



Legal Inclusion Mapping Kenya Survey Report



Survey Report
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Legal Inclusion Mapping Kenya Survey Report

I. Introduction

“He bought himself some justice” – a statement one can often hear on the streets of Kenya, decrying the justice gap between high income individuals and the lower strata of society. Obtaining birth or death certificates, registering property or resolving legal disputes present a lengthy, unaffordable struggle for the poor. Numerous civil servants dealing with basic legal documents have been accused of preferential treatment and the violation of rights which substantiates this opinion justice.

The justice gap widens for those who lack sufficient resources and have a lower level of education. Access to justice requires financial means in addition to experience and knowledge on judicial and administrative procedures.

The objective of this survey is to gain insights into:

1. The socio-economic, cultural, labour and housing situation of the vulnerable population in Kenya
2. The legal problems of the individuals, their families and their communities
3. The experience the surveyed population had with various judicial procedures and the judicial system
4. The legal inclusion situation of the surveyed population and their access to social benefits

In brief, the purpose of the survey is to investigate and to document the legal exclusion of the Kenyan population. This survey provides factual evidence and context to what previously has merely been a sentiment of legal exclusion.

II. Survey Description - Parameters

1. *Statistical design:*

- Population size of Kenya: 49.7 Mio.
- Confidence level: 95%
- Margin of error: 5 %
- Statistical sample size: **421**

According to the survey monkey size calculator¹ a sample size of 421 on a population of 49.7 million provides a level of confidence of 95% and a margin of error of 5 %.

2. *Population surveyed: 421 Kenyan Citizens*

- Between June and December 2018
- People surveyed in urban and suburban areas of the mayor cities of Nairobi, Kisumu and Mombasa
- People surveyed in rural areas of Kakamega, Bungoma, Vihiga, Transzoia, Siaya – Western Region and Kericho & Bomet County – Northern Region
- These rural areas of Kenya show abundance of low-income individuals, the majority of them with low or limited level of education.
- Population of special interest:
 - Micro-entrepreneurs: 129

¹ Sample size calculator: www.surveymonkey.com/mp/sample-size-calculator

- Women: 189 and men: 232
- Citizens over 18 years old: 414
- Nomads: 17
- Indigenous Rainforest People: 10
- Farmers: 44; Subsistence farmers: 35
- Victims of humanitarian crises: 21

3. Survey form:

- Questionnaire with 46 open, closed or multiple-choice answers, as well as some scale of value questions on: Socio-economic situation, personal, family-related and collective legal issues, access to justice related issues, and access to state benefits related issues

4. Team of interviewers:

- Six interviewers in total: one in Western Kenya, four in Nairobi, one in Eastern Kenya (Mombasa)
- Two lawyers, one social scientist and three law students; majority of interviewers originated from the surveyed area and speak native languages

5. Data Collection Info (Method):

- 421 Face-to-face surveys conducted in public places where people gathered for social events or in private homes to avoid talking about their legal problems in public
- Obtained Data: exploratory and descriptive in nature

III. Survey Results

- Between June and December 2018
- Total surveyed population: 421

1. Socio-Economic Indicators

- **GENDER:** 189 Women and 232 men

Gender	Total	%
Men	232	55.1
Women	189	44.9
	421	

- **DISTRIBUTION BY CATEGORIES OF EXCLUDED GROUPS:** Most of the respondents correspond to one or several categories of the identified excluded groups. For example, there are 129 Micro-entrepreneurs, 44 Farmers, 39 persons that live in slums, 35 subsistence farmers, 32 that belong to a minority group based on ethnic/ cultural origin.

Excluded Groups	Total ²
Slum, bidonville, invasions	39
Farmers	44
Subsistence farmers	35
Indigenous	10
Disabled	3
Nomads	17
Minority groups (based on ethnic/cultural origin)	32
LGBT	1
Migrants	1
Micro-entrepreneurs	129
Elderly People	10
<i>Unspecified</i>	137

- **AGE:** The survey was mainly aimed at people above the age of 18 as those are more likely to have experienced legal issues in their lives.

