EVALUATING THE IMPACT OF LEGAL EMPOWERMENT PROGRAMMES ON ACCESS TO JUSTICE FOR THE POOR AND MARGINALIZED IN KENYA

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KITUO CHA SHERIA
LEGAL ADVICE CENTRE
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African Centre of Excellence
FOR ACCESS TO JUSTICE

Grassroots
Justice Network

Evaluating the impact of Legal Empowerment Programmes on Access to Justice for the Poor and Marginalised in Kenya

Final Report

A study commissioned by Kituo cha Sheria - Legal Advice Centre in partnership with the African Centre of Excellence for Access to Justice and Grassroots Justice Network with the generous support of the International Development Research Centre

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TABLE OF CONTENT

ACRONYMS AND ABBREVIATIONS

ACERWC:	African Committee of Experts on the Rights and Welfare of the Child
ACRWC:	African Charter on the Rights and Welfare of the Child
ACHPR:	African Commission on Human and People's Rights
ADR:	Alternative Dispute Resolution
AGCP:	Advocacy, Governance and Community Partnerships Programme
ASAL:	Arid and Semi-Arid Land
BBI:	Building Bridges Initiative
CBO:	Community Based Organisation
CBD:	Central Business District
CJPC:	Catholic Justice and Peace Commission
CJS:	Criminal Justice System
COVAW:	Coalition on Violence against Women
CRC:	The Convention on the Rights of the Child
CSOs:	Civil Society Organisations
CSR:	Corporate Social Responsibility
CUCs:	Court User Committees
DCIO:	District Criminal Investigation Officer
FGDs:	Focused Group Discussions
FIDA:	International Federation of Women Lawyers
FIDA Kenya:	Federation of Women Lawyers Kenya
FMP:	Forced Migration Programme
GJLOS:	Governance, Justice, Law, and Order Sector
ICCPR:	International Covenant on Civil and Political Rights
ICJ Kenya:	The Kenyan Section of the International Commission of Jurists
IDRC:	International Development and Research Centre
IMLU:	Independent Medico-Legal Unit
JSC:	Judicial Service Commission
KIIs:	Key Informants Interviews
KNCHR:	Kenya National Commission on Human Rights
KSL:	Kenya School of Law
LAEP:	Legal Aid and Education Programme
LRF:	Legal Resources Foundation
LSK:	Law of Society of Kenya
M&E:	Monitoring and Evaluation
MSC:	Most Significant Change stories
MUHURI:	Muslims for Human Rights
NALEAP:	National Legal Aid and Awareness Programme
NCAJ:	National Council on the Administration of Justice
NGOs:	Non - Governmental Organisations
NLAS:	National Legal Aid Service
OGP:	Open Government Partnership
PASUNE:	Paralegal Support Network
PIL:	Public Interest Litigation
PLI:	Public Law Institute
PWDs:	Persons with Disabilities
RCKM:	Research, Communication and Knowledge Management Programme
SDGs:	Sustainable Development Goals
SGBV:	Sexual and Gender-Based Violence
TI-Kenya:	Transparency International Kenya
ToR:	Terms of Reference

UDHR: The Universal Declaration of Human Rights
UN: United Nations
UNDP: United Nations Development Programme
UNODC: United Nations Office on Drugs and Crime
USAID: United States Agency for International Development

LIST OF TABLES

PREFACE

Kituo cha Sheria (Legal Advice Centre) (hereinafter "KITUO") is the oldest non-governmental organization in Kenya and Eastern Africa specifically tasked with promoting access to justice for poor and marginalized communities. Since its inception over 50 years ago, KITUO has impacted on the lives of the indigent through its legal empowerment programmes. As the organization reaches a key milestone, it was necessary to reflect on the journey, the achievements, and the challenges by measuring the impact of its legal empowerment approaches.

It is no doubt that legal empowerment as an approach centre on building capacities of communities and individuals to use and shape the law. Legal empowerment is people-centred and anchored on community power and its effectiveness in bringing about lasting change within the justice sector. As KITUO, our approach on access to justice began from the premise of legal aid. In other words, programmes whereby lawyers provided direct legal services to address justice challenges. The approach was centred on the lawyer and hence very unsustainable, limiting and disempowering for communities. Also, the number of lawyers and their geographical location was never going to be adequate to meet the demand for legal assistance. On this premise, KITUO in the early 1970s adopted the innovative model of paralegalism in Kenya. The community-based paralegals were drawn from the communities, passionate towards justice and trained on basic legal skills to monitor and respond to justice challenges. With time, the community paralegal network of KITUO grew and expanded across the most marginalized counties in Kenya. In the 2000s, the network of paralegals was organized, self-regulated and coordinated through community and prisons justice centres that were community-led. The community justice centre model led to the evolution of the social justice centre model. Also, many people accessed justice services through the paralegal network of KITUO.

Despite these very robust initiatives to enhance access to justice, KITUO began to note that the demand for justice services was not subsiding. The number of walk-in clients remained high and the barriers to justice kept evolving, and due to their structural nature were becoming insurmountable. It was hence imperative to evaluate impact of the approaches and determine whether indeed there are systemic barriers to accessing justice and how they can be effectively addressed. The objective of the study was to document impact and strategies moving forward that can improve legal empowerment programmes in Kenya. The study relied mostly on the experience of KITUO, being the oldest organization working on legal empowerment in the country. However, the experiences of other practitioners within Kenya were also documented. The study was carried out in select counties in Kenya. Some of the research sites were particularly marginalized areas with few or no legal empowerment programmes.
It is our sincere hope that the findings of this study will be useful in crafting sustainable and effective legal empowerment approaches that will tackle systemic barriers for a more inclusive and just society in Kenya and beyond.

John Mwariri
Ag. EXECUTIVE DIRECTOR

EXECUTIVE SUMMARY

Introduction

Access to Justice is limited, particularly for the poor and most disadvantaged in society. Many Kenyans, for a variety of reasons including socio-economic, legal, and political factors, are unable to access justice. The indigent remains unaware of their legal rights, lack knowledge of the court system, or simply experience unending frustrations while seeking to access justice while navigating the complex Criminal Justice System.

Legal Aid & Empowerment: Using the law to enable disadvantaged groups to access justice and realize basic rights includes legal education; legal aid services; support for non-discriminatory dispute resolution fora to complement or supplement informal systems; training of paralegals; and rights awareness.

The laws governing legal aid tend to recognize a lawyer-centered model. However, the number of practicing lawyers in African countries is low in proportion to the overall population. Further, most of these lawyers reside in urban areas, whereas most of the population lives in rural or peri-urban areas. Thus, most people live outside of the reach of lawyers who can provide them with legal aid services.

To realize access to justice, especially among the poor and marginalized, there has been increased focus on the provision of legal aid in many African countries. Kenya, for instance, has a range of legal empowerment programs aimed at increasing access to justice for the poor and marginalised. This is in response to the 2010 Constitution which obligates the government to facilitate access to justice to all its citizens as one of the ways of realising sustainable development. This is because infringement of access to justice violates basic human rights. Besides the government, many non-state actors have over the years supported and provided legal aid initiatives. However, evidence regarding the effectiveness of legal aid programmes remains scant and inconclusive hence the basis for this study by KITUO.

Purpose and Scope

KITUO, with the support of the International Development and Research Centre (IDRC), launched research on the impact of legal empowerment programmes on access to justice for poor and marginalized in Kenya. The research project generally evaluated the impact of legal empowerment programming, the use of technology within the justice sector during the COVID-19 pandemic and formalization of paralegals through recognition, training, and accreditation. The scope of the project covered Kenya and the entire East Africa region. Lessons from other parts of Africa on these three questions have been shared as best practices. It is expected that findings of the research will not only inspire change in attitudes and practices among the public, state, and non-state actors, but also inform future programme design, innovation, and strategy on legal empowerment. The project also sought to enhance learning in the East Africa region on legal empowerment. As part of the research project, policy briefs and outcome documents have been developed that will be used by KITUO and regional partners such as the African Centre for Excellence and NAMATI for advocacy around legal empowerment in the Africa region.

The study was evidence-based research to inform future programming on legal empowerment. The empirical research methods were applied and sought to identify gaps and recommend strategies that can bring transformative and systemic change. The research project therefore attempted to understand what strategies have or have not worked, lessons learnt, new strategies for enhanced impact that are underpinned by evidence-based research. In this regard, the objectives of the research were as follows:

a) To critically assess and evaluate the impact of legal empowerment programmes in transforming lived realities of beneficiaries and bringing systemic change in Kenya and select countries in east Africa;
b) To increase learning and sharing of experiences of state and non-state actors within the legal empowerment sector in Kenya to achieve impactful change, and;
c) To make recommendations and proposals based on empirical research that will improve the efficacy of legal empowerment programmes in the country that will result in transformative change.

Methodology

The study was conducted through qualitative design. The design was adopted to ensure a comprehensive data collection and analysis of the impacts of legal aid and empowerment programs on access to justice among the poor and marginalised. To begin with, a comprehensive literature review was carried out as a basis for obtaining secondary data on the impact of legal aid empowerment programmes.

To augment the literature review, both FGDS and KIIs were carried out to collect primary data by seeking the opinions of the study respondents. A total of 157 responses were obtained through a combination of purposive and snowball sampling. Of these 94 were male while 63 were female. FGDs were conducted with 67 paralegals and 64 beneficiaries of paralegal services. In addition, 23 KIIs were carried out.

To analyse the collected data, a combination of narrative analysis and thematic analysis was used. This analysis helped identify the impacts of legal empowerment on access to justice, draw lessons from best practices and make recommendations for future interventions as contained in the report.

157 → **responses were obtained through a combination of purposive and snowball sampling.**

Out of these, 94 were male while 63 were female

FGDs were conducted with 67 paralegals and 64 beneficiaries of paralegal services.

23 KIIs were carried out

Main Findings

There was strong evidence of effectiveness in the use of legal aid empowerment programmes to increase access to justice among the poor and marginalized in the country. Evidence from the study, as well as the success stories that were captured from the literature and respondents show that legal empowerment programmes deliver widely recognized and visible impacts in supporting access to justice. For instance, there was evidence of attitude transformation and culture change among some of the KIIs who had received legal empowerment.

The role of paralegals in the provision of legal aid and realisation of access to justice also came to the fore. According to the literature review and responses from the interviewees, paralegals are in closer proximity to communities than formal justice mechanisms and they understand local contexts better than mobile courts/formal justice system. Besides, Alternative Dispute Resolution (ADR) and community justice centres are the predominant method of solving disputes in most rural communities in Kenya making paralegals the crucial link that enables members of the public to access justice.

The establishment of community justice systems in the counties by KITUO has had a positive impact on the local communities by increasing access to justice and empowering individuals to understand and assert their legal rights. It has also contributed to the promotion of the rule of law and human rights in the counties and continues to be an important component of the local legal system.

It was evident from the study that KITUO's work on legal aid empowerment and provision has led to increased access to justice and legal awareness as well as contributed towards jurisprudence through the PIL cases to hold the government accountable. KITUO was the first organisation to use PIL and other organisations and individuals have tapped into this strategic litigation approach to pursue justice.

Table VI: Impacts of legal empowerment programmes on access to justice

Impacts	Details
Raising awareness of legal rights and procedures among the poor and marginalised communities	Legal empowerment programmes have contributed to improving the understanding of legal rights and procedures in Kenya.[1]These initiatives have given people the confidence to pursue legal action to defend their rights through legal education and awareness-raising efforts. These have been undertaken through radio, M-Haki platform, and digital media.
Policy advocacy and legal reform.	Legal empowerment programs engage in policy advocacy and law reform efforts to address systemic barriers to justice. They work with stakeholders, including government institutions and civil society organizations, to promote legal reforms that enhance access to justice and protect the rights of marginalized groups.
Improved access to legal aid services for Kenya's poor and marginalised	Legal empowerment programmes have contributed to this improvement. Legal aid clinics have been made possible by these programmes, and now they can receive free legal services from them. In cases of land disputes, domestic abuse, child custody, and other legal issues, the legal aid clinics have played a crucial role in assisting individuals and communities in gaining access to justice. To resolve legal issues, the employment of alternative dispute resolution procedures, such as mediation and arbitration, have been encouraged by legal empowerment programmes. These procedures are less expensive and consume less time than going to court and have proven effective in settling family, real estate, and land conflicts.[2]
Increasing adherence to the rule of law	In Kenya, legal empowerment programmes have been crucial in advancing compliance with the rule of law. These initiatives have equipped people to demand responsibility from the government and other institutions by raising awareness of legal rights and procedures. This has aided in promoting effective government and lowering corruption.
Legal empowerment programmes have also pushed for legislation to improve the poor and marginalized groups' access to justice.	For instance, several initiatives have pushed for the adoption of regulations that safeguard the rights of marginalized groups like women, children, the youth, and people with disabilities
Strengthened community-based dispute resolution mechanisms	Legal empowerment programs recognise and support traditional and community-based dispute resolution mechanisms. They work towards strengthening these mechanisms by providing training on fair and just practices, ensuring that community members have access to informal justice systems that are transparent, accountable, and respectful of human rights. This approach helps to resolve conflicts at the community level and reduces the burden on formal courts. This is consistently applied in Turkana County, where there is a unanimous acceptance of its existence.

According to the respondents, legal aid and empowerment programmes face some challenges including delays in the resolution of cases which limits access to justice, corruption, slow uptake and use of alternative justice mechanisms, low albeit growing public trust in the criminal justice system, as well as insecurity and harassment of paralegals.

