. When the community attempted to exercise their constitutional rights and protest the destruction of their homes, they were criminally charged with incitement, and others were charged with trespass when they remained on their land. None of the individuals responsible for the destruction of our clients' property or the death of Dominic Mwanjeni Kafiri were investigated. Having arrived at Mpeketoni Town late in

the evening given the poor state of the Malindi-Lamu road, the main agenda for the visit had to wait until the morning of the 5<sup>th</sup>. The following day, the team accompanied by a journalist from the Star newspaper toured the land in question with the aim of establishing among other facts, settlement patterns, economic activities undertaken by the residents and the houses destroyed at the time of evictions. Based on the tour, it was evident that there were three different parcels of land in contention, with Egerton University, Nairobi Ranch and Madhi Swaleh Madhi claiming ownership. Indeed, the residents had constructed their houses in all these parcels of land and crops were thriving. The evidence of houses demolished by way of fire which was used as a tool of eviction was clearly visible in Mahdi's farm. Egerton University had already put beacons in the land parcel that they are claiming and had even erected a concrete sign post along the way. Pertaining to Nairobi Ranch, it is claimed that the land is under one Faruk. The land is home to 2 primary schools namely Kanze and Maisha Masha Primary Schools. Having gone round all the farms, the team held a meeting with a huge gathering of residents from all the three farms where various residents narrated their ordeal with police who not only arrested them from their homesteads, but also destroyed their houses. Most of those arrested were charged with forceful entry. Taking into cognizance the number of matters at hand, it was agreed that the matter surrounding Mahdi's land would be given priority, followed by the Egerton matter and eventually the Nairobi ranch. Kituo asked the community to select five representatives from each land parcel to take charge of the matter; develop a list of all people occupying the land parcel including their ID numbers and the year they first occupied the land; submit photographs of burned houses, charge sheets of those arrested, their letters to the Ministry of Lands, and a copy of search from the Lands office. Similarly, the community was tasked with the responsibility of organizing themselves into groups from each of the three land parcels and have themselves registered to facilitate constructive engagement in the future. Kituo took them through the various steps that a case takes and the expectations from

both Kituo and the community. On completion of this exercise, the team began its journey back to Mombasa under heavy rains. The ordeal of Mikinduni residents was highlighted in the Star newspaper later in the week. Plans are underway to file a suit at the Malindi law courts.

### **Voi-Kilio cha Haki**

The Kilio Cha Haki community in Voi through their representatives approached KITUO in the face of eminent evictions. They were seeking to file a suit to challenge an eviction notice issued by the court on behalf of the registered trustees of the Catholic Archdiocese of Mombasa who are the adversaries in this case. The parties met and underwent a mediation session supervised by the trustees' Advocate and KITUO. During the mediation, each side reiterated its position with the church saying that it was not willing to facilitate any relocation or compensation. This deadlock necessitated KITUO in tandem with its goal of protecting the poor and vulnerable in areas of land and housing to commission this fact finding mission in order to initiate PIL case. In the wake of the failed mediation in September 2011, AGCP in partnership with LAED initiated a fact-finding mission to Kilio cha Haki with the objective of consolidating more facts to support a PIL case; ascertaining the real-time impact of the rights at stake; initiating a media campaign around the issue; and setting the foundation for community driven Public interest advocacy.

### **Other initiatives**

- Kituo consolidates its database of paralegals and community groups in Coast.
- 32 women from Ng'ombeni community development forum (NICODEF) empowered on the opportunities of women under the new constitution
- 40 paralegals and women TOTs trained on land rights in Kisauni and Taveta
- Kituo participates in the LSK legal awareness week.
- Kituo participates in the ASK show in partnership with NALEAP
- Kituo mobilizes communities to participate in state organized fora on reforms e.g. the Taskforce on devolution, Visit by IIEC, Civic education on the new constitution by MOJCA.
- Over 50 community members largely drawn from the association of parents having children suffering from *Spina Bifida- hydrocephalus* empowered by Kituo on PWDs rights and the rights of children as heralded by the new constitution
- Kituo participates in a County conversational forum organized by Pact.
- Kituo participates in the international day of peace celebrations in Kisauni and Changamwe.

### **Administration**

Under administration, the following were initiated in the period under review:

- Procurement of a 4-way workstation
- Procurement of refrigerator & microwave to take care of staff welfare.
- Procurement of two additional telephone extensions to enhance effective communication.