Age	Total	%
until 18 years	7	1,7
19 – 30 years	145	34,4
31 – 40 years	135	32,1
41 – 50 years	68	16,2
51 – 60 years	47	11,2
+ 60 years	19	4,5
	421	

² Number of occurrences based on which a person can claim to belong to more than one group

- **CIVIL STATUS:** The civil status of the respondents determines certain rights and obligations. For example, the spouse is entitled to 50% of the marital property. Therefore, it is vital to capture it.

Civil Status	Total	%
Married	217	51.5
Single	60	14.3
Separated or Divorced	28	6.7
Widowed	48	11.4
<i>Unanswered</i>	68	16.2
	421	

- **LEVEL OF EDUCATION:**
 - 16.6 % (70) with primary education only
 - 24.5 % (103) with secondary education
 - 17.1 % (72) received technical training
 - 11.2 % (47) undergraduate university
 - 2.1 % (9) obtained university degree
 - 7.6 % (32) without having received any formal education

Given the low levels of education observed in the survey, there is a need for additional assistance when facing legal problems.

Level of Education	Total	%
Primary Education	70	16.6
Secondary Education	103	24.5
Technical Education	72	17.1
Undergraduate	47	11.2
University degree	9	2.1
No schooling	32	7.6
<i>Unanswered</i>	88	20.9
	421	

- **PLACE OF BIRTH:** 49.9 % of the respondents come from the rural area and 25.4% were born in the city, only 21.2% have not migrated and remain in their place of birth.

PLACE OF BIRTH	Total	%
Urban	107	25.4
Rural	210	49.9
<i>Unanswered</i>	104	24.7
	421	

- **LINGUISTIC BARRIERS:**
 - Whilst the majority of respondents speak one of the administrative languages English and Kiswahili (62.2 %), 10 % of them only speak local languages.
 - A significant number of the respondents who indicated mastering the English language only do so to a basic level which is insufficient to understand legal procedures or processes.

By default, these people are legally excluded from arranging their basic legal needs without additional legal assistance. This situation aggravates once legal procedure become slightly more complex or a court is involved.

Language	Total	%
English	1	0.2
English and Kiswahili	85	20.2
English and Kiswahili and local language	67	15.9
English and Other language	7	1.7
Kiswahili	41	9.7
Kiswahili and local language	61	14.5
Local languages	42	10.0
<i>Unanswered</i>	117	27.8
	421	

- **INCOME AND SAVINGS:** Does your income allow for saving?
 - Out of 421 respondents, 43.2 % stated they were not able to save on a monthly basis.
 - From those who indicated being able to save money, the exact amount is unknown, but very likely it is very little and insufficient to cover legal expenses.
 - The costs of legal assistance in Kenya are high and many use their savings to pay for it. Therefore, almost half of the Kenyan population risks being legally excluded due to a lack of savings, especially when the case needs to be brought to court and the use of an advocate is almost unavoidable.

Saving	Total	%
Yes	209	49.6
No	182	43.2
<i>Unanswered</i>	30	7.1
	421	

- **HEALTH INSURANCE:**
 - 54.4 % (229) of the sample group are not health insured, in spite of the universal health care provisions enacted by the state.
 - Many of the respondents were utterly unaware of the existence of a public health care scheme and do not know how to register and access these services.
 - Assisting the rural population in particular to register for the National Hospital Insurance Fund is crucial for the achievement of minimum health standards in Kenya.
 - Important to note is that the quality of healthcare is dependent on one's contribution to the health scheme. Therefore, having health insurance does not necessarily mean one is adequately covered.

Health insurance	Total	%
No	229	54.4
Yes	157	37.3
<i>Unanswered</i>	35	8.3
	421	

2. Access to work-related legal issues

- **OCCUPATION & WORK:**

Employees' situation

- Of the 205 employees, 34.6 % possess a labour contract and health insurance at work.
- 61.0 % work under an informal, verbal agreement with the employer without any social benefits or labour rights.

In order to protect the workers and advance their labour rights it is of utmost importance to provide them with written and comprehensible labour agreements.

Employed ³	Total	%
Yes	205	48.7
No	191	45.4
<i>Unanswered</i>	25	5.9
	421	

Of the employed: do have labour contract & health insurance?	Total	%
Labour contract only	19	9.3
Labour contract and Health insurance	61	29.8
None	125	61.0
	205	

Independent workers' situation

- 59,4 % (250) are small business owners or self-employed.