Conclusions

KITUO at 50 years has made considerable contributions to legal empowerment on access to justice for the poor and marginalised in Kenya. Based on the KIIs and FGDs conducted with the paralegals and beneficiaries, it is fair to conclude that many more people know when they have faced an injustice and they feel empowered to confront an injustice. Moreover, through legal aid and empowerment, many citizens now understand the avenues they can use to access justice

While many successes can be derived from the study, several lessons were also leant as captured below: -

a. Legal aid does not operate in a vacuum. The political and economic context is important and can influence success.
b. The involvement of students and volunteers is important to engaging in legal aid and maintaining the community spirit that characterized the early years.
c. It is necessary to recognize and engage with a broader set of skills than merely legal aid. These include advocacy, lobbying, use of the media and others to achieve success.
d. The methodology of delivery and content of legal education is important. These must be done in a manner that is suitable for the audience such as adult learning and contextually relevant to the challenges that are being faced by the recipient.

Recommendations

The success of Legal Aid and Empowerment programmes depend on how well the different actors such as the CJS actors, paralegals, state and non-state actors on legal aid and the citizens understand them. Accordingly, findings from the study led to the development of the following recommendations: -

i. **Trainings:** Community elders require more training on basic law and fair trial processes to effectively handle disputes. They could equally be incorporated into paralegal training programmes. Paralegals require refresher trainings to update them on changes to laws, new bills before the legislature and other types of law reforms. These trainings are critical to equip the paralegals and community elders with essential skills as well as to deepen understanding of the law and its operability. Beneficiaries could also help in escalating referral services to the paralegals.

ii. **Streamline Curriculum for Paralegals Training:** This will help achieve uniformity in drafting court documents, standardization in the application of ADR and equip them with skills to enable them carry out their duties with uniformity. While paralegals have received two training sessions, there is a need for additional courses due to the evolving nature of people's problems. The NGOs concerned with legal aid must devise a mechanism of working together to realize the goal of access to justice for the poor and the marginalized in Kenya.

iii. **Community Sensitisation Programmes:** KITUO ought to carry out a robust community sensitisation and training on mediation laws and rules.. This can also be done through availing simplified legal documents to enhance awareness. Engagement through radio stations to sensitise the community on the law should also be considered. At the counties level, strengthening the role of Court Users' Committees (CUCs) as a chain link to solve conflicts and explore the way the public utilizes the small claims court is important.

iv. **Documentation and Digitisation of Records:** Community justice centre records need to be digitised in a cost-efficient manner e.g. scanning of records and uploading to a central database managed by KITUO in partnership with the local administration. Cost-effective cloud-based solutions and scanning/ uploading to google drive using smartphones would help in case management.

v. **Partnerships, Collaboration and Linkages:** KITUO should link paralegals/ community justice centres to CUCs for better collaboration and synergy with other stakeholders and partners such as lawyers and law enforcement officers to improve access to justice. The centres should also have resident *pro bono* lawyers who are consistently available to support with the emerging cases.

vi. **Community Justice Centres in Prisons:** There is a need to open or strengthen justice centres in prisons to offer legal aid to cases of inmates charged with petty offences and decongest prisons. This is because the impact of current justice centres have yet to be fully felt as far as decongestion of prisons is concerned.

vii. **Psychosocial Support and Security:** Paralegals should be afforded protection and emergency care like other human rights defenders where there are threats to their lives. They should also be supported psychosocially because of the traumatic cases they handle from time to time;

viii. **Exchange Programmes:** Paralegals from different counties to visit and collaborate with each other regularly to improve synergy and share experiences and best practices.

ix. **Advocacy on Legal Aid Act:** KITUO and like-minded organisations should carry out advocacy initiatives to ensure the operationalisation of the Legal Aid Act, 2016, which recognises paralegals as an important part of the justice system.

x. **Continuous and Consistent Outreach Service by The Community Justice Centres:** A robust and continuous outreach by the justice centres in the communities will ensure consistent visibility and accessibility of paralegal services by the communities. Consider use of digital, social, print media and radio talk shows to enhance accessibility and outreach programmes. Beneficiaries could also help in escalating referral services to the paralegals.

xi. **Institutional Strengthening of Community Justice Centres:** Train the justice centres and paralegals on basic project management, resource mobilisation and monitoring and evaluation (M&E), financial and administration (to advise on administration, financial management, legal compliance with statutory requirements and audits);

xii. **Robust Community Self-Representation Trainings:** This is essential to equip the paralegals with skills that will aid them to file public interest litigations, should need be. This will equip them with ability to sieve cases, diverting them from formal justice systems.

CHAPTER ONE:

INTRODUCTION

1.1. About Kituo Cha Sheria – "KITUO"

KITUO is a non-governmental organization established in 1973 to empower the poor and marginalized and to enhance equity and access to justice for all. It stands as the oldest, most experienced non-governmental organisation in provision of legal aid and protection of human rights in Kenya and across the Eastern Africa region. The organisation runs four key programmes, namely: Legal Aid and Education Programme (LAEP); Advocacy, Governance and Community Partnerships Programme (AGCP); Forced Migration Programme (FMP); Research, Communication and Knowledge Management Programme (RCKM); and Finance and Administration.
The table below provides a brief description of the programmes by KITUO

Programme	Brief description
Legal Aid and Education Programme (LAEP)	The programme's goal is to ensure that indigent and marginalized persons in Kenya have access to justice through legal aid and empowerment.
Advocacy, Governance and Community Partnerships Programme (AGCP)	The programme seeks to empower the poor and the marginalized communities on their human rights and to create avenues for these individuals to effectively access and enjoy these fundamental entitlements.
Forced Migration Programme (FMP)	The FMP is devoted to addressing legal and policy needs of refugees, asylum seekers and stateless persons residing in urban areas in Kenya with a view to improving their welfare and guaranteeing access to and enjoyment of the institution of asylum.
Research, Communication and Knowledge Management Programme (RCKM)	The Programme is devoted to enhancing the capacity of KITUO in conducting research communication and disseminating the findings in the thematic areas during the plan period for improved performance, knowledge creation, leverage and profiling.

1.2. Background and Context

At independence, Kenya adopted a liberal Constitution. However, the colonial laws were not repealed or amended to suit the independence Constitution. In fact, the government progressively amended the independence Constitution to suit the colonial laws. The 'ordinances' were simply renamed Acts of Parliament. Thus, an anomaly emerged because the independence Parliament had not deliberated on the laws through the normal legislative process. Most of these laws were inherently unjust because they discriminated based on race, class, and gender. In addition, illiteracy, and ignorance put many indigenous Kenyans at a great disadvantage. The lawyers were few and inaccessible to most of the poor Kenyans. When faced with legal and human rights issues such as rent disputes, the poor residents always found themselves at a disadvantage as they did not know how to safeguard their rights or effectively access justice through the various judicial institutions.

Recent studies have shown that many African countries are on a trajectory towards realization of access to justice with more focus on legal empowerment interventions like legal literacy, enhancing access to

formal adjudication systems and paralegalism. The Government of Kenya, under the Constitution 2010, is obligated to facilitate access to justice to all its citizens as a means of achieving sustainable development. Infringement of access to justice violates basic human rights, particularly those of the indigent persons.

Despite considerable growth of legal empowerment programmes and actors in Africa, the justice gap remains wide. For example, over 1.5 billion people globally were unable to access justice in 2019. The transformative change (increase in access to justice through access to legal aid and empowerment) expected as a result of these programmes is yet to occur. There is thus a justifiable reason to ascertain the impact of the legal empowerment programmes and reflect on their successes and failures. Evaluation of the sector will identify areas for review to improve the impact of the programmes. At the same time, there is a need to challenge perspectives on impact within the sector. Many organizations fail to focus on transformative change of beneficiaries of their programmes. Instead, impact is viewed at the lower output level. As a result, access to justice actors focus on implementing project activities as opposed to creating systemic change. Consequently, justice actors are continually overwhelmed with the justice needs and interventions. In the same vein, justice problems continue to persist. Thus, this research will inform future programming on legal empowerment in Kenya and across the region.

1.3. Purpose, Methodology and Rationale for the Study

1.3.1 Purpose and Objectives of the Study

The research was designed to inform future programming on legal empowerment in Kenya and across the region. It thus identified the positive impact and change achieved thus far through KITUO's programming and the gaps and recommended strategies that can bring transformative and systemic change. The research sought to understand what strategies have or have not worked, lessons learnt, and new strategies for enhanced impact that are underpinned by evidence-based research. The report will therefore be particularly useful to the organisation as it celebrates 50 years in the business of access to justice in Kenya and the region. Specifically, the objectives of the research are as follows:

a) To critically assess and evaluate the impact of legal empowerment programmes in transforming lived realities of beneficiaries and bringing systemic change in Kenya and select countries in Africa;

b) To increase learning and sharing of experiences of state and non-state actors within the legal empowerment sector in Kenya to achieve impactful change, and;

c) To make recommendations and proposals based on empirical research that will improve the efficacy of legal empowerment programmes in the country resulting in transformative change.

1.3.2 Baseline Values and the Theory of Change

Baseline values in legal empowerment programs that the program aimed to promote and uphold were on Access to Justice, Legal Empowerment, Legal Equality and Accountability. These values are typically based on human rights and principles of social justice. They are based on the framework on the way the program has achieved their goals.

The Theory of Change in these programs was based on the following assumptions:

- People being capable of understanding and asserting their legal rights.
- Legal knowledge and skills being essential for people to empower themselves and challenge injustice.
- Changes in the law and legal system being achieved through collective action and advocacy.

1.3.3. Approach and Methodology

To achieve the above objectives, the researchers adopted the following approach and methodologies:

Phase 1 - Inception Meeting and Report: This phase included initial discussions with KITUO team to ensure a shared and common understanding of the purpose and objectives of the assignment. After the meetings, the consultants conducted initial literature review to enable the team have an appreciation of the assignment's scope of work and draw from this to enrich the proposed approach. As a result, the team submitted an inception report, which expounded on the interpretation and clarity of the Terms of Reference (ToR), sought to harmonise expectations with KITUO, sharpen the proposed delivery approach and detail-out operational work plan with specific dates. The report also proposed a list of stakeholders for Key Informants Interviews (KIIs) and Focus Group Discussions (FGDs), outlined draft KIIs and FGD guides as tools for data collection. The report was discussed and agreed on together with KITUO team. Upon receipt of feedback and comments on the draft inception report, the researchers reviewed and submitted a final inception report to KITUO.

Phase 2 - Data Collection, Literature Review/ Document Analysis: Upon approval of the inception report, the consultants continued with more in-depth analysis of relevant project and organisational documents. The literature review further sought to establish an accurate knowledge of the situation of the impact of legal empowerment in Kenya. The literature review delved into several major studies that compile impact evidence on topics within or closely related to this field. The documents that were reviewed by the consultants for secondary data included the following:

Table I: List of Documents Reviewed

Source	Type of Documents
Kituo Cha Sheria	• Kituo cha Sheria Annual Reports • Kituo Cha Sheria Strategic Plan 2020 – 2024 - Realizing Sustainable Development.
KITUO Executive Director	• Pouring New Wines in Old Wineskins - State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016 by Dr. Annette Mbogoh Vol. 1 No. 1-192 (2021) Egerton Law Journal.
United Nations Office on Drugs and Crime (UNODC)	• Access to Legal Aid in Criminal Justice Systems in Africa Survey Report- UNODC (2011).
Others	• A research report on *the legal recognition of paralegals in Africa: lessons, challenges, and good practices* by Robert Nanima and Ebenezer Durojaye University of the Western Cape; • *The Value of Paralegals in Kenya's Justice Chain* by Shatikha S. Chivusia ESR Review #01 Vol. 22 2021; • Strengthening Access to Justice and Promoting Human Rights • *COVID-19, Technology and Access to Justice* by Justice Madan Lokur – UNODC (2020) • *Developing Alternative Pathways to Enhance Access to Justice through Incentivised Pro Bono and Legal Aid Services in Kenya* – Strathmore Law Clinic -Vol. 1 No. 1-192 (2021): Egerton Law Journal; • *The Criminal Justice System in Kenya -An Audit-* Legal Resources Foundation (LRF), RODI Kenya & National Council on the Administration of Justice (NCAJ). • Maru, V, & Gauri, V (EDS.) (2018) *Community Paralegals and the Pursuit of Justice*. Cambridge University press

Phase 3 - KIIs/ FGDs (Situational analysis): This phase of the assignment involved identifying key stakeholders (see the table below) and conducting KIIs/ FGDs with them on the impact of legal empowerment programmes on access to justice for the poor and marginalised in Kenya. During these discussions, the consultants assessed and evaluated the impact of legal empowerment programmes in transforming lived realities of beneficiaries and bringing systemic change in Kenya. The sessions were tailored to enable learning and sharing of experiences of state and non-state actors within the legal empowerment sector in Kenya. The KIIs and FGDs documented Most Significant Change stories (MSC), and documented recommendations and proposals based on empirical research that will improve the efficacy of legal empowerment programmes in the country and result in transformative change. Balanced scorecard assessment tool was also used in conducting participatory appraisal of the performance of the KITUO's legal empowerment programming across critical perspectives of project performance. These included *stakeholder management*, *programme outputs* as well as *learning and growth*. The balanced scorecard mainly aided in answering questions related to programme efficiency. This was augmented with key project documents listed above. The KIIs/FGDs targeted the following counties: Garissa, Kisumu, Kitui, Mombasa, Nairobi, Nakuru and Turkana. Three of the counties namely Nairobi, Mombasa and Kisumu are capital cities with considerably developed systems of justice. On the other hand, Garissa, Kitui and Turkana are considered arid counties with poor justice systems. The mode of interviews was face-to-face, online, or via mailed questionnaire depending on a respondent's convenience and availability.

