Mapping Legal Inclusion in Kenya

Provisory Legal Inclusion Mapping Report

Content

Legal Inclusion Mapping Kenya

I.   Introduction

A.   SDG 16: leaving no one behind

In 2015, world leaders adopted the UN Global Goals for Sustainable Development 2016-2030.
SDG 16 tackles the issue of legal inclusion and good governance: 'a) to promote peaceful and inclusive societies for sustainable development, b) provide access to justice for all and: c) build effective accountable and inclusive institutions at all levels.'

The challenge for governments, policy makers, lawyers, international organizations, NGOs and other stakeholders for the next decade then is: How to close the global legal gap while 'leaving no one behind'?

B.   Legal Inclusion Mapping Method

What is Legal Inclusion?
The situation in which people (and nature)   a.   have their basic legal needs satisfied through adequate registrations, contracts, or their 'status' demonstrated in any other form, which enables them   b.   to enjoy legal protection by means of effective access to remedies and the court system, and   c.   to have access to the rights, benefits and entitlements of the society in which they live.

The Legal Inclusion Mapping Method, developed by Microjustice4All (MJ4All), is a simple and cost-effective tool to implement the targets formulated in SDG 16. The Mapping Method focuses on the legal empowerment of vulnerable citizens.

The national legal framework already in place usually provides its citizens with rights and protection. However, it often is the case that due to a lack of legal-administrative documents or of status recognition otherwise excluded groups are not able to access their rights and enjoy legal protection.

The entire population needs to arrange administrative and private law issues related to property, housing, business, inheritance etcetera in order to be legally included. Only a tiny percentage in a country has to deal with courts in conflicts and penal law related procedures. The latter is also essential for legal inclusion to exist, but the administrative and private law issues of the vast majority needs is an area that has been overlooked by most working in the justice sector. The research done by the MJ4All mapping teams shows that the most urgent legal exclusion problems come down to six areas:

1.   **Civil documentation:** birth certificates and documents relating to personal identity which give access to education, health services, social benefits, microfinance and voting
2.   **Property and housing:** land property registration and documents relating to property transfer and rental issues which provide legal protection and access to loans
3.   **Income and work**: documents for setting up businesses, co-operatives and other legal entities, contracts and basic labour issues
4.   **Family law**: papers related to inheritance, divorce, and child recognition

5. **Disasters and conflict**: issues and documents relating to manmade or natural disasters legal re-habilitation of refugees, IDPs and other disaster victims
6. **Natural environment**: environmental issues and documents related to legal personality, representation and recognition

The Mapping Process

Since early 2018 Microjustice4All has developed the Legal Inclusion Mapping Method as a tool to implement the targets formulated in SDG 16. Three sets of legal inclusion indicators are mapped, which relate to the three agents of legal inclusion:

a. the ability of '**people'** to access and protect their rights
b. the way the **'State'** has organized the access to basic legal needs and the judiciary, and
c. the accessibility, affordability, and quality of '**legal assistance'**
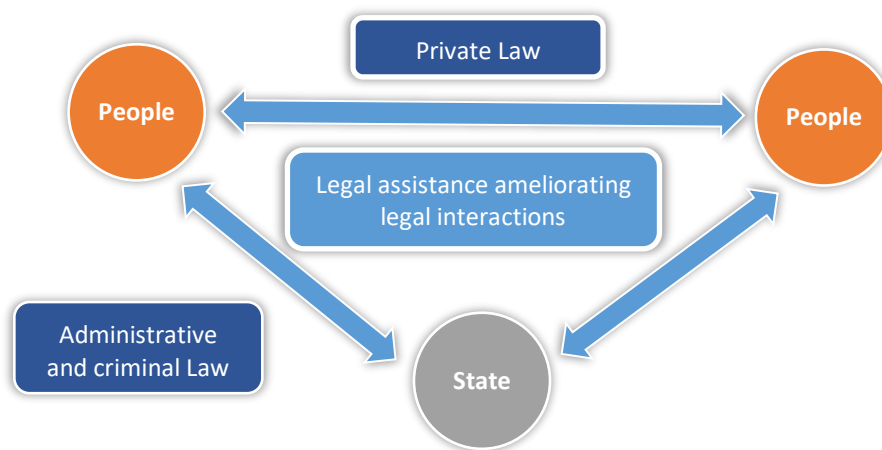
Legal Interactions between 'People'/'People' and 'People'/'State', supported by 'Legal Assistance'

If a person is poor, uneducated, and belongs to a group at risk, it is likely that (s)he will be legally excluded if the state services, institutions and the judiciary are not easily accessible, and legal assistance is out of reach. The table below illustrates the key elements that are mapped on both a country-wide and the excluded groups' level in order to provide recommendations on making the legal system more easily accessible and to provide the needed legal assistance services to include the excluded part of the population.