Do you have a business of your own? ⁴	Total	%
Yes	250	59.4
No	145	34.4
<i>Unanswered</i>	26	6.2
	421	

Of the 250 self-employed or business owners:

- 72.8 % respondents categorized their business as very small or small, whilst 27.2 % considered their business to be medium sized.
- 19.2 % (81) indicate that they are engaged in trade.

Of those who have a business, category of business	Total	%
Very small to small	182	72.8
Medium	68	27.2
	250	

³ Employment in this case does not mean that the labour situation of the respondent is formalized in a labour contract and health insurance.

⁴ This question aims at any micro-business activity that can also be an additional source of income. Being employed and having a small business of their own can therefore overlap.

The informal sector: lack of business-related papers of the Independent workers

Of the 250 self-employed or business owners:

- 18 % have a business registration, and therefore also a tax registration. The business registration can be a sole propriety, partnership or company registration.
- 31.6 % (79) of business owners has operational licence from the county

Thus, 82% (205) has not registered their business and 68.4 % (171) of the business owners have neither business & tax registration nor licences whereas only 3.6% have a rental contract for the premises from which they operate. This creates (legal) uncertainty which hinders consistent growth.

Of those who run a business Do you have ...?	Total	%
Operational licence from the county	79	31,6
Business & Tax Registration	45	18,0
Rental contract for the premises	12	4,8
Other	9	3,6
None	96	38,4
<i>Unanswered</i>	9	3.6
	250	

Do you make use of contracts in your profes- sional life?	Total	%
Yes	104	24.7
No	174	41.3
<i>Unanswered</i>	143	34.0
	421	

The legal empowerment of these business owners through formalisation of their businesses and provision of necessary contracts will reduce their legal uncertainty. It will enable them to take part in the formal economy and empower them to invest in their own business.

In brief, helping people with their business-related documents is a priority for their legal empowerment in order to pull them out of the informal economy and into the formal one.

- 57 % (240) categorized themselves as 'farmers' for they grow their own food or crops on some land.

Farmers

Are you a farmer?	Total	%
Yes	240	57.0
No	153	36.3
<i>Unanswered</i>	28	6.7
	421	

- **RETIREMENT:**
 - Out of 421 respondents, 4.3 % (18) were retired senior citizens
 - Of the remaining 90 % (379), when asked about their pension plans, only 18.8 % confirmed contributing to the retirement benefit authority's fund. 66.0 % indicated they did not have a pension plan.

Without additional assistance to register for the public pension scheme, a vast majority of Kenyans risks to find themselves in old-age poverty.

Are you retired?	Total	%
Yes	18	4.3
No	379	90.0
<i>Unanswered</i>	24	5.7
	421	

Do you contribute to the retirement benefit authority (RBA)?	Total	%
Yes	79	18.8
No	278	66.0
<i>Unanswered</i>	64	15.2
	421	

3. Land and Housing related issues

- **HOUSING:**

Housing	Total	%
Owned	172	40,8
Rented	185	43,9
Company housing	14	3,3
Other	32	7,6
<i>Unanswered</i>	18	4,3
	421	

- 58.1 % (100) of owners confessed not having any documentation (title deed) to prove their claim to their housing. 62.2 % (115) of who rented confessed not having any rental agreement

Of the 172 house owners: is your house registered & has the necessary documents?		
	Total	%
Leasehold or freehold title deed (of the owners 172)	72	41.9
<i>None</i>	100	58.1

Of the 185 tenants: do you have a rental contract?	Total	%
Rental contract	70	37.8
None	115	62.2

- The reasons stated most often for not obtaining adequate title deeds or other documents proving ownership are:
 - inadequate information on the registration procedure (24.2 %)
 - lack of financial means to afford the registration (13.1 %)
 - too many requirements (11.2 %)
 - 4.5 % indicated the long distance to the land registry

Possessing a rental contract, a written housing agreement or formal property deeds is paramount to preventing and resolving any land, property or housing disputes that may arise. It is also a precondition to the full enjoyment of one's property. Around half of the total surveyed population does not have access to such a document which contains a risk of suffering from legal issues arising thereof.