A total of 157 respondents were obtained through a combination of purposive, convenience and snowball sampling. Of this, 94 were male while 63 were female. FGDs were conducted with 67 paralegals and 64 beneficiaries of paralegal services. In addition, 23 KIIs were carried out.

To analyse the collected data a combination of narrative analysis and thematic analysis was used. This analysis helped identify the impacts of legal empowerment on access to justice, draw lessons from best practices and make recommendations for future interventions as contained in this paper. The table below shows the participants in the study by the stakeholder group and method of engagement.

Table II: Participants by Stakeholder Groups and Method of Engagement

Institutions Stakeholders	KIIs	FGDs
Kituo Cha Sheria	• Current Board; • Executive Director	• Founders Forum; • Former Board members; • Staff.
Beneficiaries/ Clients		• Garissa, Kisumu, Kitui, Mombasa, Nairobi, Nakuru and Turkana.
Community Paralegals		• Garissa, Kisumu, Kitui, Mombasa, Nairobi, Nakuru and Turkana.

Chiefs/ Assistant Chiefs	• Garissa, Kisumu, Kitui, Mombasa, Nairobi, Nakuru and Turkana.	
Law enforcement Officers	• Garissa, Kisumu, Kitui, Mombasa, Nairobi, Nakuru and Turkana.	
Pro bono Advocates	• Garissa, Kisumu, Kitui, Mombasa, Nairobi, Nakuru and Turkana.	
Non-Governmental Organisations (NGOs)/ Civil Society Organisations (CSOs)	• KHRC (Kenya Human Rights Commission); • Legal Resources Foundation; • Federation of Women Lawyers – Kenya (FIDA-K); • The Kenya Section of the International Commission of Jurists (ICJ Kenya); • Transparency International Kenya (TI-Kenya)	
Constitutional Commissions and Independent Offices	• NCAJ; • Kenya National Commission on Human Rights (KNCHR); • National Legal Aid Services; • Office of the Attorney General.	
Donor Agency(ies) and Partners	• United Nations Development Programme (UNDP) *Amkeni*; • Mott Foundation; • IDRC, IDLO, *Misereor;* • Royal Netherlands Embassy.	

Phase 4: Report and Validation: The consultants read through each of the KII and FGDs notes/ transcripts to process the information. The analysis of the data was premised on the level of consensus/ dissent as well as response patterns across the focus groups and individual members. Inferences were made about the level of consensus. This analysis culminated into a draft report on the impact of legal empowerment programmes on access to justice for the poor and marginalised in Kenya. The consultants prepared a concise and user-friendly report of the research findings for KITUO. In writing the draft and final reports, we have used formats agreed upon with KITUO. The draft report was validated and the validation feedback incorporated into the final report.

Phase 5 – Advocacy Policy Briefs: Based on the reviews, analysis and documentation enumerated above, we will draft policy briefs (for Kenya) to be used for advocacy in Kenya and at the African Union/Commission. In them, we will provide recommendations on the impact of legal empowerment programmes on access to justice for the poor and marginalised. Other knowledge products will include an advocacy guide, as well as some selected stories of change (case studies).

CHAPTER TWO:

CONTEXT ANALYSIS AND LITERATURE REVIEW

2.1 Background and Introduction to Legal Empowerment and their Significance in Kenya

Definition of Legal Empowerment Programmes

Legal empowerment programmes are initiatives that aim to empower individuals and communities, particularly the poor and marginalised, by increasing their access to justice and legal services. These programmes seek to address the barriers that prevent individuals and communities from accessing justice, such as lack of legal knowledge, discrimination, and socio-economic marginalisation. Legal empowerment programmes aim to promote legal awareness, education, and capacity-building, as well as provide legal aid and support to those in need. Legal empowerment programmes can take many forms, including community legal clinics, paralegal training, public legal education campaigns, and advocacy for legal and policy reforms. These programmes can be led by NGOs, Community-Based Organisations (CBOs), or government agencies. The goal of legal empowerment programmes is to enable individuals and communities to exercise their legal rights, access legal services, and participate in the decision-making processes that affect their lives. Legal empowerment programmes recognise that access to justice is not only a matter of formal legal processes but also involves addressing the social, economic, and political factors that create inequality and marginalisation. These programmes seek to build the capacity of individuals and communities to identify legal issues, advocate for their rights, and engage in social and political processes that affect their lives. Legal empowerment programmes are based on the belief that empowering individuals and communities to exercise their legal rights is a key factor in promoting social and economic justice and building more inclusive societies.

Programmes for legal empowerment are designed to strengthen marginalised and underprivileged groups' access to justice and a myriad of legal services. Legal empowerment programmes have grown in importance in Kenya because of the poor and marginalised populations' restricted access to justice and the many legal obstacles that prohibit them from doing so. The Kenyan government has implemented several initiatives including laws and policies aimed at improving the people's' access to justice.[1] However, these laws and policies have yet to be visibly effective in meeting the legal solutions for the underprivileged and disadvantaged groups. This has been evident among people living with HIV and AIDS, who even reported abuse from their partners upon disclosure of their HIV status.[2] They were reported to be intimidated by the formal justice network, and would often choose to escalate their matters to the village elders.

The success story below gives a clear picture of the use of legal aid to assist individuals to access justice in Kenya.

1. Kalla, K. & Cohen, J. (2007) "Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS–related Legal Services" Law and Health Initiative: OSI's Public Health Programmes. Open Society Initiative for East Africa. Available at <https://kelinkenya.org/wp-content/uploads/2010/10/Ensuring-justice-for-the-Vunlerable.pdf> (last accessed in April, 2024)
2. Ibid

Garissa County has had a history of multiple displacements of persons from their community land. The community was displaced from Umusalame area despite settling there for their entire lifetime. This happened without prior notification and was not subjected to public participation. In 1999, an evacuation happened in a violent manner. The community then got into retaliation, resulting in the arrests and prosecution of 6 people. The arrested were then released, citing no evidence of violation of the law. In 2003, the authorities returned to evict the community. This time around, they gave a 14-day notice. There was a government need to build a village polytechnic on the purported government land. The justice coordinator coordinated a public baraza in a sensitization forum to urge their members not to leave the land.

The challenge of frequent evictions necessitated the need to write to the authorities informing them of the predicaments. Despite the halting notices, the coordinator was subsequently arrested and detained several times. The coordinator was recommended to KITUO through Kenya Human Rights Commission in 2004. KITUO then travelled to Garissa to obtain views from the public, and then filed public interest litigation. This was initially thrown out due to technical and procedural technicalities.

As a result, KITUO then hired a consultant (Elisha Ongoya), who then filed a constitutional petition. They subsequently got financing from Centre for Housing Rights and Evictions in Geneva to support the case. The case continued until 2011 when Justice Warsame (Presiding Judge) summoned the Attorney General to appear in court failure to which the court would pronounce itself on the matter. The non-attendance of the Attorney General granted all the 19 prayers, some prayers being award of compensation of the victims and getting back their land.

Kenya's legal system is complicated and consists of both formal and informal justice systems. Courts, tribunals, and other legal entities created by legislation make up the formal justice system. Regardless of how sensitive or urgent a case is, the conventional justice system has a reputation for being too expensive and taking too long to resolve a case. The informal judicial system, on the other hand, comprises of religious courts, community-based dispute resolution procedures, and customary courts.[3] These are viewed as being economical, effective, and dependent on mediation and mutual consent to settle conflicts in the communities.[4] Despite the existence of the formal and the informal justice systems, the marginalised and poor communities often lack timely access to either. This might be explained by the justice systems' systemic accessibility and availability challenges, including the inherent occasions of giving unfair - either by process or by substance- outcomes. The ignorance of the public also comes into play as well as poverty, and peer pressure that hinder people from pursuing justice.

As a result, legal empowerment programmes are now essential in Kenya in order to close the gap between the formal and informal judicial systems and offer legal aid to the underprivileged and marginalised groups. Legal empowerment programmes help the marginalised groups to receive legal assistance and understand their legal rights.[5] These initiatives support the development of community-based paralegal services, legal education, and community members' capacity for accessing justice.[6]

Legal empowerment programmes have been successful in promoting access to justice for the poor and marginalised communities in Kenya. This has been anchored by Article 48 of the Constitution of Kenya

3. UN Women, UNICEF & UNDP. (n.d.) "A study of informal Justice Systems: Access to justice and human rights." Available at <https://www.undp.org/sites/g/files/zskgke326/files/publications/Informal-Justice-Systems-Summary.pdf> (last accessed April, 2024)
4. ibid
5. Anuradha Joshi, "Legal Empowerment and Social Accountability: Complementary Strategies Toward Rights-based Development in Health?", World Development, Volume 99, 2017, Pages 160-172, ISSN 0305-750X, https://doi.org/10.1016/j.worlddev.2017.07.008. (last accessed April 2024)
6. Ibid

2010, which mandates the state to ensure access to justice for all Kenyans, and if need be, at a reasonable fee. For instance, community paralegals have been instrumental in providing legal services to communities that cannot afford the high costs of legal representation. These paralegals provide legal advice, mediate disputes, and support accused persons in legal proceedings. The National Legal Aid Service exists to steward legal aid facilitation in Kenya.[7]

Moreover, legal empowerment programmes have played a crucial role in enhancing legal literacy among marginalised communities. Through legal education, communities have been empowered to understand their legal rights and obligations, which have enhanced their ability to seek justice. Legal empowerment programmes have also facilitated access to justice by providing alternative dispute resolution mechanisms, which are more accessible and cost-effective than the formal justice system.

2.2 The Importance of Access to Justice for the Poor and Marginalised in Kenya

Access to justice is a fundamental human right and is critical for the protection of the poor and marginalised in the society. The poor and marginalised are often subjected to human rights violations, including discrimination, exploitation, arbitrary arrests, and abuse. Access to justice avails ways of seeking redress and holding perpetrators to account for their actions. Access to justice is therefore very essential for the protection of human rights. Kenya has a history of human rights violations, particularly against the vulnerable populations such as women, children, and Persons with Disabilities (PWDs). These vulnerable populaces are often denied access to basic services, such as healthcare and education, and are at a higher risk of violence and exploitation.[8] Access to justice therefore, provides a mechanism for holding perpetrators and other people accountable for their actions and ensures that the rights of the poor and marginalised are safeguarded.

In Kenya, where poverty and inequality prevail, the significance of access to justice for the poor and marginalised cannot be overstated. Economic opportunities frequently elude these vulnerable groups, exacerbating their exclusion from society. However, by facilitating access to justice, we can address this imbalance and foster a fairer society.

The transformative power of access to justice extends beyond the individual. It serves as a crucial tool in combating corruption and enhancing transparency and accountability in both the public and private sectors. By enabling the disadvantaged to seek legal redress on their grievances, we can create an environment conducive to business and investment, where integrity and fairness prevail.

Furthermore, access to justice plays a vital role in resolving disputes and safeguarding property rights. By ensuring that everyone, regardless of their socio-economic status, can access legal mechanisms, we promote economic stability and facilitate growth. The protection of property rights not only empowers individuals to assert their claims but also bolsters confidence in the overall economic system.

It is important to recognize that the poor and marginalised often hold negative perceptions of the legal system, one of the reasons being their inability to access it effectively.[9] By establishing equal access to justice for all citizens, regardless of their financial means, we can begin to rebuild trust and confidence in the legal system. This inclusivity sends a powerful message that the legal framework exists to protect and serve every member of society, fostering a sense of trust and belonging.

7. Supra (no. 3) Muiru, A., Mburu, B., Wanjau, B., and Otieno, J. et al., (2021) "Developing Alternative Pathways to Enhance Access to Justice through Incentivized Pro Bono and Legal Aid Services in Kenya" Strathmore Law Clinic. ELJ, Vol 1, 2021. ISSN 2789-3421

8. Madan Lokur "COVID-19, Technology and Access to Justice" in United Nations Office on Drugs and Crime (2020). Available on https://www.unodc.org/dohadeclaration/en/news/2020/04/covid-19--technology-and-access-to-justice.html (last accessed in April, 2024).

9. Supra (No. 6) UN Women, UNICEF & UNDP. (n.d.) "A study of informal Justice Systems: Access to justice and human rights." Available at <https://www.undp.org/sites/g/files/zskgke326/files/publications/Informal-Justice-Systems-Summary.pdf> (last accessed April, 2024)

2.3 Understanding Legal Empowerment Programmes

Access to justice is a fundamental human right and is critical for the protection of the poor and marginalised in the society. The poor and the marginalised are often subjected to human rights violations, including discrimination, exploitation, arbitrary arrests and abuse. Access to justice avails ways of seeking redress and holding perpetrators to account for their actions. According to the Kenya Legal Empowerment Network (KELEN), the number of Kenyans targeted by legal empowerment programs in 2013-2023 is 1,285,000. This is calculated by assuming that 100,000 Kenyans were targeted each year, for a total of 11 years.[10] However, it is important to note that this is just an estimate, and the actual number of Kenyans reached may be higher or lower.

