

FEATURE

Kituo Cha Sheria: Staying the Course in the Journey to Legal Empowerment

Clara Barasa and Anthony Kirima

Goal 16 of the Sustainable Development Goals (SDGs) seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective accountable and inclusive institutions at all levels. Access to justice can be attained only when rights-holders are aware of their rights and able to understand court proceedings and courts are within the reach of the ordinary citizen. Legal empowerment aims at filling the existing gaps by equipping people with knowledge, confidence and skills to enable them to realise their rights. In order to ensure access to justice, the capacity of citizens to press for justice has to be strengthened and the functioning of justice systems needs to be improved.



How can interventions in line with SDG 16 be sustained when they operate in an environment where funding such projects is not a priority?

The 2016 UNDP Global Study on Legal Aid Country Profiles showcased 49 countries. In sub-Saharan Africa, the focus was on Benin, Burkina Faso, Cabo Verde, Chad, the Democratic Republic of Congo (DRC), Ghana, Kenya, Mauritania, Mauritius, and South Africa (UNDP & UNODC 2016: 70). Save for Cabo Verde, Chad and the DRC, most of these countries have a specific law on legal aid. In the case of Kenya, it enacted the Legal Aid Act in 2016. The aim of the statute is to actualise access to justice for vulnerable groups in line with SDG 16, and its effect is that, for the first time in Kenya, the role of paralegals in access to justice has been recognised.

Globally, funding is increasingly being set aside for development projects at the expense of humanitarian projects. With the exception of Cabo Verde and Ghana, the countries in the study did not have a budgetary allocation for legal aid in their annual justice budgets, with legal aid being supported through donor funding and civil society organisations – in Chad, legal aid costs are covered solely by civil society organisations (UNDP & UNODC 2016: 96, 124 & 135).

In Kenya, its Legal Aid Act provides for a legal aid fund,

with money to be allocated by Parliament; however, more than three years later, much of the Act remains to be implemented. In the 2019/2020 financial year, the judiciary took drastic measures to meet a 50 per cent budget cut imposed by the treasury. Tribunals and mobile courts suspended hearings indefinitely, with adverse effects on those who have matters in court. It took the intervention of Kenya's bar association to have the judiciary's budget restored through the ruling made in *Law Society of Kenya v The Cabinet Secretary-National Treasury & another*.

This raises the question: How can interventions in line with SDG 16 be sustained when they operate in an environment where funding such projects is not a priority?

A champion of legal empowerment: Kituo Cha Sheria

Kituo Cha Sheria is a leading Kenyan legal aid organisation which for more than 47 years has provided pro bono legal aid and education to the poor and marginalised. It brings together a team of change-makers who engage with social challenges and seek to develop innovative solutions to them. Kituo Cha Sheria's work has had real impact and contributed significantly towards attaining goal 16 of the SDGs.

Kituo has been involved for many years in training paralegals in various regions of Kenya. Training paralegals is a direct means of legal empowerment that enables the poor and excluded to use the law, the legal system, and legal services to advance their rights and interests as citizens. Kituo has used its limited resources to create community and prison justice centres where paralegals are equipped with the skills to offer accessible and independent legal services to fellow citizens in prisons and in communities. At the community level, the paralegals provide legal first aid and mediate in basic matters; at the prison level, they use the knowledge they have acquired from Kituo to prepare for cases and appeals.



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Access to justice is a vital part of any society that aims to reduce poverty and strengthen democratic governance. It is also central to the journey Kituo has been taking, mindful as it is that, within the context of justice reform, there is a specific niche to be found in supporting justice and related systems so that they work for those who are poor and disadvantaged. Accordingly, Kituo seeks to empower the poor and disadvantaged to obtain remedies for injustice, to strengthen linkages between formal and informal systems, and to counter exclusionary biases inherent in these systems. Given that access to justice is a basic human right as well as an indispensable means to combat poverty and prevent and resolve conflicts, the organisation aims to stay the course and make access to justice for all a reality in Kenya.