- **OWNERSHIP OF LAND UP-COUNTRY:**
 - 44.7 % (188) of respondents confirmed owning land in rural areas whilst mainly residing in a city.
 - 59 % of those who own land in the village indicated they do not possess any documentation to prove their claim over the land.

Do you have any property in rural areas?	Total	%
Yes	188	44.7
No	205	48.8
<i>Unanswered</i>	28	6.7
	421	

Of those with property in rural area: do you have the needed property documents?	#	%
Yes	77	41.0
No	146	59.0
	188	

The 59% without any written proof of ownership are most prone to land grabbing. Providing assistance to register their land will prevent a vast amount of land disputes.

The possession of land is highly valued in Kenya. Conflicts regarding land are numerous and can have a deep impact on those (families) involved. This makes the provision of proper documents in this area especially important, because it does not only help to solve conflicts but also to prevent them.

- **BASIC AMENITIES:**
 - 59.1 % (249) of the surveyed population indicated they have access to electricity.
 - 70.3 % (296) indicated they have access to water.
 - 21.9 % (92) indicated they have access to the sewage system.
 - 46.8 % (197) indicated they have access to either gas, firewood or charcoal for cooking.

Basic amenities	Total	%
Electricity	249	59,1
Water	296	70,3
Sewage	92	21,9
Gas/firewood/charcoal	197	46,8
<i>Unanswered</i>	54	12,8

4. Personal and Family-Related Legal Issues

- **IDENTITY DOCUMENTS:**

- 75.1 % (316) of the surveyed sample group indicated to possess an ID
- Of all those who do not have an ID, the most often mentioned reason for not having it is a lack of financial means, inadequate information or misinformation by the civil servants and long and tedious procedures.

Backlog in the public institution delays the obtaining of vital identity documentation. Whilst a large part of the registration procedure is shifted online, accessing these services requires electricity, a stable internet connection as well as a device to request the documentation. Facilitating the registration procedure through trained staff on the ground in cyber cafés will help increase these numbers significantly.

Do you and your family have identification documents?	Total	%
Yes	316	75.1
No	51	12.1
<i>Unanswered</i>	54	12.8
	421	

- **SEPARATION / DIVORCE:**

- 93.1 % (68) of separated people (73) have not formally processed their divorce due to lack of awareness of the importance of a divorce certificate or the complex procedure, lack of means, or long and tiresome processes.
- The topic of divorce is a particularly sensitive matter in society and carries connotations of shame and embarrassment. Therefore, the numbers of respondents may vary as some felt embarrassed to open up about the issue.
- 16.4 % (12) who have children receive financial assistance from the other parent. Financial issues and the presumption that payment would be unlikely are the two major reasons given for the absence of financial assistance for the children.

Formalising both the divorce procedure and all matters regarding the child will enhance the legal position of woman and children, in particular, and enable them to protect their rights when needed. Assisting single parents (mostly young women) in claiming child support is paramount to the legal empowerment of these women and children.

In case of being Separated, did you process the divorce?	Total	%
Yes	5	6.8
No	68	93.1
<i>Unanswered</i>	348	
	421	

Do children of separated / divorced parents receive financial assistance?	Total	%
Yes	12	2.9
No	72	17.1
<i>Unanswered</i>	337	80.1
	421	

- **INHERITANCE:**

- 70.8 % (298) of all respondents indicated not having made any arrangements for their inheritance.
- Those who have made an arrangement (100) are mostly verbal, informal agreements within the family, rendering people vulnerable to conflict.

Have you made arrangements with regard to your inheritance?	Total	%
Yes	100	23.8
No	207	49.2
DK / NA	91	21.6
<i>Unanswered</i>	23	5.5
	421	

If YES, how?	#	%
Will	59	14.0
Other	23	5.5
<i>[Unanswered]</i>	339	80.5
	421	

- 44.4 % (187) have indicated having encountered inheritance issues in their life. Inheritance disputes remain a prevalent legal issue amongst the Kenya population, especially in conjunction with a lack of property documents. Yet, the majority of Kenyans have not taken any precautionary measures to protect themselves against these disputes.