The legal empowerment programs in Kenya are designed to help people understand their legal rights and how to access justice. These programs are important because they can help to ensure that everyone in Kenya has access to justice, regardless of their social or economic status. Findings from recent studies reveal that legal empowerment approaches in both the formal and informal justice sectors are likely to be more sustainable when a) they are locally owned; and b) when they are coupled with top-down reforms to ensure domestic laws and regulations are in line with international legal standards on gender equality.[11] Further, legal empowerment initiatives are poised to exert a significant influence on access to justice and address gender disparity when they creatively incorporate indigenous wisdom and customs. This enhances the credibility of the reforms and guarantees their long-term sustainability.[12]

Different Types of Legal Empowerment Programmes

Kenya has a range of legal empowerment programs aimed at increasing access to justice for the poor and marginalised. Some of the different types of legal empowerment programs in Kenya include:

Table III: Examples of legal empowerment programmes

Types of Programmes	Description
Community Legal Clinics	These are community-based organisations that offer legal advice and assistance to individuals who cannot afford the services of a lawyer. These clinics are often staffed by volunteer lawyers, law students, or paralegals.
Paralegal Training	Paralegals are trained to provide legal advice, assistance, and representation to individuals who cannot afford a lawyer. Paralegal training programmes in Kenya provide training on basic legal principles, legal research and writing, and advocacy skills.

10. Shatikha S. Chivusia "The Value of Paralegals in Kenya's Justice Chain" ESR REVIEW #01 Vol. 22 2021;
11. IDLO (2013) "Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment." Available at https://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Full_Report.pdf pg.7 (last accessed in April, 2024)
12. Ibid.

Public Legal Education	Public legal education programmes aim to educate individuals and communities about their legal rights and responsibilities. These programmes provide information on legal processes, court procedures, and available legal services.
Legal Aid	Legal aid programmes provide free or low-cost legal services to individuals who cannot afford a lawyer. These programs may include legal representation, mediation, and other forms of legal assistance.
Advocacy for Legal and Policy Reforms	Legal empowerment programmes in Kenya often advocate for legal and policy reforms that can increase access to justice and promote human rights. These programs may involve lobbying, media campaigns, and other forms of advocacy to raise awareness about legal issues and promote legal and policy change.
Training on Public Interest Litigation (PIL)	Public Interest Litigation is a legal strategy used by organizations to advocate for the rights and interests of marginalized communities. Through PIL, organizations (in this regard, community justice centres) file lawsuits or petitions on behalf of disadvantaged groups to address systemic issues and bring about legal and policy changes.
Alternative Dispute Resolution (ADR)	ADR programmes provide alternative methods for resolving legal disputes, such as mediation or arbitration. These programmes can be more accessible and cost-effective than traditional court processes.

Historical Context of Legal Empowerment Programmes in Kenya

KITUO, established in 1973 after Kenya's independence, aimed to provide legal aid and empowerment to disadvantaged individuals. Prior to independence, the legal profession was predominantly controlled by colonial regulations that excluded Africans and created a dual structure. The Law Society of Kenya lawyers did not interact with ordinary Kenyans, who were effectively reached through Barazas.[13] After independence, indigenous lawyers began joining the Law Society of Kenya.

The memories of the founders serve as the primary source of information on the organization's formation due to the loss of records in a politically motivated fire at previous KITUO offices. The early days of KITUO were characterized by volunteerism and community service from lawyers who would later become prominent figures in the legal profession, such as former Chief Justice Willy Mutunga, Lady Justice Mary Angawa, The Late Dr. David Gachuki, RTD Judge J. Vitalis O. Ouma, The Late Steven Adere and Mukhtar Jaffer. These lawyers, originally employed by large white law firms, aimed to contribute to society as they were financially stable and did not rely on legal aid for income.

Initially, the lawyers provided services in various locations, including community centers, every evening. They recruited students from the Kenya School of Law and the University of Nairobi Law School to accompany them and assist in offering legal aid. The organization sometimes provided transportation or stipends to support the students in their work. Pro bono cases were also processed in the lawyers' offices, reflecting a practice that is less common today due to various factors.

Joining KITUO was a conscientious decision even in the early days, as better financial opportunities

13. The Baraza is a semi-formal public gathering held in communities at the behest of local administrators. The aims of the baraza are to pass critical information, deal with rising information in a locality and to collect the views of the local community on certain issues

could be found elsewhere with the same legal skills. This financial challenge continues to be a problem for paralegals working in the community, as many are not sponsored by any institution.

Legal Frameworks and Policies that Support Legal Empowerment Programmes in Kenya

Legal empowerment programmes in Kenya are supported by a range of legal frameworks and policies. These include:

i. **The Constitution of Kenya, 2010:** The Constitution of Kenya recognizes the right of all persons to access justice and promotes the protection of human rights. It also provides for the establishment of legal aid and alternative dispute resolution mechanisms to increase access to justice for all. There is also a provision for alternative justice in Section 159 of the Constitution. The constitution also emphasizes public participation in decision-making processes. It encourages the involvement of citizens, civil society organizations, and marginalized groups in the formulation and implementation of policies and laws. This provision promotes legal empowerment by ensuring that the voices and concerns of marginalized communities are heard and addressed.

ii. **The Legal Aid Act, 2016:** This Act provides for the establishment of legal aid service providers to offer legal aid services to indigent persons who cannot afford legal representation.

iii. **The National Legal Aid Policy, 2016:** The National Legal Aid Policy provides a framework for the provision of legal aid services in Kenya. It seeks to ensure that legal aid services are accessible, affordable, and effective for all.

iv. **The Community Land Act, 2016:** This Act provides for the recognition and protection of community land rights in Kenya. It also establishes mechanisms for resolving land disputes through alternative dispute resolution mechanisms.

v. **The Access to Information Act, 2016:** This Act promotes the right to access information held by public entities. It provides for the establishment of an independent commission to oversee the implementation of the Act.

vi. **The Children Act, 2022:** The Children Act provides for the protection of children's rights in Kenya. It also establishes mechanisms for resolving disputes involving children through alternative dispute resolution mechanisms.

vii. **The Legal Education Act, 2012:** This Act provides for the establishment of the Council of Legal Education to oversee legal education in Kenya. It seeks to ensure that lawyers and other legal professionals are properly trained and qualified to provide legal services including legal aid.

viii. **The County Governments Act:** The Act enables county governments to enact laws and by-laws within their jurisdiction. This legislative power provides an opportunity for counties to address specific legal issues and gaps that hinder legal empowerment. Counties can enact laws to protect the rights of marginalized groups, establish legal aid funds, and create mechanisms for promoting access to justice and legal empowerment.

Legal Aid and the Push for Democracy

The legal fraternity in Kenya had remained outside of politics through independence and the rule of President Jomo Kenyatta and the early years of President Daniel Arap Moi despite widespread human rights abuses. This was partly to avoid being labelled as disloyal to the government, but this changed in the wake of the crackdown on democratic freedoms following the failed 1982 coup.

"A pattern of open solidarity began to emerge among activist lawyers and sympathetic LSK members. 36 Members of the legal profession began founding or aligning with various human rights organisations. Their efforts ultimately fed into a broader popular movement for democracy. Without formal political organisations to counterbalance the Moi regime, the resulting web of non-state actors served as some of the few opposition voices during the 1980s – and they drew heavily on legal tactics to achieve their aims".[14]

As argued by Mbogoh, legal aid through paralegalism was formed in community-based structures and informal spaces because of the control and lack of space provided at the formal level by repressive regimes that did not allow for freedoms. Thus, paralegalism empowered communities in restricted regimes to articulate their interests and has a focus on human rights ethos in these circumstances.[15]

Scholars have noted that in Kenya, as the judiciary was not viewed as impartial or independent in previous regimes, paralegal interventions were used to resolve disputes in much the same way as 'mob (in)justice, traditional dispute resolution mechanisms, demonstrations, mass action', thereby showing the relevance of this approach in the fight for democracy.[16] Indeed, following the space granted during the start of the multiparty era, KITUO actively participated in civic education and outreach programmes for voting rights, launching an extensive information campaign, issuing booklets, posters, and video- and audiocassettes that played in matatus.[17]

Bearing in mind the situation in Kenya, this created the socially and politically conscious lawyer who played a key role in democratic and human rights-based reform in the country to date. It is important to note that:

- Prominent lawyers would play a significant role in the push for multi-party democracy and reform.
- The current structure of Kenyan civil society engaged in democratic reforms has many lawyers.
- Key movements such as the repeal of Section 2A of the Constitution thereby making Kenya a multiparty state and the passage of the new Constitution in 2010 were largely spearheaded by lawyers.
- Judicial reforms have been key in upholding democratic provisions and protecting human rights as the organ is no longer seen as a tool of the executive and has been used for various Public Interest Litigation (PIL) cases, including most recently opposition to proposed changes under the Building Bridges Initiative (BBI) that were deemed unconstitutional.

Thus, legal aid was provided in a political and social environment of repression of human and civil rights where the rights of the people, especially the indigent ones were repressed. This combined with the work in the community setting led to collaborations with civil society, some of whom were also providing legal aid and support at the community level. The legal aid movement thus became intertwined with the struggle for democracy at points in its history. The KITUO founders noted that the organisation came together with the Public Law Institute (PLI) and International Commission of Jurists and others when their interests aligned to play a key role in fighting for the rights of the disadvantaged. In the

14. See generally Moy HA. Kenya's Community-Based Paralegals: A Tradition of Grassroots Legal Activism. In: Maru V, Gauri V, eds. Community Paralegals and the Pursuit of Justice. Cambridge University Press; 2018:165-209.
15. Mbogoh A (2021) "Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016" Egerton Law Journal Vol. 1 pp. 161 – 179.
16. Waruhiu W.J. & Otieno O.J. "Access to Justice - The Paralegal Approach" Ghai Y & Ghai J. (eds) The Legal Profession and New Constitutional Order in Kenya, Strathmore University Press (2014), pp. 201 – 220. Also available on https://www.kas.de/c/document_library/get_file?uuid=56ba9291-7c05-98d5-96b1-8161785ff854&groupId=252038 (last accessed April, 2024)
17. Supra (no. 17) Moy HA. Kenya's Community-Based Paralegals: A Tradition of Grassroots Legal Activism. In: Maru V, Gauri V, eds. Community Paralegals and the Pursuit of Justice. Cambridge University Press; 2018:165-209.

1990s, this group of CSOs more broadly focusing on access to justice, grew encompassing some of the most prominent ones in the country such as International Federation of Women Lawyers (FIDA), PLI, the LSK, ICJ K, Children Legal Action Network (CLAN), Christian Legal Education and Research (CLEAR), the Independent Medico-Legal Unit (IMLU), Legal Resources Foundation (LRF), Coalition on Violence Against Women (COVAW), Centre for Rights Education and Awareness (CREAW), The CRADLE Foundation, Catholic Justice and Peace Commission (CJPC) and Muslims for Human Rights (MUHURI).[18]

Working with the Community

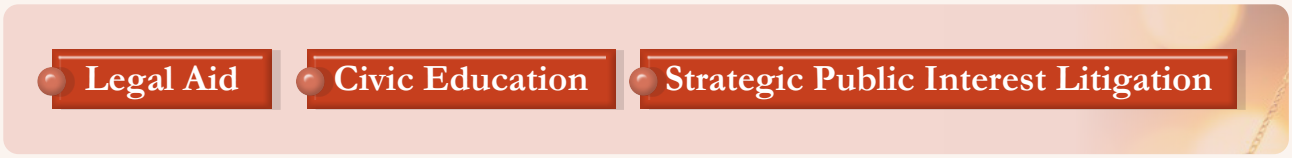
However, it is important to note that KITUO recognised the overlap with human rights but remained focused on legal aid. As per an organisational study on KITUO, the early days were mostly used to deal with indigent persons.

> *"These groups (the marginalised) were vulnerable to several rights violations ranging from exorbitant increase in house rent by landlords, evictions from their slum dwelling place to poor conditions of work in their work places. Majority of these people worked as domestic workers in the upmarket residential areas or cheap manual labourers in the industrial market. Many are the times (sic)their salaries were withheld for no apparent reason, received dismissals on no notice and at times lost their residential places to private developers who in most cases grabbed public land where their shanties stood."*[19]

This focus on indigents was on transforming lives. Free legal aid was provided in easy access areas, initially one of these was on Luthuli Avenue in the Central Business District (CBD).However, a high volume of clients and long sessions meant that this time spent with clients was not always the most productive. To try and limit this, fee of Kshs 20 was introduced for consultation but many did not have this fee. Law students began to be introduced to this centre, and the founders credit this for creating a generation of compassionate lawyers as they had to listen to stories and empathise without possible financial compensation.

As mentioned before, this often brought them into contact with repressive local authorities and legislation. The founders note that in those days the organisation would simply stall due to a lack of funding and capacity as there were no external funders. Legal aid provided was limited to civil and not criminal matters. In addition, KITUO would not go to court but would aim to teach beneficiaries how to represent and defend themselves in court thereby empowering them. While there were no donors as there are now, a tradition of large law firms such as Kaplan supporting the legal aid movement was present at the time. Indeed, the founders rejected donor funding from certain sources over fears that this would lead to a loss of control and independence of the organisation. According to the founders, the question of why would these funds be made available was always raised and this resulted in some funding being rejected.