Likewise, the programme ensured that there was enough flow of petty cash to run daily office expenses and equally ensured that goods & services such as stationeries, taxi services & sourcing for hotel quotes were done in good time. Due to financial constraints however, the department failed to meet some of the targets it had set e.g. fixing of grills at front office door to enhance security and procurement of a new office motor vehicle to support office logistics.

### **New Staff on Board**

The regional office had two new employees confirmed and one intern recruited during the year. These are the Assistant Programme Officers for LAED and AGCP, and one legal intern.

### **Corporate Social Responsibility**

Christmas came early for Shimo la Tewa inmates. The regional office celebrated the International Human Rights day with both men and the women inmates at Shimo la Tewa prison. To mark the important day, the entire Mombasa staff presented the inmates with lots of gifts and even had refreshments together.

### **Kituo Valentine**

As is the norm at Kituo, Mombasa Kituans celebrated Valentines Day in style. The staff exchanged gifts and even enjoyed a valentines cake together.

### **Challenges**

1. Inadequate funding to support certain interventions.
2. Inability of some clients to raise filing fees.
3. Clients coming from far and wide pose a challenge in aspects of representation as well as their ability to follow up their cases.
4. Failure by some community members to follow up on their cases.
5. Rising demand for legal services vis-a-vis the number of staff to attend to them.
6. Limited office space and equipment.
7. No motor-vehicle for outreaches





## Research, Communication and Documentation (RCD)/

## Information Technology (IT)

### Introduction

This programme played its role of supporting other key programmes in the areas of Research, Communication, Documentation and Information Technology. Through research KITUO's was able to enhance its policy advocacy and litigation intervention as well as inform public debates on critical areas of KITUO's thematic concerns. Through the use of Information Technology (IT) KITUO made great strides, in engaging technology in various forms to increase efficiency and production in its business processes. There was increased use of computer applications within the programmes and administrative staff, aimed at improving on productivity. There was also a remarkable improvement in communication and research through use of the Internet and email. Data and resource sharing was emphasized through use of computer networks and centralized computing, i.e. use of Servers. The programme also contributed in enhancing KITUO's profile by show-casing its continued role, relevance and work. This was through the various publications, reports, pamphlets, social media and website content.

*During the period under review, the programme undertook several activities.*

#### **a) Research**

#### **b) Production and Dissemination of Kituo's Publication and Documentaries**

*The programme was responsible for the production of Kituo's publication and documentaries, some of which are highlighted in the tables below.*

### Documentaries

The publications and documentaries were distributed to our various publics including our grassroots communities, volunteer advocates, donor agencies, civil society organizations, community justice centres and individual clients. Some were distributed through the website and social media sites.

The program has also been in charge of production and dissemination of Information, Education and Communication materials including banners, T-shirts, brochures and fliers. These are normally very useful during advocacy campaigns on various issues. They also serve the individuals and communities by providing them with information on their rights and act as invaluable tools that empower them to claim these rights as well as enable them engage with policy makers and ensure Government accountability.

#### **c) Communication/Profiling Kituo's Work**

#### **h) Information Technology Backup and Security**

All KITUO digital information is backed up in order to improve on security and ensure a quick recovery incase of disaster. All PCs are protected from viruses, worms and unauthorized access by Karspersy Antivirus software which is licensed and updates regularly. KITUO also operates a local Domain that validates all users before gaining access to our local resources, like printers and servers information.



## Documentations:

	Name	Content	Date
1	Promotion and protecting urban refugee rights	The launch of NURRIA project at Pan Afric Hotel Nairobi	15 / 4 / 2011
2	The public interest litigation board meeting	Public interest litigation meeting at kituo board room	4 / 5 / 2011
3	Public interest litigation colloquium	Public interest litigation colloquium at Sarova Panafric Hotel	21 / 5 / 2011
4	World Refugee Day	Celebrations of the world refugee day	20 / 6 / 2011
5	Legal aid clinic at Korogocho	Legal aid clinic at Korogocho ahead of Kituo birthday 2011	7 / 7 / 2011
6	Public lecture-Stanley Hotel	Public lecture at the Stanley Hotel ahead of Kituo birthday	8 / 7 / 2011
7	Dinner- Pan Afric Hotel	Dinner at the Panafric Hotel during the Kituo birthday	9 / 7 / 2011
8	Trial advocacy program dinner and Katiba anniversary 2011, people's convection	Dinner at Carnivore and osteria after the concluded trial advocacy training. Kituo in conjunction with Kenya school of law	26 / 8 / 2011
9	Kamukunji parliamentary candidates public forum	A forum of Kamukunji constituency candidates ahead of by-elections	11 / 5 / 2011
10	Kituo events and activities	Activities of Kituo in 2010	15 / 5 / 2011