Encountered inheritance issues	Total	%
Yes	187	44,4
No	196	46,6
<i>Unanswered</i>	38	9,0
	421	

- **MONEY LENDING:**

- 79.8 % (336) of all respondents have either borrowed money or lend money to somebody before.

- Yet, 50.8 % of these have not recorded their loan agreement in any shape or form.

In case of a dispute, the money lender has no evidence to substantiate the existence of a loan and thus, loses out.

Have you ever lent money to, or borrowed from somebody?	Total	%
Yes	336	79,8
No	51	12,1
<i>Unanswered</i>	34	8,1
	421	

Have you signed a loan agreement?	Total	%
Yes	113	26,8
No	214	50,8
<i>Unanswered</i>	94	22,3
	421	

5. Community organization related legal issues

- **LEGAL PERSONALITY OF COMMUNITY ORGANIZATIONS:**

Membership in community organizations	Total	%
Yes	243	57,7
No	149	35,4
<i>Unanswered</i>	29	6,9
	421	

- 57.7 % (243) indicated being a member of a community organization.
- Of the 243 respondents, only 43.6 % confirmed their community organization was registered and therefore had legal personality on its own.

Is your community organisation registered?	Total	%
Yes	106	43.6
No	137	47.4
	243	

Registering their community with the authorities allows individuals to function as a collective unit and register for subsidies and public funding schemes.

6. Conflict resolution and experience with the administrative and legal procedures

- **EXPERIENCE WITH (LEGAL) DISPUTES:**
 - 75.1 % (316) of all respondents experienced a dispute either personally or in their family.
 - 26.6 % of those related to matters & conflicts within the family (money lending, inheritance, domestic violence)
 - 18.5 % related to conflicts with neighbours (delimitation of territory, fighting, noise nuisance)
 - 17.1 % related to disputes with public institutions
 - 13.3 % related to disputes at work (prolonged or arbitrary detention)

Do you have or have you or your family member had a dispute?	Total	%
Yes	316	75,1
No	86	20,4
<i>Unanswered</i>	19	4,5
	421	

Dispute areas	Total	%
His/her work	56	13,3
With your neighbours	78	18,5
With a relative	112	26,6
With public institution	72	17,1
Other	39	9,3
<i>Unanswered</i>	108	25,7

Have you or your family member been the victim of	Total	%
A crime	152	36,1
A traffic accident	105	24,9
An accident at work	39	9,3
Other	40	9,5
<i>Unanswered</i>	143	34,0

- **DISPUTE RESOLUTION: How did they solve their problems?**
 - The majority (32.5 %) of those who successfully resolved their dispute did so through a formal judicial process, conciliation or mediation 12.1 % and 15.7 % through an administrative process
 - The remaining 24.2 % did not resolve their dispute at all.

How did you solve these problems?	Total	%
Judicially	137	32.5
Administratively	66	15.7
Conciliation	51	12.1
Did not resolve	102	24.2

<i>Unanswered</i>	65	15.4
	421	

Why did your legal problem remain unresolved?	Total	%
Burdensome requirements	57	13,5
Lack of finance	76	18,1
Long distance	31	7,4
Inadequate information	30	7,1
Long and slow process	57	13,5
Corrupt officials	45	10,7
<i>Other</i>	15	3,6

- **LEGAL ASSISTANCE IN SOLVING THEIR DISPUTES:**

Legal assistance for solving legal problems	Total	%
On their own, self-representation	74	17,6
Help from a knowledgeable family member	56	13,3
Lawyer hired	112	26,6
NGO / Legal aid foundation	15	3,6
Public Legal Assistance	26	6,2
Other	28	6,7
<i>Unanswered</i>	169	40,1

- **FINANCING LEGAL ASSISTANCE**

Financing legal assistance	Total	%
Savings	111	26,4
Family Loan	60	14,3
Bank Loan	19	4,5
Sale / pledge of assets	59	14,0
Other	22	5,2
<i>Unanswered</i>	188	44,7

7. Legal Inclusion Perception

- **SATISFACTION WITH THE LEGAL SERVICE PROVIDER**

Are you satisfied with the lawyer or the institution providing legal service?	Total	%
Yes	118	28.0
No	302	71.7
Unanswered	1	0.2
	421	