KITUO thus worked to look after many citizens who needed their rights protected for a just and equitable society through:



Other organisations involved in these grassroots paralegal networks also got involved in promoting legal awareness, human rights defenders and monitors. This included working with pro bono advocates to

18. Supra (No. 1) Caroline Amondi "Legal Aid in Kenya : Building a Fort for Wanjiku" in Ghai Y & Ghai J. (eds) The Legal Profession and New Constitutional Order in Kenya, Strathmore University Press (2014), pp. 201 – 220. Also available on https://www.kas.de/c/document_library/get_file?uuid=56ba9291-7c05-98d5-96b1-8161785ff854&groupId=252038 (last accessed April, 2024).

19. See generally https://www.jus.uio.no/smr/english/research/projects/ripoca/workshop-april-2010/Kenya_Org_study_Kituo_cha_Sharia.pdf (last accessed in April, 2024)

provide legal aid and supporting clients in legal proceedings.[20] In 1988 the organisation received external funding from the Ford Foundation and established a secretariat for day-to-day activities and has continued to receive donor funds since that time.[21] Another sign of the expansion of the work of KITUO in the 1980s and 1990s was the recruitment of staff without legal background to handle other tasks. From the founders meeting, the aim was to support them to apply non legal knowledge to their community-based legal aid programmes. A specialist on participatory methodology and adult learning in the development sector joined the team partly in response to concerns that students were concerned that the teaching was not relevant to their work as it had too much of an exam focused approach. Rather they wanted to know what was relevant to them, their context and how to apply this knowledge. The purpose of this approach was to determine the best way for legal education including awareness on legal and human rights – and for this to be delivered in a participatory method.

KITUO was already active in the informal settlements at this point, for example in Korogocho, teaching citizens about their rights and having law students brought by KITUO to carry out this process. Following this education on rights was given in the context of empowerment of citizens to achieve these rights. A booklet entitled *Haki Yetu* was published and became so well known that the police would let those who carried the booklet free if they were arrested or detained. This built on earlier knowledge when a booklet produced by Kituo was met with scepticism in Korogocho as questions arose about its utility. This booklet could not help them and they requested a smaller sized booklet that could easily be carried in their wallet. These were so successful that they were printed in multiple languages. This formed the foundation of what would later become the outreach programme. It was at this stage that Kituo began shifting from simply a legal aid organization to more of a human rights organisation.

The Toi Market story in the preceding table is an example of the use of both legal aid advocacy and human rights to champion for justice.

A story provided by the founders demonstrated the intersection of legal rights and advocacy in the case of Toi market. The market has been used by informal traders to sell their wares but was on a piece of land that they did not own – however the absentee landlord went to court and sought to evict the traders. On a purely legal basis they had no legal grounds to protect themselves and indeed lost the case in court and eviction was ordered. Kituo however was concerned with the issue of livelihoods that would be affected by the closing of the market. Kituo chose to highlight the issue in the press showing the impact of the rights of the one versus the many holding that although the eviction was correct in law, it was not correct from a human rights perspective. As narrated by one of the local community organisers at the time,

> *"What happened [at Toi] at that time: we were taken to court. So, we lost the case, but what happened: we had hired two 25-seater matatus, and people were waiting for us in the market, for news – so we just turned the story, and we went back to the market saying that we won. But we had actually lost the case. Meanwhile, there was an adjacent market which was constructed to host the Toi market traders, so that these people could be comfortable getting their land. So, when the chief was still allocating [the new market], we went back to [Toi] market – singing, dancing – and we reconstructed the [Toi] stalls, and we have been there ever since. Toi market has been there ever since. So those were the early days – we just ignored [them], we could not prove we had a right because they just said this is private property; it was very clear this is private land."*

This approach of organizing the community included engaging the local MP, the press and brought up issues of there being a humane way to deal with these issues and the rights of the many versus the rights

20. Supra (No. 18) – Mbogoh A (2021) "Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016" Egerton Law Journal Vol. 1 pp. 161 – 179.
21. Ibid.

of the one. Effectively this was won through advocacy and public opinion despite the loss of the court case. At the time of writing the market remains in place.

Kituo was founded by a cadre of socially conscious Kenyan lawyers just as they were coming into the legal space and replacing the older colonial white lawyers. The focus was and has continued to be on providing legal aid to indigent populations who are unable to access justice. This spirit of volunteerism and social justice kept the organization running through the years and in advocating for the rights of the underprivileged brought it indirectly into the fight for freedoms under dictatorship in Kenya. However, the organization has maintained its focus on legal empowerment for indigent persons and it is this and the spirit of community and volunteerism that should be carried forward to future work.

Access to Justice, the Legal Aid Act and Challenges

Access to Justice is a basic principle in the rule of law and allows for citizens to have their voices heard and exercise their rights. According to the United Nations this should be impartial and non-discriminatory and one of the major challenges to this is accessing legal advice and representation.[22] To this end UNODC has developed the United Nations Principles and Guidelines on Access to legal aid which emphasizes that Legal Aid is an essential element of a criminal justice system.[23] Access to Justice is also key to achieving the Sustainable Development Goals and is highlighted in the KITUO Strategic Plan 2020-2024 in line with Sustainable Development Goal (SDG) 16.

Table IV: Examples of Treaties and Conventions that form part of Kenyan laws

Legal Instrument	Access to Justice
The Constitution of Kenya, 2010	Mandates the State to ensure access to justice for all persons and if any fee is required, to make it reasonable and not impede access to justice
The Legal Aid Act, 2016	Facilitates the provision of affordable, accessible, sustainable, credible, and accountable legal aid services to indigent persons in Kenya
Persons Deprived of Liberty Act	Provides for the right to visits by human rights officers of duly recognized institutions for the purposes of inspecting and assessing the conditions under which such persons are held and further accords legal aid and legal assistance to aliens in prisons where consular assistance is not available
The Universal Declaration of Human Rights (UDHR)	Sets out in general terms, as a common standard of achievement for all peoples and all nations that everyone charged with a penal offence should be granted all the guarantees necessary for his defence including legal representation and legal aid.
The International Covenant on Civil and Political Rights (ICCPR)	Mandates States to ensure that accused persons have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it.

22. United Nations "Access to Justice" https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ (last accessed April, 2024)
23. United Nations Office on Drugs and Crime (2013) "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf (last accessed in April, 2024).

The Convention on the Rights of the Child (CRC)	Mandates State parties to ensure that the child is informed promptly and directly of the charges against him or her, and, if appropriate, through his or her guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence. States are required to ensure that legal aid is provided to children in all criminal cases unless special circumstances would dictate otherwise.
The African Charter on Human and Peoples' Rights 1981 (ACHPR)	The Charter contains principles and guidelines on the right to fair trial and legal assistance in Africa. The charter makes it an obligation of state parties in ensuring that an accused person has the right to be presumed innocent until proved guilty by a competent court or tribunal and the right to defence, including the right to be defended by counsel of his choice
The African Charter on the Rights and Welfare of the Child (ACRWC) 1989	The rights under this convention have been reproduced in the Children Act of 2001. This Act led to the establishment of Children's court to handle children's cases
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.	Kenya ratified CEDAW in 1984. It is an international treaty adopted by the United Nations General Assembly in 1979. It aims to promote and protect women's rights and eliminate all forms of discrimination against women.

The Constitution of Kenya under Article 48 provides that, 'The State shall ensure access to Justice for all persons and, if any fee is required it shall be reasonable and not impede access to justice'.[24] Getanda argues that this taken in combination with Article 49 and 50 of the Constitution on Rights of Arrested Persons and Fair Hearing place further emphasis on the concept of justice for all. Article 50 (g) and (h) provide that every accused person has the right to a fair trial, which includes the right to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly.

This is a step forward from the now repealed Constitution that contained provisions removing the right to legal representation at public expense. This was shown in the case of *David Njoroge Macharia -vs- Republic (Criminal Appeal No 15 of 2020*) where the charge was robbery with violence. The Honourable Court held that substantial injustice could occur in capital offence cases for the indigent accused. When determining whether an accused would suffer substantial injustice without state-funded legal representation, the court considered the following factors:

a. The severity of the charge;

b. Complexities of the case;

c. The capacity of the accused person to defend themselves;

d. The public interest which requires the accused to have court-appointed counsel due to the nature of the offence.

Under the new Constitution of 2010, the appellant argued that his right to legal representation at state expense was violated and that Kenya had failed in its duties under international conventions and treaties such as the ICCPR. The court, however, found that under the old Constitution, international law was required to be incorporated into national law and this could not be upheld and that the trial had taken

24. Article 48 of the Constitution of Kenya, 2010

The Constitution of Kenya under Article 48 provides that, 'The State shall ensure access to Justice for all persons and, if any fee is required it shall be reasonable and not impede access to justice'

place under the old constitution where the right to free legal representation was not guaranteed.[25] The judgement reads in part,

> *"Kenya is traditionally a dualist system; thus, treaty provisions do not have immediate effect in domestic law nor do they provide a basis upon which an action may be commenced in domestic courts. For international law to become part and parcel of national law, incorporation is necessary…. in so far as the appellant before this Court is concerned, his trial took place under the old Constitution, and he would not have been entitled to free legal representation during the first trial.* [26]

KITUO was part of the Paralegal Support Network (PASUNE), now the Paralegal Society of Kenya (PSK), who sought to share experiences and collaborate, they grew from the various grassroots organisations, provided harmonized legal training materials which were shared with the KSL for design of a diploma for paralegals and were involved in advocacy around the Legal Aid Bill.[27] KITUO, working together with other members of civil society, played a role in the formation of the National Legal Aid and Awareness Programme (NALEAP) under the Government Justice Law and Governance Programme (GJLOS) to create citizen awareness on legal aid and develop a legal aid delivery scheme for the indigent and vulnerable in society. Pilots carried out were done in conjunction with civil society and Kituo, for example, aided in the training of prisoners on law to build capacity for self-representation, a programme that continues today. NALEAP worked on the draft of the Legal Aid Bill of 2013 that would become the Legal Aid Act of 2016.[28] NALEAP also pushed for a system to recognize and accredit paralegals.

NALEAP and PASUNE are credited in part, along with a general push for judicial reform, with securing government support for a national legal aid system and the legislative framework. The Legal Aid Act of 2016 defines an accredited paralegal as a person accredited by the National Legal Aid Service (NLAS) to provide paralegal services under the supervision of an advocate or an accredited legal aid provider. The population of Kenya is primarily rural in nature and lack access to formal justice systems as do those living in informal settlements where customary justice mechanisms may be used instead. Those who are most at risk of being exploited and in need of the defence of the law despite these new legal protections are unable to raise the finances necessary for legal procedures and do not understand what accessing justice is and how it can aid them. It is for this reason and due to advocacy work by various organizations working in the legal aid space including Kituo that the Legal Aid Bill became and Act in 2016. The Legal Aid Bill was passed in 2016 and this was to give effect to Articles 19 (2), 48 and 50(2)(g) of the Constitution. It also provides a legal and institutional framework under which legal aid shall be provided, establishes the National Legal Aid Service (NLAS) and makes provisions for who qualifies for legal aid. Moy in her fieldwork identified the problem of formal recognition as hampering the work of paralegals.

25. Legal Resources Foundation "The State of Legal Aid in Nairobi County 2020" https://www.lrf-kenya.or.ke/wp-content/uploads/2021/07/State-of-Legal-Aid-Booklet.pdf (Last accessed in April 2024)
26. See http://kenyalaw.org/caselaw/cases/view/74661/ (last access in April 2024)
27. Supra (No. 18) – Mbogoh A (2021) "Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016" Egerton Law Journal Vol. 1 pp. 161 – 179.
28. Supra (No. 29) - Legal Resources Foundation "The State of Legal Aid in Nairobi County 2020" https://www.lrf-kenya.or.ke/wp-content/uploads/2021/07/State-of-Legal-Aid-Booklet.pdf (last accessed in April 2024)

"Nearly every paralegal and community leader we interviewed identified the lack of formal recognition as one of the most serious challenges facing paralegals. Paralegals frequently referred to instances when authorities rebuffed them for lack of legitimacy. Meanwhile, community leaders wanted a clearer sense of what defines a paralegal, the type of training required, and what paralegals are authorized to do and not do. Interviewees speculated that a system of accreditation might further clarify matters by standardising training for paralegals, at a time when the length, recurrence, and quality of paralegal training varies widely across the country.[29]

Salient features of the Legal Aid Act include:

- Granting authority to provide legal advice.
- Establishing the Legal Aid Fund.
- Adopting a wider definition of legal aid.
- The National Legal Aid Service is mandated to develop programmes for legal aid education.
- Civil society representation in governance.[30]

Challenges on Access to Justice and Legal Aid and Empowerment

While this is certainly a positive step, there have been challenges in operationalisation. Mbogoh argues that paralegals have thrived in informal settings and although they now receive recognition from the state – this recognition is governed by the state and creates, 'a formalised space shrouded by specific rules and regulation in training, accreditation and practice.[31]' The power to formulate over-regulation and ensure compliance to these new regulations is conferred on state agencies. Bearing in mind that the history of the work undertaken by KITUO through legal empowerment approaches has often brought it into conflict with authorities this remains a concern. Legal Resources Foundation (LRF) notes that while the presence of the National Legal Aid Service (NLAS) is positive, it is hampered in its operations in the following ways:

- Inadequate human and financial resources and it is highly reliant on donor funding. There are also no clear provisions for the service in the national budget.
- NLAS in 2021 was operating with what was considered a skeleton staff to cover the entire country with a lack of coordinating mechanisms and qualified advocates even in the capital city Nairobi.
- NLAS lacks the capacity to undertake monitoring, evaluation, supervision, and coordination.[32]