Mapping Legal Inclusion

Agents of legal interactions	Mapping legal inclusion: indicators on country level	Mapping inclusion situation of Excluded Groups per group	SDG 16
People	Society: • Poverty level • Education Level • Groups at risk	Description of the vulnerability of the specific excluded group	Peaceful and Inclusive Societies for Sustainable Development
State	Accessibility, affordability, transparency and quality of the legal and institutional framework	Legal and Institutional framework applied to the specific group, and research into the legal tools available for their legal empowerment	Effective, accountable and inclusive institutions on all levels
Legal Assistance	Accessibility and quality of legal assistance	Legal assistance available per excluded group	Access to Justice for All
Output			
	Comprehensive Legal Empowerment Plan to achieve Legal Inclusion with the stakeholders: • Recommendations for legal empowerment at the state level • Legal Empowerment Service Provision for excluded groups		Implementation Tool & Progress Monitoring Framework for SDG 16

Legal Inclusion mapping teams

The legal inclusion mapping teams, consisting of lawyers and professional researchers, engage with experts and stakeholders on various levels. The teams identify legally excluded groups by doing extensive desk research and surveys. They make use of questionnaires and interviews with hundreds of citizens, social and development organizations, academia, businesses and representatives of the excluded groups to get an accurate picture of their legal vulnerabilities. Besides this, consultations take place with legal experts, government institutions and the justice sector to get the relevant legal expertise and know how to solve those legal vulnerabilities.

Comprehensive Legal Empowerment Plan

After the research and analysis phase is concluded, the MJ4All mapping teams draw up a Comprehensive Legal Empowerment Plan to implement sustainable and inclusive solutions to meet the excluded groups' legal needs. The Plan involves both stakeholders in the specific excluded groups and stakeholders in the legal and Government sector.

Implementation and monitoring

The third and final phase of the Legal Inclusion Mapping consists of setting up an Implementation Plan and a Progress Monitoring Framework. This includes establishing legal inclusion targets and drawing up a timeline for the implementation of modifications to reach SDG 16. It also involves the introduction of innovative tools for the legal-administrative and institutional framework.

C. Implementation of Legal Inclusion Mapping in Kenya

From June to November 2018 a Kenyan team of three lawyers and one social scientist has conducted the mapping under the guidance and support from the legal empowerment experts and researchers from Microjustice4All. The research phase of the mapping consisted of:

- Surveys with the population at large and the groups at risk regarding their legal situation (having their legal paperwork, experience with the state institutions, the judiciary, and legal assistance services among others).
- Consultations and in-depth interviews with legal expert, the legal aid providers, the state agencies working on making the legal system and state services accessible, such as the advisor on digitalization and innovation to the Government and to the Chief Justice, the Kenya Law Reform Commission, and various social organisations working with the vulnerable groups, and with representatives of the vulnerable groups themselves.
- Desk research on both mapped legal themes as well as on some key vulnerable groups in Kenya.

The results are collected and organised according to the structure of the table 'Mapping Legal Inclusion' above. This information serves as the basis for the report.

Outputs of the mapping that are summarised in this report are:

- Survey Report, providing primary data on the legal inclusion level of the people.
- Description of administrative-legal procedures to fulfil basic legal needs (primary resources) and the judiciary (mainly on basis of secondary sources).
- Description of the Legal Assistance Service Providers, and their accessibility.
- Description of the vulnerability of specific Excluded Groups, and how the legal-institutional framework be applied to legally empower them through legal assistance.
- Comprehensive Legal Empowerment Plan

D. Mapping results & recommendations in summary

In the first place, overall there are very positive developments in Kenya as a consequence of the 2010 Constitution and the digitisation of the public sector. The main issues of concern for the legal inclusion of all are:

1. Forces within the institutions that are blocking these processes, e.g. in the land registration
2. To access the digital governance, one has to be educated and trained in ICT and be able to fill out forms correctly. In general, most people need (legal) assistance to access the system and protect their rights. At present, legal assistance is too expensive for the vast majority of Kenyans, for a large part, due to the monopoly on legal services of the registered advocates who have to charge a minimum fee specified per type of legal service.
3. There are a number of legal-administrative areas that need simplification, providing transparency and taking away the 'gatekeepers' such as inheritance procedures and the role of the chief in some basic administrative procedures.

A sustainable legal services infrastructure is needed for the legal empowerment of the Kenyan population at large. In the first place, people should be able to easily access information on their rights and the ways to access them, and they need to be able to hire affordable and reliable legal assistance services.

On the basis of these findings, a Comprehensive Legal Empowerment Plan for the legal inclusion of all in Kenya is proposed.

**End of the preview of
Provisional Legal Inclusion Mapping Report - Kenya.**

**If you wish to receive more information, please send an email to
info@microjustice4all.org to obtain the complete document**