

Legal Empowerment: Promoting Inclusive, Non-Discriminatory ID Systems

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Mahmoud Hussein, a member of Kenya's Nubian community, grew up in the Kibera area of Nairobi. As a young adult, one day he was walking down the street when he was pickpocketed. He lost his money, his driving license, and, most importantly, his ID card. Mahmoud felt getting a new ID card was urgent, so that he could obtain a replacement driving license he needed to continue working as a truck driver. He reported the theft to police and then took the police report, along with his ID number that he had memorized, to the registrar's office. Yet in the system, it turned out two people were associated with that ID card number. The registrar sent Mahmoud for fingerprinting and his prints matched his ID number in the system. Still, the registrar would not process his application for a replacement ID.

This happened nearly three decades ago. For 29 years, Mahmoud struggled to obtain a new ID. He lost his job and had no political voice. His family relied on what his wife earned as a hairdresser. He tried again and again, bringing the documents he did have, approaching various government offices, but each time he was told the supporting documents were not enough, and the requirements kept changing. Eventually, Mahmoud felt he was not being treated the same as other Kenyan applicants. He was close to giving up.

Unfortunately, Mahmoud's story is not an exception.

Using demographic data and our experience working with marginalized communities, we estimate about 5 million Kenyan citizens are subjected to a different process when they apply for an ID card – based on their ethnicity or religious affiliation alone. Not everyone's struggle lasts for decades like Mahmoud's, but if you are Nubian, or Somali, or Swahili, or part of many other Kenyan communities, you cannot expect to apply with your birth certificate and one parent's ID card and receive your ID in three or four weeks like other Kenyans. You are literally sent to a different line, you appear in front of a vetting committee, you must produce a different set of documents – even documents from your grandparents or great-grandparents – and your process can take months or years longer than other Kenyans. You may not get your ID card at all.

Discrimination is embedded in identification systems around the continent and the world, sometimes as explicit

policy and sometimes taking the form of unchecked discretion that can lead to arbitrary requests, unequal treatment, and opportunities for prejudice to affect the issuance of documentation. Vulnerability is compounded as people are often left unable to access basic rights and services or to challenge how they are treated under such a system.

Legal empowerment – to know, use, and shape the law – offers a path forward. Initiatives supporting community paralegals, non-lawyers who are trained in the law and in skills like negotiation, mediation, community organizing, and advocacy, are one type of legal empowerment approach that can be grounded in local context, cost-effective, and have large-scale impact.

In 2014, after struggling to obtain a replacement ID for two and a half decades, Mahmoud heard about a program run by Nubian Rights Forum, a close partner of Namati. Nubian Rights Forum had a team of community paralegals – all recruited from within the community – trained to work with their fellow Nubians on acquiring birth certificates, IDs, and passports. Mahmoud went to the paralegal office and explained his situation to Hassan, one of the paralegals. From there, Hassan walked with Mahmoud through the process, helping him to understand the relevant laws, meet current requirements, fill out forms, and even instill confidence in Mahmoud to interact with registration officials from an informed position. Over a period of two years, Mahmoud went through three vetting processes and worked hand-in-hand with Hassan to fight discriminatory practices to ensure his application kept moving forward. application process, he's able to assist others in understanding the law and overcoming discrimination to get their IDs too. Overall, paralegals working with Namati and our partners have worked with over 10,000 Kenyans as they applied for documentation over the past five years.

Legal empowerment can also catalyze large-scale, systemic change. While there cannot be enough paralegals to directly assist every person facing discriminatory treatment or other obstacles in acquiring identity documentation, the grassroots experience can form the basis from which to advocate for national-level improvements that can benefit millions. Throughout the process of helping Mahmoud, Hassan was tracking the case. He recorded information such as how much time each step of the process required, what documentation Mahmoud had to submit, and



whether he was asked for a bribe. When paralegals track hundreds or thousands of cases, the data becomes empirical evidence on how people experience the administrative system in practice. Data can identify discriminatory treatment as well as administrative obstacles – such as accessibility, connectivity, or delays – faced by everyone.

As countries move towards digitalization of identity systems, it is critical to take into account the practical realities of current systems – without addressing these challenges through full reform, digitalization could exacerbate exclusion. With new ID regimes, additional requirements may be imposed for everyone, for example, which could disproportionately affect communities that already face challenges acquiring documentation. Those who experienced unequal treatment may be reluctant to participate in a new registration effort. Further, the stakes of accessing identity may increase, as proving who you are becomes a requirement for enjoying a larger number of rights and services.

Integrating legal empowerment into the process of establishing and implementing new digital identity systems can offer benefits to marginalized communities and to governments. Paralegals can instill confidence in marginalized communities to engage the system and empower people to navigate the process successfully. At the same time, paralegal case data can support a real-time feedback loop on implementation to help governments and technology providers make iterative improvements in their systems.

Significant time and money goes into the roll-out of digital IDs. Where there is investment in digital ID systems, a small percentage of the supporting funds could be set aside for independent civil society-run legal empowerment and data collection efforts in communities that face the greatest obstacles accessing IDs. This integration of legal empowerment approaches into digital identity efforts has the potential to ensure more inclusive, more effective identification systems for all.

For further reading, see:

- Vices of Discrimination: The Impacts of Vetting and Delays in the Issuance of ID Cards in Kenya (2018), available at: <https://namati.org/resources/vices-of-discrimination-impacts-of-vetting-delays-in-issuance-of-id-cards-kenya/>
- Briefing Paper: Implementation of Nubian Minors v. Kenya (2014), available at: <https://namati.org/resources/briefing-paper-implementation-of-nubian-minors-v-kenya/>