Mbogoh argues that these challenges, among others, have meant that in effect the NLAS has not been effective and indeed that the passage of the Legal Aid Act may have hampered the informal rules of the sector, which allowed it to grow and become important in the community. The impacts of these rules have not only not been felt on the ground, but the presence of these rules creates a lack of clarity on where and how they apply. On the question of the training of paralegals, for example,

"The Legal Aid Act and its appurtenant rules do not have transitional provisions providing directions on how to deal with already existing legal empowerment programmes other than the legal aid pilot projects. Therefore, it is unclear what happens to the community paralegal organization and coordination and uncertain organically grew since Kenya's independence."[33]

29. Supra (No. 17) Moy HA. Kenya's Community-Based Paralegals: A Tradition of Grassroots Legal Activism. In: Maru V, Gauri V, eds. Community Paralegals and the Pursuit of Justice. Cambridge University Press; 2018:165-209.
30. Ibid.
31. Supra (No. 18) – Mbogoh A (2021) "Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016" Egerton Law Journal Vol. 1 pp. 161 – 179
32. Ibid.
33. Supra (No. 18) – Mbogoh A (2021) "Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016" Egerton Law Journal Vol. 1 pp. 161 – 179

The founders noted that a key challenge is continuing to keep the door open to the street and maintain the practice that anyone can walk in and seek legal aid for free. This allows for aid to be provided to a wide range of cases as has been the case in the past where large numbers of cases have been about land, traffic offences, family cases affecting women and others. In its history, KITUO has also faced internal struggles as it sought to make the organization more formal. In the late 1970's, USAID offered funding but this would come with restrictions that effectively meant that KITUO had to toe the line and American lawyers would be brought in to demonstrate how legal aid should be carried out – there was external pressure from the University of Nairobi and LSK to accept this funding as it would allow growth. However, KITUO declined the funding to remain focused on the poor and indigent populations. These battles with donors served to sharpen the commitment of the founders. In other instances, lawyers working with KITUO to provide free legal aid were threatened with disbarment for the provision of this service and for paying court fees to file cases that indigents could not afford. Most notably, KITUO offices were the target of a bombing based on the cases they had filed.

Moy undertook a study across six of the then eight provinces to determine factors that influenced effectiveness of paralegals and legal aid in the field. A large variance in the types of cases handled was found and it was clear those skills beyond basic legal knowledge such as mediation, mobilization, advocacy, engagement with authorities and management of emotionally tense situations was needed.[34] Other key factors from this study are summarised in the table below.

Table V: Key Factors that Influence Effectiveness of Paralegals and Legal Aid Services

Factor	Details
Relationships with Local Authorities	• Collaborative relationships yielded better results particularly when integrated into formal and informal dispute resolution. Create linkages between partners in administration, especially when new staffs come in. This applies to the police, Assistant County Commissioners, Deputy County Commissioners, and chiefs. • Collaborate with courts, participate in legal service weeks, and establish court *pro bono* committees under the Judiciary's pro bono schemes. • The use of *Nyumba Kumi*, community policing, and village elders contribute to maintaining order and resolving conflicts.
Formal Recognition	• This is through the Legal Aid Act. Financing capacity is lacking but opportunities exist as the law is adopted to accelerate the establishment of paralegals. • The operationalisation of the Legal Aid Fund, which is yet to begin, is viewed as the anchor point through which indigent Kenyans will access justice at no cost.

34. Supra (No. 17) Moy HA. Kenya's Community-Based Paralegals: A Tradition of Grassroots Legal Activism. In: Maru V, Gauri V, eds. Community Paralegals and the Pursuit of Justice. Cambridge University Press; 2018:165-209.

Support Structures	• There should be a strengthened standard operating policy on client data handling, support in escalation mechanisms and communication procedures. These are required from parent NGOs to handle logistics, training and cater for cost of living. Those who are supported perform best in their work as paralegals.
Training and Logistical Support	• Continuous support through training, oversight, expert referrals should be maintained. • Training reinforces the positive reputation of paralegals and their access to institutions like courts and police stations. • Emphasis should also be laid on specialized training. This applies to evidence gathering, children's rights and SGBV.
Cultural Factors	○ Power dynamics such as gender and going against those in positions of authority need to be navigated. Ethnicity of the paralegal also affects citizens who may consider that they will not receive help if the paralegal is of another ethnicity.

While these factors are reflected in the literature, it is important to contrast these with the findings of the fieldwork as reflected in the evaluation section. Legal aid work remains largely centred on the community and it is here that KITUO has excelled and has a tradition of social consciousness and working to improve the lot of indigent peoples. These are the key questions that need to be tackled by KITUO in its programming moving forward. How can they operate within these constraints strategically and which partners can be engaged to enhance this? Sections on the evaluation will look at the response of KITUO to these issues over the last few years and how they can continue to meet these challenges.

CHAPTER THREE

FINDINGS AND ANALYSIS

3.1 Legal Empowerment and Access to Justice for the Poor and Marginalised in Kenya

As the initial point of reference in the community, paralegals are in closer proximity to communities than formal justice mechanisms and they understand local contexts better than mobile courts/formal justice system. Alternative dispute resolution and community justice centres are the predominant method of solving disputes in most rural communities in Kenya, making paralegals the crucial link that enables members of the public to access justice. In Turkana County, for instance, the paralegals in the county often go out of their way to assist victims of child marriage and other forms of gender discrimination to access justice. Resolution of disputes around land and grazing rights lead to reduced incidences of inter-communal violence. Cases of defilement and child marriage are prevalent but KITUO's legal empowerment programmes through the paralegals have helped to raise awareness about legal rights and contributed to deterrence of the same.

The paralegals work in the villages in reconciliation matters as well as to offer legal assistance. Most of the cases revolve around land matters and thus most of the paralegals' work span arbitration and succession matters. These are undertaken through alternative justice systems or escalated through the formal court processes. They assist the locals with filing of cases as well. The paralegals are also a crucial link in the mediation of family matters. They provide counselling services, seek child custody and protection services, and take an active role in forestalling early marriages and escalation of child abuse matters to the formal court processes. The paralegals also facilitate community awareness programmes on legal matters pertaining to the family. They train the local administration on legal matters and equip them with the skills to resolve conflicts at the grassroots level. The paralegals also deliver judicial services to the communities they serve at a cost that is way lower than the conventional justice system. For instance, land adjudication costs around Kshs. 300,000 in the formal justice system. The paralegal officers provide these services at a way lower cost.

The establishment of community justice systems in the counties by KITUO has had a positive impact on the local communities by increasing access to justice and empowering individuals to understand and assert their legal rights. It has also contributed to the promotion of the rule of law and human rights in the counties and continues to be an important component of the local legal system. Cases at community justice centres are well documented by the local administration with the assistance of paralegals. Paralegals based at community justice centres embedded with local administration help chiefs to manage disputes efficiently and clear case backlog. The justice centres work with the area chiefs and law enforcement officers to adjudicate cases at the community levels. The police, for instance, often refer disputes to community justice centres staffed by paralegals, a sign of the community's confidence with the paralegals in the local communities. This was the situation in Garissa, Kisumu, Kitui, Mombasa, Nairobi, Nakuru and Turkana Counties.

In Garissa County, paralegals work closely with refugees and the host communities to conduct legal awareness campaigns, offer support with the documentation of the refugees, provide information and advice, facilitate ADR, assists in legal referrals in Sexual Gender Based Violence (SGBV) matters, and referring cases to appropriate authorities without necessarily involving police in some matters. They also engage in advocacy efforts to promote legal education and reforms and improve access to justice for vulnerable populations. As a result of these interventions, the community has nurtured and cultivated a culture of awareness, knowledge, and the courage to seek redress in court for any violations that may occur against them. There is increase in procedural knowledge and basic understanding of the law among the communities. Notably, in *Kituo Cha Sheria & 8 others v Attorney General [2013] eKLR*, KITUO successfully petitioned the courts in quashing an order for the closure of Dadaab Refugee Camp. This was after the findings of the court that the order threatened the rights and fundamental freedoms of refugees and violated the State's responsibility towards persons in vulnerable situations. As a result of the good work of paralegals in the county, they (the paralegal officers) have been incorporated into the collaboration matrix in the communities in dispute resolution. They are frequently consulted by the local authorities on pertinent matters of the law within their jurisdictions.

The KIIs and FGDs conducted across the counties reveal a positive outlook by beneficiaries on the impact of legal empowerment. Here are a few samples:

Attempted dispossession of land by in-laws:

My land disputes started in 2021, when I noticed suspicious dealing on land bequeathed to me by my father-in-law. My brother-in-law colluded with the chief to have me arrested and detained due to the land now in dispute. I called Kituo cha Sheria, who managed to have me released. This happened for free. The matter is still awaiting resolution by the Lands Office. The brother-in-law was stopped from intimidating me and now I can plant my crops in the farm. I urge people to turn up to be assisted at Kituo cha Sheria for their legal matters.

Anonymous, Kitui County

Encroachment of the land by neighbours:

It started in 2018 on an inherited land from the late father-in-law. The land was up for sub-division and I was given land that was earmarked for grabbing by my neighbours. It reached the planting season where my crops were uprooted. We reported the matter to the chief, who wanted the matter settled at home. In April 2019, development work started on the land, and the neighbours brought it down. Subsequently, a neighbour referred me to Kituo cha Sheria in July 2019. The parties were summoned. Search was requested, but the other party was not willing to produce, neither could he provide other documents. Surveyors settled the matter and the land reverted to me in July 2020.

Anonymous, Kitui County

Mediation of family dispute over non-payment of school fees:

My husband got involved in an extramarital affair, got violent towards me, and began neglecting his duties at home, including non-payment of school fees. I then heard about Kituo cha Sheria in June 2021 when they were announcing about their outreach programmes in Kalulu Market. I then approached them there. I was then directed to the office in Kitui town, where I was assisted free of charge. A letter was written to my husband, summoning him to the office. We attended a counselling session, where our family matters were successfully mediated upon. Nowadays, he provides for the family, desisted from acts of domestic violence towards me. I urge people not to suffer on matters, whether domestic or legal, when they can get viable solutions to their problems in Kituo cha Sheria.

Anonymous, Kitui County

Public Interest Litigation – Umusalame Community Land: Garissa County

I have been in the corridors of justice since 2003 since the government evicted us from the community land in Umusalame. I have written letters to the authorities, been arrested, and detained several times in the pursuit of this cause. KHRC recommended our case to Kituo. The petition went on for nine years, and we managed to have all our 19 prayers granted. In as much as we have won this case, greater challenges remain. Wealthy individuals are grabbing acres of land. We are worried that this will impact our future and that of our children. We need Kituo to help us protect our community land.

Anonymous, Garissa County

Public Interest Litigation on climate change – Baringo County

Baringo PIL was the first of its kind in the continent. There were rising water levels within the Lakes in the Rift Valley region which led to flooding. Lake Baringo began to flood the nearby community land and homes. The rising water levels were due to the changing climate according to experts. According to Climate Change Act, the government has a role to mitigate climate change effects. We sent our teams to Baringo to assess the situation. Last year we presented the case to court. Many organisations applied to be enjoined in the case, KHRC, LSK amongst others have sought to be joined in the case. The case will be heard by a three-judge bench.

Kituo Cha Sheria

Evaluating the impact of these programmes is essential in determining their effectiveness and identifying areas that need improvement. Here are some of the ways legal empowerment programmes have impacted access to justice for the poor and marginalized in Kenya:

Table VI: Impacts of Legal Empowerment Programmes on Access to Justice

Impacts	Details
Raising Awareness of Legal Rights and Procedures Among the Poor and Marginalised Communities	Legal empowerment programmes have contributed to improving the understanding of legal rights and procedures in Kenya.[4] These initiatives have given people the confidence to pursue legal action to defend their rights through legal education and awareness-raising efforts.[5] These have been undertaken through radio, M-Haki platform, and digital media.[6]
Policy Advocacy and Legal Reform.	Legal empowerment programs engage in policy advocacy and law reform efforts to address systemic barriers to justice. They work with stakeholders, including government institutions and civil society organizations, to promote legal reforms that enhance access to justice and protect the rights of marginalized groups.
Improved Access to Legal Aid Services for Kenya's Poor and Marginalised	Legal empowerment programmes have contributed to this improvement. Legal aid clinics have been made possible by these programmes, and now they can receive free legal services from them. In cases of land disputes, domestic abuse, child custody, and other legal issues, the legal aid clinics have played a crucial role in assisting individuals and communities in gaining access to justice. To resolve legal issues, the employment of alternative dispute resolution procedures, such as mediation and arbitration, has been encouraged by legal empowerment programmes. These procedures are less expensive and consume less time than going to court and have proven effective in settling family, real estate, and land conflicts.[7]

Increasing Adherence to the Rule of Law	In Kenya, legal empowerment programmes have been crucial in advancing compliance with the rule of law. These initiatives have equipped people to demand responsibility from the government and other institutions by raising awareness of legal rights and procedures. This has aided in promoting effective government and lowering corruption.
Legal Empowerment Programmes have also Pushed for Legislation to Improve the Poor and Marginalized Groups' Access to Justice.	For instance, several initiatives have pushed for the adoption of regulations that safeguard the rights of marginalized groups like women, children, the youth, and people with disabilities
Strengthened Community-Based Dispute Resolution Mechanisms	Legal empowerment programs recognise and support traditional and community-based dispute resolution mechanisms. They work towards strengthening these mechanisms by providing training on fair and just practices, ensuring that community members have access to informal justice systems that are transparent, accountable, and respectful of human rights. This approach helps to resolve conflicts at the community level and reduces the burden on formal courts. This is consistently applied in Turkana County, where there is a unanimous acceptance of its existence.

