

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

Policy Brief



Introduction

KITUO is the oldest, most experienced legal aid-providing and human rights non-governmental organization in Kenya, across the Eastern Africa region. It exists to empower the poor and marginalized and to enhance equity and access to justice for all. We respectfully submit this policy brief in contribution to the work of the African Commission for Human and People's Rights (ACHPR) to promote the African Charter for Human and People's Rights, with an emphasis on legal empowerment and access to justice.

Relevance

We are mindful that this is in line with Article 3 of the African Charter on Human and Peoples Rights on equality before the law and equal protection before the law; and Article 7 on the right to have one's cause heard of the African Charter on Human and Peoples Rights; and Resolution 41 of 1996 on the Right to Fair Trial and Legal Aid in Africa Bearing in mind the recently established legal aid fund to support litigants seeking services at the African

Court on Human and People's Rights (AfCHPR) that is soon to be launched in line with the Statute on the establishment of the Legal Aid Fund of Human Rights Organs of the African Union.

Noting that under this statute on the establishment of the Legal Aid Fund of Human Rights Organs of the African Union under Article 2 seeks to provide legal assistance to indigent applicants before Human Rights organs of the Union, and under Article 3 seeks to mobilize and receive resources to finance the Legal Aid scheme and to engage in activities and projects that will further the objectives of the statute.

KITUO has undertaken research on legal empowerment in the Kenyan context and this policy brief is based on those findings which can be used to understand challenges, best practices, and make recommendations on ACPHR policy on legal empowerment and access to justice



Findings

KITUO Cha SHERIA undertook research to critically assess the impact of legal empowerment programs in bringing systematic changes to the lived realities of beneficiaries in Kenya. This policy brief is informed by the findings of the legal empowerment research and sought to understand the history and challenges faced by indigent persons in legal empowerment with a focus on access to Justice.

It emerged that legal aid serves to enhance democratic space and promote the rights of the indigent peoples and therefore goes hand in hand with democratic space. Legal aid does not exist in a vacuum and the political and economic context is important and can influence access to justice. 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

Further, alternative dispute resolution methods or informal justice mechanisms are widely used in the Kenyan context, particularly among indigent populations, the urban poor and rural citizens who lack access and finances to secure formal legal aid. Kenya has become one of the few countries to formally recognise this in policy and seek to merge traditional and formal legal systems, noting that this is like the approach envisaged in the African Union Transitional Justice Policy,

The use of traditional justice systems relies heavily on community-based organisations and the work of civil society who have established a presence and trust among the citizens, but often these initiatives do not have state backing, are ad hoc in nature, limited by financial constraints and uncoordinated.

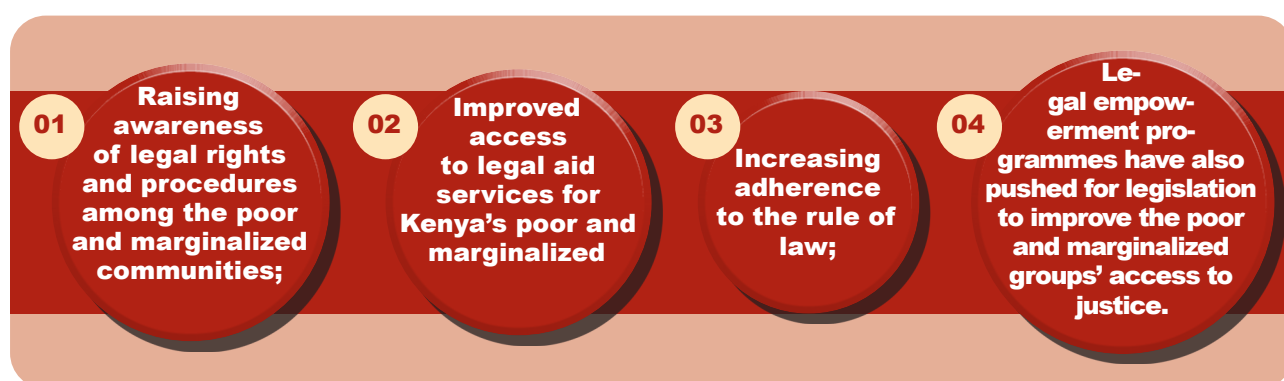
Community-based paralegals understand local contexts better than the formal courts system

and are the crucial link that enables the public to access justice. These paralegals often go out of their way to address specific challenges such as child marriage and land disputes that are unique to each context.

Paralegals, however, suffer from a lack of standardised training and financial capacity to carry out their work in the community and are often supported by donors or non-governmental agencies rather than the state, which in the case of Kenya has a legal obligation to provide legal aid, while noting that the African Charter on Human and Peoples Rights under Article 3 guarantees every individual equality before the law and that every individual will be entitled to equal protection before the law

We further found that the Kenyan Legal Aid Fund and associated policies suffer from a lack of outreach across the country and capacity which can be attributed in part to insufficient financial allocations and political will to provide legal empowerment. Legal defenders when provided by the state are often underpaid compared to the private sector, thus deterring lawyers from providing legal aid.

We found that the provision of legal empowerment programmes on access to justice resulted in:



Recommendations







Based upon these findings, we urge the African Commission for Human and People's Rights to consider the following when operationalizing its legal aid fund and undertaking its commitment to enable access to justice:



The African Commission for Human and People's Rights should seek to undertake a comprehensive multi-country study to establish a baseline of the current work being carried out by various community-based legal aid providers and the challenges they face in operationalization;



This should be supplemented by an understanding of the key issues they deal with and the support that the respective state provides and is seeking to provide through laws and policies. This will enable the AU Legal Aid Fund to respond more accurately to the diverse needs on the ground;

-  Seek to strengthen informal justice mechanisms or traditional approaches already in place at the community level. Capacity building both technical and financial can be provided to ensure compliance with local laws and respective AU and international conventions, particularly around gender issues and that outreach is scaled up to serve more citizens respectively;
-  Invest in greater awareness-building activities to enable citizens to not only understand their rights and duties, but further to be aware of avenues that they can use to defend these rights;
-  Encourage collaboration and cross-country learning on legal aid programs at the regional level, highlighting success stories and where possible providing financial and technical resources to support these programs;
-  In collaboration with local and regional partners, enhance the provision of *pro bono* legal support for indigent persons and the presence of lawyers available to specific groups such as those in prison or remand for petty offences, those charged with capital crimes and other categories where formal legal representation is required;
-  Paralegals should be accorded legal recognition through a standardized approach and provided funding avenues to enhance their effectiveness and where countries lack legal aid laws hasten the development and implementation of these laws;
-  Encourage collaboration between governments and civil society on legal empowerment and support for state-funded legal aid programs.