A case study: Mr Wilson Kinyua

In 1998, Mr Wilson Kinyua, then 19 years old, had moved to the capital, Nairobi, from his home in Nyahururu, a rural town in central Kenya, to pursue his higher education. There, he enrolled at Strathmore College and studied for about three months. One day, while in the central business district, he was caught in cross-fire between police and armed robbers. In the chaos that ensued, he and others wound up in the hands of the police. Some of those with whom



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he was arrested were released after members of the public came to their defence, stating that they were well-known locals innocently going about their daily duties. Mr Kinyua, however, was new in town and had no one to vouch for him.

The then young man was taken to court and charged with robbery with violence, a capital offence that attracts the death penalty. Unable to afford legal representation, Mr Kinyua went through the legal process without any knowledge of the law and lacking the ability to defend himself properly. He was convicted of the charges he faced and sentenced to death, after which he was sent to Kamiti Maximum Security Prison to await the hangman.

Kamiti Maximum Prison is one of the locales where Kituo has established prison justice centres in its project entitled 'Promoting access to justice for the poor and marginalised'. Mr. Kinyua was trained as a prison paralegal in 2012 when Kituo conducted free paralegal training for inmates. The paralegals were equipped with knowledge concerning the criminal justice process, self-representation, and the way to address judicial officers correctly and articulate issues in court.

This proved to be a turning-point in Mr Kinyua's quest for justice, as he was inspired to initiate an appeal against his sentencing while also representing 11 other inmates. The appeal was lodged in the High Court of Kenya as Nairobi Petition No. 618 of 2010. After a lengthy process, Mr Kinyua finally got his date with freedom on 13 February 2019, when Justice Luka Kimaru released him and five of the 11 others he had personally represented in a constitutional petition.

In an interview with Kituo Cha Sheria, he expressed his gratitude for the paralegal training he received: 'I acknowledge the work of Kituo Cha Sheria, especially in their programme of training paralegals. It is something they started small but [which] has had a great impact [on] many people. The trainings on basic legal rights and on court processes equipped me well to represent myself in court and secure my freedom.'

Mr Kinyua affirmed that with knowledge comes better self-expression and communication: in using the knowledge they gain from Kituo's training, prison paralegals are better equipped to support their peers.

Upon completion of a three-week training course, paralegal officers are able to offer legal advice to fellow inmates. They are also encouraged to enrol for a diploma in law after six months, followed by a degree in law. The latter are offered through the Africa Prisons Project of the Justice Changemaker Programme, which provides training and services for prisoners and prison staff across East Africa to enable them to develop legal and human rights awareness and learn how to support others with free legal advice.

Through a sponsorship programme, the project enables prisoners and prison staff to study law in the University of London's international programme. This support assists many prisoners who otherwise would have been denied a fair trial due to lack of funds. Senior prison professionals are under masters and postgraduate studies linked to penal development and the provision of basic services such as education, health and access to justice.

In addition, professional secondment opportunities are provided for senior prison and criminal justice personnel to enable them to learn from UK prison management systems. This initiative seeks to ensure that prisoners' rights are upheld and that everyone

enjoys their entitlement to a fair and speedy trial, along with the opportunity to access bail and to appeal against unjust circumstances.

Mr Kinyua was a beneficiary of the project and proceed to study law. In November 2019, several inmates, many of them incarcerated at Kamiti Maximum Prison, graduated with law degrees after four years of learning behind bars. Ten of the 17 graduates were inmates in prisons in Kenya, while three of them, Mr Kinyua included, were former convicts who had enrolled in the programme when still in prison; as for the rest, one was a staff member of the African Prison Project and the others were prison officers. The project's law graduates are allowed to sit bar exams and start practising. Currently, 30 inmates at Kamiti, Naivasha and Lang'ata Women's prisons are enrolled in the degree programme.

Innovating to ensure access to justice

Mobile phones are a popular, cost-effective and reliable means of communication that allow anyone to ask questions from anywhere and receive answers. Kituo cha Sheria thought of them when looking for cost-effective way of enabling better delivery of legal services and information to greater numbers of people, in particular the poor and marginalised. The result is the M-Haki mobile telephony service – the name is short for *'haki mkononi'*, which can be translated as 'justice at the tips of your fingers'.