3.2 The Justice System and Access to Justice for the Poor and Marginalised in Kenya

The justice system in Kenya is based on a common law system inherited from the British colonial era. The system is composed of a hierarchy of courts, ranging from lower magistrate courts to the Supreme Court, with each court having jurisdiction over different types of cases. The lower courts, such as the magistrates' courts, handle most cases, including criminal and civil cases. Above the magistrates' courts are the High Courts, which handle more complex cases, such as murder and appeals from magistrates' courts and tribunals. , The Court of Appeal is third court and hears appeals from the High Court, while the Supreme Court is the highest court in Kenya, hearing appeals from the Court of Appeal and providing advisory opinions on matters of national importance. It also has original jurisdiction on petitions relating to presidential elections.

The Judiciary in Kenya is independent of the Executive and Legislative branches of government. The Chief Justice is the head of the judiciary, and is responsible for the administration and management of the courts. Judicial officers, including judges and magistrates, are appointed by the Judicial Service Commission (JSC), a body established by the Constitution of Kenya, 2010. However, the justice system in Kenya faces several challenges, including delays in the resolution of cases, corruption, and limited access to justice, particularly for the poor and marginalised. These challenges have led to calls for reforms in the justice sector, including the establishment of alternative dispute resolution mechanisms, strengthening of the capacity of the judiciary, and promotion of legal empowerment programmes to increase access to justice for all.

The context of access to justice for the poor and marginalised in Kenya is shaped by several factors, including the country's history, social and economic inequalities, and the structure of the justice system itself. Historically, Kenya was colonised by the British, and the legal system inherited from colonialism

was designed to serve the interests of the colonial powers and the elites. After independence in 1963, the country's leaders sought to develop a legal system that would promote justice and equality for all Kenyans, but the legacy of colonialism continued to shape the justice system, leading to unequal access to justice for the poor and marginalised. Social and economic inequalities in Kenya have also contributed to limited access to justice. The country has one of the highest levels of income inequality in the world, with a significant proportion of the population living in poverty. Poverty and limited access to education can make it difficult for individuals to understand their legal rights or to afford legal representation, leading to limited access to justice.

The structure of the justice system in Kenya can also be a barrier to access to justice. The system is often slow and bureaucratic, with significant backlog of cases. This can be particularly challenging for the poor and marginalised individuals who may not have the resources to wait for long periods of time for their cases to be resolved. In recent years, the Kenyan government and CSOs have made efforts to improve access to justice for the poor and marginalised. Legal empowerment programmes, including legal aid services and community paralegal programmes, have been established to provide legal assistance and education to those who need it most. However, there is still a long way to go to ensure that all Kenyans have equal access to justice and can exercise their legal rights regardless of their socio-economic status.

Due to the complexities of the Criminal Justice System occasioned by the fact that it comprises many actors with diverse role, as well as lack of knowledge among CJS actors and the general public, access to justice among the poor and marginalised continues to be elusive. This is evidenced by congested prisons in the country, low public trust in the CJS, increased case backlogs and delays in the administration of justice. Subsequently, there has been increased attention and call for the use of Alternative Justice Systems mechanisms (AJS) to improve access to justice.[35]

AJS mechanisms in the delivery of justice involve all measures taken by the CJS actors to ensure access to justice without following the formal justice system. They include the use of non-custodial measures such as diversion, plea bargaining, restitution, community service orders, and alternative dispute resolution. AJS are in line with the Social Transformation through Access to Justice (STAJ) vision established by Chief Justice Martha Koome. According to the Chief Justice, "The STAJ Vision for the Judiciary puts people at the center of our service delivery. We are aiming at developing a people-centered justice system that is focused on people's needs thus reinforcing the idea of justice as a public good."[36] Unlike the complex formal justice systems, there is evidence that AJS systems can help improve access to justice in a people centered, cost-effective, efficient, and sustainable manner.

3.3 Impacts of Lack of Access to Justice for the Poor and Marginalised in Kenya

The lack of access to justice for the poor and marginalised in Kenya has significant social, economic, and political impacts. Here are some of the key impacts:

35. Charity Kagwi-Ndungu UNODC Enhances Judiciary's Innovative Vision on Social Transformation through Access to Justice https://www.unodc.org/easternafrica/en/Stories/unodc-enhances-judiciarys-innovative-vision-on-social-transformation-through-access-to-justice.html#:~:text=%E2%80%9CThe%20STAJ%20Vision%20for%20the,Chief%20Justice%20of%20Kenya%2C%20Hon. (last accessed April, 2024)
36. Ibid.

Table VII: Key Impacts of Lack of Access to Justice for the Poor and Marginalised in Kenya

Impacts	Details
Endemic Violation of Human Rights	The poor and marginalised in Kenya are often unable to access the justice system to protect their human rights. This can result in violations of rights such as the right to a fair trial, freedom from discrimination, and the right to life and security of person.
Entrenchment of Poverty	The poor and marginalised in Kenya are often unable to access legal services or enforce their legal rights, leading to a cycle of poverty. For example, without access to legal services, poor individuals may be unable to obtain title to land or obtain compensation for labour, making it difficult for them to improve their economic circumstances.
Endless Impunity	The lack of access to justice can create a culture of impunity, where those who commit crimes or violate rights are able to do so without consequence. This can erode public trust in the justice system and the rule of law.
Perpetual Marginalisation	Limited access to justice can further marginalize already marginalised populations, such as women, persons with disabilities, and ethnic and religious minorities. This can perpetuate social inequalities and exclusion.
Propagation of Conflict	The lack of access to justice can contribute to conflicts between individuals and communities, as disputes are often left unresolved. This can lead to increased tensions and even violence.

Efforts to increase access to justice for the poor and marginalised in Kenya are essential to addressing these impacts and promoting human rights, social inclusion, and economic development.

3.2 Challenges to Legal Empowerment on Access to Justice

Programmes face multiple challenges during implementation. Some of the challenges may be due to internal institutional dynamics while others may be external occasioned by the programme's interaction with external stakeholders. While internal institutional challenges may hamper adequate implementation of a programme intervention, the external challenges may impede the programme's outputs from progressing to impacts. This research identified the following challenges to the legal empowerment on access to justice by the poor and marginalised in Kenya:

3.2.1 External Challenges to Legal Empowerment on Access to Justice

Table VIII: External Challenges to Legal Empowerment of Access to Justice

Challenges	Details
Delays in the Resolution of Cases	○ The backlog of cases in the courts is a major challenge in Kenya's justice system. Some cases take years to be resolved, leading to frustration among litigants and undermining public confidence in the justice system.
Limited Access to Justice	○ Many Kenyans, particularly the poor and marginalized, have limited access to justice due to factors such as poverty, lack of legal knowledge, and limited availability of legal aid services. This has resulted in a justice system that is inaccessible to many.
Corruption	○ Corruption remains a major challenge in Kenya's justice system. This includes judicial corruption, where some judicial officers have been accused of taking bribes to influence the outcome of cases, as well as administrative corruption, where court officials demand bribes to expedite cases.
Insufficient Resources	○ The justice system in Kenya is under-resourced, with courts lacking the necessary infrastructure, technology, and personnel to handle the volume of cases effectively. ○ This, unfortunately, has led to competition amongst NGOs offering paralegal support instead of collaboration to ensure access to justice for the indigent.
Limited Use of Alternative Dispute Resolution Mechanisms	○ Alternative dispute resolution mechanisms such as mediation and arbitration are not widely used in Kenya, limiting the options available to litigants, and contributing to the backlog of cases in the courts
Limited Public Trust and Confidence	○ Public trust and confidence in the justice system in Kenya is low, with many people viewing it as corrupt, slow, and ineffective

Insecurity and Harassment	○ Paralegals often face threats to their lives for championing rights of victims. In expansive counties such those in Arid and Semi-Arid Land (ASAL) like Turkana and Garissa paralegals cannot access every sub county/ward owing to insecurity, size of the county and limited resources. ○ In the event of defilement and other violation of human rights, the perpetrators resort to intimidation and coercion of victims to recant their accounts, hence information gets distorted and evidence is watered down. Some victims are given money to stifle justice efforts, and are threatened with denial of support should the cases be reported. This is most common in incidents of accidents. In some cases, the complainants have been assaulted or arrested because the perpetrators are well-connected.
Administrative Bureaucracies and Challenges	○ Land matters are still complex and riddled with administrative bureaucracies that take long to adjudicate and, in some cases, leading to frustrations and suicide. Land title deeds are expensive and difficult to acquire. This forces the parties involved to sell a part of the land to acquire a title deed.
Cultural Beliefs	○ There is also limited knowledge of the conventional law among the members of the public on land matters. There are cases where women are still denied land in the context that their share is at their marital homes. They are also chased away by their in-laws once they are widowed. The cultural conflicts with contemporary law highlight a need for continuous legal awareness and outreach programmes by the paralegals.
Changing Dynamics in Criminal Activities.	The present phenomenon of children committing crimes of arson in schools and unemployed youth getting involved in criminal activities stretches the already limited KITUO resources. ○ The use and abuse of drugs and substances exacerbates the situation in the communities. This highlights a need for education among children and young adults to deter them from criminal activities.

3.2.2 Internal Challenges to Legal Empowerment of Access to Justice

Table IX: Internal Challenges to Legal Empowerment of Access to Justice

Challenges	Details
Resource Mobilisation Constraints for KITUO	○ **<u>Resource Mobilisation Strategy:</u>** It is our view that there is no strategic approach to resource mobilisation. KITUO's approach to resource mobilisation is largely driven by opportunities - most funds are raised through reaction or response to opportunistic calls. ○ Legal empowerment programs often face challenges in achieving sustainability beyond the initial funding period. Securing long-term financial commitments or developing income-generating activities is essential for sustaining program operations. Without sustained funding, the programs' impact will be limited, and the gains made by marginalized communities shall inevitably erode over time.
	Organisational Capacity, Staffing, and Resourcing: The evaluation notes that KITUO lacks optimal capacity and staffing in numbers to pay attention to resource mobilisation, in addition to implementing programmes. As a result, staff is designated fundraising roles such as proposal development as secondary roles. This led to low win rates for proposals. For instance, last year 2022, 15 proposals were submitted and only 3 were successful. The evaluation also noted that insufficient infrastructure, particularly in marginalized communities, serves to impede the implementation of legal empowerment programs. Less physical space for legal clinics (group cases resolved under trees), limited access to relevant technology (data handling and storage of sensitive client information) and communication tools, and inadequate transportation can hinder the programs' outreach and engagement efforts. Investing in infrastructure and addressing logistical barriers is crucial for effective resource mobilization.
	○ **Business Development Infrastructure:** The evaluation notes that KITUO has no business development infrastructure that would identify opportunities, facilitate a Go *No Go* decision, constitute a bid team, and convert the opportunity into a quality proposal for sign off and submission.
Limited Funding and Resource Constraints	○ Paralegals struggle with transport to access remote villages and often have to rely on their own resources to intervene; ○ Limited or no funding for legal aid yet we have a legal framework for legal aid. The framework is not adequate without sufficient funding.
Staffing Constraints	○ Due to minimal funding, KITUO does not have enough staff at the program level to support programming. In the legal empowerment program and to facilitate access to justice, one of the recommendations proposed was to incorporate an in-house advocate to advise paralegals and improving client case management through training. There is also a need to have volunteer data officers as well as an assistant coordinator for the justice centres.

Client and Data Handling Concerns	Some justice centers display client details at their justice centers. This could end up in the wrong hands and can end up compromising their security. There must always be consistent training on upholding confidentiality and anonymization of the information. o KITUO also needs to undertake scrutiny of its advocates' network to mitigate against incidents of malpractice and minimize collusion of the advocates and turning against their clients.

3.3 Sustainability Initiatives Undertaken by Kituo cha Sheria

Kituo cha Sheria's sustainability initiatives have gone a long way to make it the leading legal aid provider in Kenya. The organization has a long track record of success in providing legal aid to the poor and marginalized, and it is well-positioned to continue its work for many years to come. This is enhanced by the solid reputation left behind by the work undertaken by county social justice networks across the country.

In the field findings in all the counties, all the respondents unanimously described Kituo cha Sheria as the advocate for social justice and the rights of the poor and marginalized. The work undertaken has helped to create a more equitable society where everyone has access to justice. This serves to solidify the reputation of the organization and it has earned the trust of the people they have served through referrals.

The organization also invests in its staff and volunteers by providing them with training opportunities, undertaking continuous research to identify and bridge gaps in access to justice, making it more sustainable in the long term. Most importantly, as seen in the social justice centres, Kituo has been using technology to enhance communication between the head office and the justice centres, automate tasks and reduce costs.

Some initiatives shared stem from FIDA-Uganda, whose initiatives in sustainability have been important in their long-term plans. Their paralegal training program, legal aid clinic, public awareness campaigns, and advocacy work have all helped to ensure that women have access to the legal services they need to protect their rights. Their initiatives, just like the Kituo initiatives, have raised awareness of the law on domestic violence and led to more women reporting abuse in Uganda. Above all, FIDA-Uganda's advocacy work led to the passage of a law that prohibits gender discrimination in employment.