Reasons for dissatisfaction with legal service providers <i>(Multiple choice question, percentages according to the 302 dissatisfied with legal services providers.)</i>	Total	%
Inadequate or unclear Information	85	28,1
Expensive	168	55,6
Time consuming	123	40,7
Undesirable outcome	67	22,2
Other	13	4,3

- **COMPLEXITY OF THE PROCEDURE**

Complexity of the procedure <i>(Multiple choice question, percentages according to the total population sample (421))</i>	Total	%
Long and slow	304	72,2
distant office location	102	24,2
Many requirements	168	39,9
Not difficult	1	0,2
[Other]	13	2,4
<i>Unanswered</i>	44	10.5

- **ACCESSIBILITY AND CLARITY OF INFORMATION**

Accessibility and clarity of the information <i>(Multiple choice question, percentages according to the total population sample (421))</i>	Total	%
No Information	47	11.2
little information	264	62.7
Clear and accessible information	26	6.2
Other	2	0.5
<i>Unanswered</i>	86	20.4

- **TIME INVESTMENT**

Investment of time from the beginning to the conclusion <i>(Multiple choice question, percentages according to the total population sample (421))</i>	Total	%
1 to 3 months	16	3.8
3 to 12 months	68	16.2
1 to 3 years	78	18.5
3 years to more	136	32.3
Other	24	5.7
<i>Unanswered</i>	58	13.8

- COSTS OF LEGAL SERVICES**

Economic investment / costs of legal services (Multiple choice question, percentages according to the total population sample (421))	Total	%
0 to 500 KES	3	0.7
500 to 2000 KES	26	6.2
2000 to 5000 KES	50	11.9
+ of 5000 KES	152	36.1
Other	83	19.7
<i>Unanswered</i>	73	17.3

- EXPERIENCED DIFFICULTIES DUE TO LACK OF CORRECT LEGAL DOCUMENTS**

Experienced difficulties due to lack of correct legal documents?	Total	%
Yes	282	67,0
No	105	24,9
<i>Unanswered</i>	34	8,1
	421	

Which legal documents did you not possess? (Multiple choice question, percentages according to the 282 that ever experience difficulties.)	Total	%
Civil documents	53	18,8
Property and housing documents	111	39,4
Business/Professional documents	32	11,3
Other	17	6,0
<i>Unanswered</i>	233	82,6

What was the reason you did not possess the necessary documents? (Multiple choice question, percentages according to the 282 that ever experience difficulties.)	Total	%
Too many/difficult requirements	76	27,0
Financial constraints	92	32,6
Distance to registration office	32	11,3
Inadequate information	58	20,6
Long and slow process	45	16,0
Corrupt officials	41	14,5
Discriminatory treatment	32	11,3
Other	31	11,0

- **PREVENTING LEGAL PROBLEMS THROUGH CORRECT LEGAL DOCUMENTS**

Preventing legal problems through correct legal documents	Total	%
Yes	327	77.7
No	6	1.4
<i>Unanswered</i>	88	20.9
	421	

- **ACCESS TO STATE BENEFITS**

Access to state benefits <i>(Multiple choice question, percentages according to the total population sample (421))</i>	Total	%
Education	206	48,9
Health care	123	29,2
Pension	49	11,6
Affordable housing	24	5,7
Employment benefits	9	2,1
Unemployment benefits	2	0,5
Other	10	2,4
<i>Unanswered</i>	190	45,1

In most cases the lack of access to state benefits can be traced back to a lack of awareness about the rights and procedures to obtain these and could be resolved by legal assistance to those in need.

IV. Conclusion

- The survey results highlight the need for legal empowerment activities and services on the ground. A recurring pattern reappears on numerous occasions: People have a claim to property, state benefits or identity-related documents. However, they remain unable to attain them, most often for the following reasons:
A lack of means, lack of information, corruption of the civil servants, long and demanding processes and long distance to the institutions.
- Local legal empowerment services can bridge that gap. Assistance in the obtaining of official documents is most pressingly requested for it helps prevent and resolve any potential legal disputes.