## Publications:

	Publication	Content
1	The Coast Chapter of the Citizens Score Card on Agenda 4	A highlight on Land reforms, Constitutional reforms, Judicial reforms and National Cohesion and Unity in Counties in the Coast province
2	Internally Displaced Person (IDPs) have rights	An information booklet on Legal Rights of Internally Displaced Persons (IDPs)
3	Newsletters	Kituo news and events published every four months
4	Annual Report 2010	Summary of Kituo achievements and major outcomes of the year 2010
5	Legal Aid and Education BULLETIN Vol. 2	A legal Aid and Education write up. Titled THE LAW OF SUCCESSION GUIDE
6	Calendar 2012	Annual calendar depicting our Board of Directors and all programmes at Kituo

**KITUO CHA SHERIA**  
The Centre for Legal Empowerment

**Annual Report 2010**

**KITUO Newsletter**  
The Centre for Legal Empowerment

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**THE INTERNATIONAL CRIMINAL COURT Investigations in the PNU Case**

**Kenya's La Trobe Prison**

**Reconciliation**

**Language and Religion**

**National Prosecution of Post-Genocide Violence**

**The Industrial Court Under Court Law**

**The International Criminal Court Investigations in the PNU Case**

**BULLETIN**  
LEGAL AID AND EDUCATION PROGRAMME

**The Law of Succession Guide**

**KITUO CHA SHERIA**  
The Centre for Legal Empowerment

**ISSUE OFFICE - NAIROBI**

**ISSUE OFFICE - MOMBASA**

**ISSUE OFFICE - KISumu**

**ISSUE OFFICE - MALINDI**

**ISSUE OFFICE - WOTI**

**ISSUE OFFICE - MACHAKOS**

**ISSUE OFFICE - MURURU**

**ISSUE OFFICE - NAKURU**

**ISSUE OFFICE - NAROK**

**ISSUE OFFICE - NYSERONYI**

**ISSUE OFFICE - SIYUHA**

**ISSUE OFFICE - TAITETA**

**ISSUE OFFICE - UASIRI**

**ISSUE OFFICE - UTAHA**

**ISSUE OFFICE - WUNDUJI**

**ISSUE OFFICE - YUJUA**

**ISSUE OFFICE - ZEEBA**

**ISSUE OFFICE - KISumu**

**ISSUE OFFICE - MALINDI**

**ISSUE OFFICE - WOTI**

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**KITUO CHA SHERIA**  
The Centre for Legal Empowerment

**KIJITABU KUHUSU HAKI ZA UTENDA KAZI**  
(Haki za Leba)

*Tunajali haki*

1973 - 2012 - 39 YEARS WALKING THE TALK ON ACCESS TO JUSTICE

**2012**  
JULY

Mon	Tue	Wed	Thu	Fri	Sat	Sun
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

**AUGUST**

Mon	Tue	Wed	Thu	Fri	Sat	Sun
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

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**THE COAST CHAPTER OF THE CITIZEN SCORE CARD ON AGENDA FOUR: A HIGHLIGHT ON LAND REFORMS, CONSTITUTIONAL REFORMS, JUDICIAL REFORMS AND NATIONAL COHESION AND UNITY.**

**KITUO CHA SHERIA**  
The Centre for Legal Empowerment

**USAID**  
FROM THE AMERICAN PEOPLE

**PACTKENYA**  
Working with others for positive change

*We care for Justice*

**INTERNALLY DISPLACED PERSONS (IDPs) HAVE RIGHTS**

**AN INFORMATION BOOKLET ON LEGAL RIGHTS OF IDPS**

**KITUO CHA SHERIA**  
The Centre for Legal Empowerment

**DRAFT PEACE POLICY**

**WOMEN**

**To empower a woman is to empower a community**

**We care for Justice**





## Finance and Administration

### Human Resources

In the year 2011, KITUO had a total of 42 employees (21 male and 21 female). There was an increase from 40 in the previous year.

Department	Male	Female	Total
Legal Aid	4	4	8
AGCP	2	3	5
URIP	4	5	9
RCD	2	1	3
Civil Peace	1	1	2
Admin & Support	8	7	15
TOTAL	21	21	42

### Internships

KITUO continued to offer trainings to up-coming lawyers and other professionals in collaboration with other institutions. KITUO had a total of 9 local interns during the year, attached to URIP, Legal department and AGCP department. During the year, two interns from the legal department joined the Central European University in Budapest- Hungary for Masters Degrees in Human rights. This is a joint programme between KITUO and Open Society Institute (OSI).