Select Cases that have shown Jurisprudential Progress in Kenya

1. ***Petition 574 of 2012: Kituo Cha Sheria v Independent Electoral and Boundaries Commission & another [2013] eKLR***

On January 21, 2013, the High Court of Kenya, sitting at the Nairobi Law Courts and presided over by Judge David Majanja, issued a judgment regarding the voting rights of prisoners.

(a) Declared that prisoners are, subject to Article 83 (1) of the Constitution entitled to be registered as voters and have the right to vote under Article 38(3) (a) and (b) of the Constitution.[37]

(b)Declared that the Independent Electoral and Boundaries Commission has the obligation to observe, respect, protect, promote, and fulfill the rights and fundamental freedoms of prisoners and more particularly to facilitate their right to register to vote and to vote.[38]

(c) Directed that the Independent Electoral and Boundaries Commission shall put in place measures to ensure that prisoners who are registered to vote are able to vote in next General

37. Kituo Cha Sheria v Independent Electoral and Boundaries Commission & another [2013] eKLR
38. Ibid.

Election.[39]

(d) Directed that the Independent Electoral and Boundaries Commission shall put in place and implement measures to facilitate the right of prisoners to register to vote and vote in future elections and referenda.[40]

2. *Kenya National Human Rights Commission and Kituo Cha Sheria vs AG & 3 Others;*

On February 9, 2017, the Constitutional and Human Rights Division of the High Court in Milimani, Nairobi, issued a significant judgment concerning the closure of the Dadaab Refugee Camp and disbanding of the Department of Refugee Affairs (DRA), as per Petition 227/2016, Kenya National Human Rights Commission and Kituo Cha Sheria -vs- the Attorney General and 3three others.[41]

Justice John M. Mativo's held that the Kenyan government was prohibited from shutting down the Dadaab refugee camp.[42] He emphasized that the repatriation of refugees was in contravention of Articles 2(5) and 2(6) of the Kenyan Constitution and violated Kenya's international obligations.[43] Additionally, the judgment declared the decision to disband the Department of Refugee Affairs as beyond the legal authority of the government.[44]

3. *Judgment of the evicted Kibos Nubian Community*

The Honourable Court in Kisumu ruled that any forceful eviction and or demolition without relocation was illegal and violated the rights of the petitioners to property and that the petitioners are entitled to the property or compensation before relocation.[45]

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39. Ibid.
40. Ibid.
41. Ibid.
42. Ibid.
43. Ibid.
44. Ibid.
45. See generally https://kituochasheria.or.ke/wp-content/uploads/2022/09/ELECTION-PETITION-CASE-NO.-E004-OF-2021-JUDGMENT-9-final.pdf (last accessed April 2024)

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

KITUO at 50 years has made considerable contributions to the legal empowerment on access to justice for the poor and marginalised in Kenya. Based on the KIIs and FGDs conducted with the paralegals and beneficiaries it is fair to conclude that people know when they have faced an injustice and they feel empowered to confront an injustice. KITUO's grassroot presence and work has cultivated and nurtured a community justice system anchored on communities who are in their own rights justice defenders and can respond to justice issues. Through working paralegal centres in 24 counties, KITUO avails legal information to the communities through the community paralegals and community justice system. KITUO's work has contributed towards jurisprudence through the PIL cases to hold the government accountable. KITUO was the first organisation to use PIL and other organisations and individuals have tapped into this strategic litigation to pursue justice.

The interviews held in the stated counties underscored the importance of consultations, community legal empowerment programs, alternative justice systems, and improved dissemination of information. The recommendations put forward include the involvement of paralegals, strengthening data protection mechanisms, awareness campaigns, collaboration among stakeholders, and the allocation of adequate resources. By addressing these challenges and implementing the suggested measures, Kenya can enhance access to justice, enabling individuals and communities to assert their rights and seek effective remedies.

In-depth discussions held with various actors within the access to justice sector indicated that indeed the legal empowerment of the poor and marginalised to access to justice had registered significant milestones in a challenging environment. Footprints of KITUO alongside other agencies in the sector could be traced in the progress made thus far. The evaluation team is aware that change is not linear and it takes time, however the findings of the evaluation indicate that things are progressing well as far as access to justice by the poor and marginalised is concerned. The prospects of the sustainability of legal empowerment programming are equally promising, with the programme being anchored on community justice system and paralegalism. Aspects of remarkable knowledge transfers such as training of community membership on self-representation, healthy engagement, and collaboration with law enforcement officers in Court User Committees (CUCs).

Key lessons learned here include:

- Legal aid does not operate in a vacuum; the political and economic context is important and can influence success. However, their operation should be conducted with a significant level of independence, as overregulation of the sector could act as a barrier on efforts to enhance access to justice.
- The involvement of students and volunteers is key to engaging in legal aid and maintain the community spirit that characterized the early years.
- It is necessary to recognize and engage with a broader set of skills than merely legal aid including advocacy, lobbying, use of the media and others to achieve success.
- The methodology of delivery and content of legal education is important. These must be done in a manner that is suitable for the audience such as adult learning and contextually relevant to the challenges that are being faced by the recipient.

4.2 Recommendations

The following recommendations would help advance the cause of legal empowerment programme on access to justice for the poor and marginalised in Kenya:

4.2.1 Programme Level Recommendations

i. **Trainings:** Community elders require more training on basic law and fair trial processes to effectively handle disputes. They could equally be incorporated into paralegal training programmes. Paralegals require refresher trainings to update them on changes to laws, new bills before the legislature and other types of law reform. These trainings are critical to equip the paralegals and community elders with essential skills as well as to deepen understanding of the law and its operability. Beneficiaries could also help in escalating referral services to the paralegals;

ii. **Streamline Curriculum for Paralegals Training** so that there is uniformity in drafting court documents; standardization in the application of ADR and equip them with skills to enable them carry out their duties with uniformity. While paralegals have received two training sessions, there is a need for additional courses due to the evolving nature of people's problems. The NGOs concerned with legal aid must devise a mechanism of working together to realize the goal of access to justice for the poor and the marginalized in Kenya.

iii. **Community sensitisation programmes:** KITUO ought to carry out a robust community sensitisation and training on mediation and laws. This can also be done through availing simplified legal documents to enhance awareness. Radio station sessions to sensitise the community on the law. At the counties level, strengthen the role of Court Users' Committees (CUCs) as a chain link to solve conflicts and explore the way the public utilizes the small claims court. There should be dialogue between the youth and the police to mitigate against incidents of police abuse of power. Most important, there needs to be diversion of offenders willing to reform from the conventional justice system.

iv. **Documentation and Digitisation of Records:** Community justice centre records need to be digitised in a cost-efficient manner like scanning of records and uploading to a central database managed by KITUO in partnership with the local administration. Cost-effective cloud-based solutions and scanning/uploading to google drive using smartphones would help in case management. For instance, there is a need to establish a justice coordination centre in Garissa town to deal with the matters of community land. This shall aid in e-filing, escaping the need to pass through the Garissa County Security Committee and the Garissa District Criminal Investigation Officer (DCIO) to file a complaint.

v. **Partnerships, Collaboration and Linkages:** KITUO should link paralegals/community justice centres to CUCs for better collaboration and synergy with other stakeholders and partners such as lawyers and law enforcement officers to improve access to justice. The centres should also have resident *pro bono* lawyers that are consistently available to support with the emerging cases.

vi. **Community Justice Centres in Prisons:** There is a need to open more justice centres in prisons to offer legal aid to cases of inmates charged with petty offences and decongest prisons. The impact of current justice centres have yet to be fully felt as far as decongestion of prisons is concerned.

vii. **Psychosocial Support and Security:** Paralegals should be afforded protection and emergency care like other human rights defenders where there are threats to their lives. They should also be

supported psychosocially because of the traumatic cases they handle from time to time.

viii. **Exchange Programmes:** Paralegals from different counties to visit and collaborate with each other regularly to improve synergy and share experiences and best practices.

ix. **Advocacy on Legal Aid Act and the Children's Act:** KITUO and like-minded organisations carried out advocacy initiatives to ensure the operationalisation of the Legal Aid Act, 2016 which recognises the paralegals as an important part of the justice system. The paralegals are also an important link in effecting diversion of children from the Criminal Justice System as per the Children's Act of 2022.

x. **Continuous and Consistent Outreach Service by The Community Justice Centres:** A robust and continuous outreach by the justice centres in the communities will ensure consistent visibility and accessibility of paralegal services by the communities. Consider use of digital, social, print media and radio talk shows to enhance accessibility and outreach programmes. Beneficiaries could also help in escalating referral services to the paralegals.

xi. **Institutional Strengthening of Community Justice Centres:** Train the justice centres and paralegals on basic project management, resource mobilisation and Monitoring and Evaluation (M&E), financial and administration (to advice on administration, financial management, legal compliance with statutory requirements and audits).

xii. **Robust Community Self-Representation Trainings:** This is essential to equip the paralegals with skills that will aid them to file public interest litigations, should need be; and could help with the ability of sieving cases, diverting them from the formal justice systems.

4.2.2 Institutional Level Recommendations

i. **Partnerships:** KITUO should mitigate the staffing challenges by developing partnerships with law schools in various local universities. This should serve to enhance the paralegal outreach efforts without a huge outlay of resources. KITUO need to revive the networks it had with the Universities to identify *Probono* lawyers to support its work.

ii. **Revamped Governance Structure:** Need for clarity of roles between the Board of Trustees and Board of Directors to ensure no duplicity of roles. The Board should also consider inviting personalities from diverse professional backgrounds. Review the board charter and use it to sensitise the board on governance and policies. There is also a need to develop election rules that guide the board membership elections.

iii. **Restructure the Secretariat:** Currently KITUO has an Executive Director assisted by Programme Managers. The Executive Director's role includes programme work, fundraising, controls, external engagement, and board secretary. It is the opinion of the evaluators that these are very overwhelming roles that it is necessary to recruit a deputy Executive Director who can free off some roles from the Executive Director to augment the efficiency of the office.

iv. **Strengthen Reporting from the Justice Centres:** The legal empowerment program needs elaborate reporting to enable KITUO to assess the performance of their paralegals and obtain real-time information on their clients' cases. The Monitoring and Evaluation Department should consider having a tracker to enable flow of information from the justice centres. This would aid in identification of any bottlenecks at the first instance and solving them at the earliest opportunity.

v. **Relationship Development:** Building strong relationships with potential funders, donors, and partners is crucial. Identify key stakeholders, such as government agencies, philanthropic foundations, corporate entities, and community leaders who share the KITUO's vision and values. Develop a systematic approach to collaboration at work, including networking events, one-on-one meetings, and participation in relevant outreach programmes, conferences, or workshops.

vi. **Resource Mobilisation:** To ensure a robust resource mobilisation/business development infrastructure for KITUO, the evaluation recommends the following measures:

- **Donor Intelligence Mapping and Analysis of Trends:** There is shrinking of donor funds and increasingly stringent conditions for funding leading to fierce competition for funds. KITUO therefore needs to strategically position itself to diversify funding streams and opportunities. The diversification ought to explore the following funding streams:

  - **Social Entrepreneurship** is becoming innovative, revenue generating ventures that NGOs engage in to access unrestricted funding for their operations. It combines a market orientation with a social purpose, generating both financial and social revenues. In the development sector, the reality of dwindling grant funding informs the need for non-profit to be innovative and consider social entrepreneurship as a funding mechanism to enhance sustainability, and diversify income sources and become less dependent on external funding.

  - **Corporates and Private Sectors** are emerging as an opportunity for resource mobilization through philanthropy and Corporate Social Responsibility (CSR). There is a need to continuously map out corporate/private sectors, conduct due diligence and pitch for the funding.

- **Business Development Process:** KITUO need to develop a Business Development system that ensures a neat and clear proposal development workflow right from opportunity identification to post submission discussion/assessment. The system should have a lead writer to coordinate inputs from staff.

- **Contract a Business Development Expert:** Consider recruiting an expert or lead proposal writer to support the staff and to develop water-tight workplans. This function can also be outsourced to a consultant.

- **Donor Roundtables:** Organise periodic donor roundtables, campaigns, exhibitions and events to commemorate days such as Human Rights Day.[46] See here for more relevant United Nations (UN) international days.

KITUO's 50-year journey in legal empowerment has significantly contributed to enhancing access to justice for Kenya's poor and marginalized communities. The findings from key informant interviews and focus group discussions affirm that legal empowerment initiatives have fostered a strong community-based justice system, enabling individuals to recognize and address injustices. Through a

46. United Nations "Human Rights Day 10 December" https://www.un.org/en/observances/human-rights-day (last accessed April 2024)

network of paralegal centers across 24 counties, KITUO has provided vital legal education, strengthened grassroots legal mechanisms, and advanced public interest litigation to hold authorities accountable.

Despite the progress made, persistent barriers to justice necessitate continuous adaptation and strengthening of legal empowerment strategies. The study underscores the importance of sustained stakeholder collaboration, improved data protection mechanisms, community legal education, and resource allocation to enhance the impact of these initiatives. Moreover, the sustainability of legal empowerment programming remains promising, particularly with community-led justice systems and paralegal networks at its core.

Looking ahead, the ongoing commitment to legal empowerment must incorporate lessons from past experiences, leverage advocacy and technological advancements, and ensure inclusivity in legal aid services. By addressing structural challenges and embracing innovative approaches, Kenya can further consolidate gains in access to justice, empowering communities to uphold their rights and seek effective remedies.

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