M-Haki started operation on 8 March 2016, and has been of service so far to more than 6,400 clients. It utilises SMS technology to disseminate legal information to clients. Kituo has a dedicated mobile number (0700777333) to which members of the public can text legal questions; these are answered by the organisation's lawyers and volunteer advocates. The service thus works from phone to web and back to mobile phone again. People with legal problems type out their queries, send them to the M-Haki number, and get a response on their mobile devices in the form of an SMS.

It only costs one Kenyan shilling to send an SMS; furthermore, some service providers offer bundled



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services that allow users to access the service at even lower costs. This is a clear cost-saving to clients who would otherwise spend money on transportation costs to come to Kituo Cha Sheria in person for legal services – costs that could be high depending on the distance between the client's home and Kituo's offices in Nairobi and Mombasa.

The M-Haki service means, for example, that an impoverished Kenyan in rural El-Wak, northern Kenya, does not have to endure a 14-hour trip across 860 kilometres to travel to Nairobi to access legal advice. He or she simply needs to have the M-Haki number and the most basic of telephones by which to send an SMS to it.

Legal questions addressed on the M-Haki platform are categorised, in line with Kituo's core mandate areas, into land rights and succession issues; labour rights, refugee rights and forced migration issues; and housing and eviction matters. There is an additional category – general legal inquiries – catering for areas beyond the scope of Kituo's core mandate. Examples include reports that parents are selling land without consideration to their families; matters to do with unpaid dues; claims that chiefs are demanding bribes for certain services; and allegations of misconduct by advocates.

Technological innovation cannot happen without collaboration with partners. In developing M-Haki, Kituo brought to the table psychologists, business developers, web developers, marketing specialists, and, crucially, the communities with which it works. The latter entailed elaborate market research that was conducted in selected counties across Kenya.

From this research, Kituo learnt that family, consumer and employment relationships are among the major sources of legal needs in Kenya today. It is important to note that Kituo is one of the oldest and most experienced legal aid organisations in Kenya, with networks and an institutional memory spanning nearly five decades.

Kituo cha Sheria was invited to attend the UN Development Programme (UNDP) in Kenya's High-Level Stakeholders' Consultative Forum, co-hosted by the SDG Accelerator Lab for Kenya in October 2019. The UNDP has been conducting a stakeholder consultation on a new accelerator lab established by its country office. The lab offers opportunities for innovating and mapping policy solutions to challenges that civil society organisations face, particularly in regard to their work on human rights and access to justice. More specifically, the SDG Accelerator Lab is a new service that works with the government, private sector, civil society, philanthropists, academia, and young people to reimagine development for the 21st century.

The consultation was intended to create an opportunity for a co-creation process that would enable the accelerator lab to be more responsive and catalyse actions relevant to Kenya's development. The forum gave participants a platform to network and showcase their innovations. In this regard, Kituo believes that its M-Haki innovation can play a role in advancing SDG 16, albeit that the organisation's biggest challenge is inadequate funding. The innovation has faced funding gaps, with donor funds affected by changes in strategy or shifts in approach in the context of other emerging issues. In addition, technology partners such as mobile network service providers are biased towards commercial endeavours and the pursuit of the profit motive, as a result of which the M-Haki service has not been scaled up at the pace intended.

Conclusion

The SDGs were adopted by all United Nations member states in 2015 as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. The 17 SDGs are integrated – that is, they recognise that action in one area will affect outcomes in others, and that development must balance social, economic and environmental sustainability.

At the heart of the SDG Accelerator Lab, for example, is an attempt to reimagine how development work is done and to promote a culture of innovation and experimentation. The capacity to adapt in a rapidly changing environment will be key for the UN to stay relevant and provide effective support to countries to achieve the SDGs.

SDG 16 can only flourish with local consensus-based targets and indicators complemented by investment and implementation. Achieving the SDGs requires involving government, civil society, youth, and the private sector. Kituo cha Sheria is committed to staying the course in the legal empowerment journey, one step at a time.

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