### Kituo 10 year Evaluation

Being part of the learning process, Kituo was accorded with Misereor to realize an evaluation of its work taking as a period the last 10 years with specific attention to the project in implementation now. The evaluation which had a character of mid-term evaluation and based in general participatory approach took place between 31<sup>st</sup> March and 21<sup>st</sup> of April 2011. The outcome of the evaluation will shape Kituo future programmatic work starting the year 2012.

### Kituo CSR day in Kenyatta National Hospital Cancer Children ward

This year Kituo CSR DAY was on the 27<sup>th</sup> of May 2011 in Kenyatta National Hospital- Cancer Children Ward. The objective of the event was twofold; to show solidarity with children suffering from Cancer and for staff to learn more about cancer.

The children played with the toys provided by the organization and sang songs during the event. The children were face painted Kituo Colours to blend the event.

### Kituo Celebrates its 38<sup>th</sup> Years of Access to Justice

Kituo cha Sheria marked its 38<sup>th</sup> anniversary with pomp and glamour on the 7<sup>th</sup> of July 2011 under the banner “Promotion and Protection of labor rights in the fight against poverty”

As part of the birthday celebrations preceding the actual birthday event, was a 2 day free legal aid clinic held at Korogocho.

The main birth day event was a public lecture at the Stanley hotel and an evening dinner at the Sarova Panafric Hotel. The key note speaker was distinguished Professor Shadrack Gutto of South Africa. The occasion was graced by Honorable the Chief Justice- Dr. Willy Mutunga. Other high profile guests who graced the event were Deputy Chief Justice Ms. Naomi Baraza, Kituo Founder Member Mr. Steve Andere, Ken Nyaundi –Kituo cha Sheria Chairman, Ms Hellen Wasilwa –Registrar Industrial Court, Mr. Charles Khamala representing LSK, and Dickson Enonda representing the Volunteer Advocates. More than 10 judges attended the occasion which was very successful.





## Team Building Event and Kituo Values Workshop

The year 2011 was very unique that Kituo cha Sheria as an organization undertook an exercise to emphasize on its values. A survey known by the name "Monkey Survey" focusing on the current status of the organization values was undertaken. The workshop was held on the 3<sup>rd</sup> of November 2011 at Lenana conference centre. This was followed by a team building activity with the organizations' values as the core theme at the Nairobi National Park.

## AGM

The Annual General meeting (AGM) was held on the 20<sup>th</sup> of December 2011 at the Panafric Hotel where the Executive Director's report highlighted the work of Kituo in 2011. The chairman of the BoD, Mr. Ken Nyaundi, thanked all the staff and AGM members (New and Old) for their work to ensure that Kituo lived up to its mission and vision of access to Justice for the poor and marginalized. A pauper fund was established to assist the very needy clients file their cases in court.

## Development Partners

During the year 2011, KITUO received support from a number of partners among them Misereor, The Ford Foundation, PACT, UN-Women, GIZ, UNHCR, IRC (European Commission), UNDP Amkeni, OSI among others.

Kituo takes this opportunity to extend gratitude to all our partners for the generous support for 2011.

## Staff end of the year Party

The staff end of year party was held on 20<sup>th</sup> December 2011 at Ole-Polos recreation facility off Magadi Road. The staff enjoyed games, Luncheon and a dance to celebrate the successful end of the year 2011. Rewards were given to the best performing staff.

## Procurement

The procurement and tender committee continued to meet to vet quotations for supply of services and goods regularly throughout the year. This has ensured continuity in competitive bidding and strict adherence to procurement policies of the institution.

## Staff Benefits

KITUO continued to extend employee benefits to all employees who were eligible during the year. Medical cover for all employees and their dependence was covered with APA insurance Company Ltd while the Provident Fund for pension contribution continued to be managed by CFC who are the fund managers.

## Salaries and statutory payments

All the staff were remunerated as per their terms of engagement (contracts) during the year 2011 and all statutory deductions were remitted in time to relevant bodies. KITUO also filed the returns with the NGO Coordination Board for compliance with the NGO Act and other government regulations.

## Audit

KITUO continued to undertake the audit of its books and accounts semi-annually. For the year 2011, the Audit was undertaken and completed as agreed with partners noting the aspect of bringing on board new Auditors as stipulated in the organization's constitution.



