

# Barriers to Entry: Entrepreneurship Among the Youth in Dandora, Kenya

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Student Research Papers #2012-6

**THE PROGRAM ON  
LAW & HUMAN DEVELOPMENT**

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Notre Dame Law School's Program on Law and Human Development provided guidance and support for this report. The author remains solely responsible for the substantive content.

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Author, Title (Notre Dame Program on Law and Human Development Student Research Papers #, Year).

ISSN (online): 2165-1477

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Notre Dame Law School  
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Barriers to Entry:  
Entrepreneurship Among the Youth in Dandora, Kenya

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<sup>\*</sup> This report was made possible through support from the University of Notre Dame Law School's Program on Law and Human Development. The author is grateful to the Holy Cross Parish of Dandora for hosting him, to the Dandora Law and Human Development Project (Kerubo Okioga, Dorin Wagithi, Gerald Otieno, Andrew Myendo, and Christine Achieng) for their invaluable assistance and support, and to Professors Christine Cervenak and Paolo Carozza for their encouragement and advice. The author would also like to thank his friends and family for their love and support. The content of this report is the sole responsibility of the author and does not necessarily reflect the opinions of the Program on Law and Human Development nor the Ford Family.

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## **Executive Summary**

Kenya is a developing country with much potential. Boasting an extremely high literacy rate compared to neighbors and a hard-working population hungry for improvement, youth seem to have fertile ground upon which to start a business. However, even with varied forms of aid, many barriers exist and stand in the way of the realization of business ideas; this is especially so among the youth.

Like elsewhere around the globe, youth in Kenya are disproportionately affected in a weak job market and have extremely high unemployment rates, leading some youth to make a living through criminal or other such alternative means. Certain areas, such as Dandora, face additional challenges. Dandora is the home of an enormous open dumpsite that is the cause of many health problems in the surrounding communities. Like other low-income housing estates, Dandora is often neglected in the provision of basic services by the government.

The Government of Kenya has attempted in a number of ways to improve the standard of living of its residents and to provide jobs and opportunities for youth. It has instituted programs aimed at providing free basic education as well as programs that target training youth in entrepreneurship or a certain trade. It also has a program that is designed to make capital available to enterprising youth interested in starting a business.

Widespread government corruption cripples the aid that the government offers, however. Non-governmental organizations (NGOs) and Community Based Organizations are able to pick up the slack in many ways such as providing access to education and capital. Lacking resources to advertise their services, many youth are left unaware of the variety of aid that exists within their community. If a program were created to educate the public on these services as well as

how to best take advantage of them, aid organizations could be much more effective and reach more youth.

The greatest challenge for a young entrepreneur in Dandora is gaining access to capital. Utilizing innovative credit instruments, NGOs and microfinance organizations offer capital to entrepreneurs who would not normally have access to traditional banking services. Despite this, there are still gaps that need to be filled. Many loans are contingent upon the recipient being a member of a group, thus leaving out individual young entrepreneurs who have not worked in the market long enough to save money on their own.

While access to capital may pose the biggest hurdle, many other obstacles exist. The process to register and start a business is overly complex and often requires the aid of an attorney. For an individual from Dandora, it is not only difficult and time-consuming: it can be very expensive as well. The system is open to corruption, with officials often encouraging bribes to expedite the process. Automating the procedure would make it virtually immune to corruption, reduce the cost of registration, and decrease the total time it takes to register a business.

Many Kenyans do not utilize the court system because of the expense and time involved, instead using informal methods to solve disputes; this in large part due to the extremely large backlog of cases. The new judiciary has been aggressively addressing these issues among others, yet problems persist. An integrated system of alternative dispute resolution (ADR) and the passing and enactment of pending legislation to create a small claims court would go a long way towards allowing entrepreneurs better access to formal dispute resolution mechanisms.

Furthermore, environmental and living conditions pose additional barriers to young entrepreneurs. Events like water shortages and electricity outages only complicate a system that is inherently troublesome to navigate. Problematic social conditions compound this situation

with tribal tensions and the threat of theft and other crime, increasing the difficulty of efficiently creating, maintaining, and operating a profitable business.

Despite all this, youth in Dandora have most of the tools available to succeed in entrepreneurship, even though they may not be aware of the many of the opportunities surrounding them. Many youth are able to overcome these obstacles, but more could be done on a macro and micro scale in order to pave the way for new business ideas to enter the market.

## I. Background

Home to over 41.6 million people, 87% of Kenyans are literate.<sup>1</sup> Despite high literacy rates, development—in a number of areas—is not as advanced as one might imagine.

Kenya is ranked 195<sup>th</sup> in the world in GDP per capita at an estimated \$1,800 per year,<sup>2</sup> and a projected 50% of the population lives below the poverty line.<sup>3</sup> Due in part to the internal strife resulting from the post-election violence



beginning in late 2007 in addition to the burgeoning global recession, GDP growth dropped from 7% to 1.5% in 2008, later returning to seemingly steady levels around 5%.<sup>4</sup> However, this falls

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<sup>1</sup> *Kenya Country Profile: Human Development Indicators*, U.N. DEV. PROGRAMME [UNDP], <http://hdrstats.undp.org/en/countries/profiles/KEN.html> (last visited Oct. 17, 2012).

<sup>2</sup> *The World Factbook: Kenya*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html> (last visited Oct. 17, 2012).

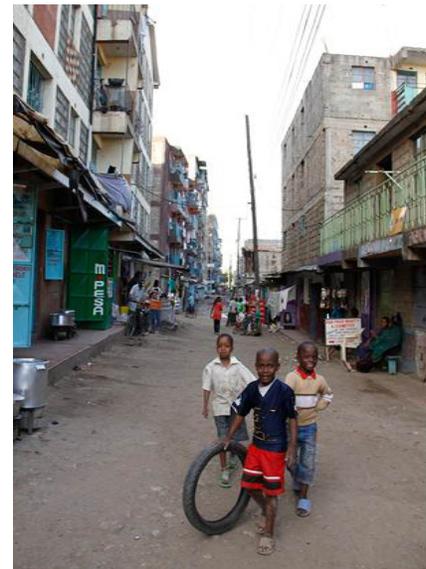
<sup>3</sup> *Id.*

<sup>4</sup> *Kenya*, AFRICAN ECONOMIC OUTLOOK, <http://www.africaneconomicoutlook.org/en/countries/east-africa/kenya/> (last visited Oct. 17, 2012).

well short of the goals set by President Kibaki in 2008 for the “economic pillar” of Vision 2030, which aimed to realize a growth rate of 10% by 2012.<sup>5</sup>

Vision 2030 is the government’s blueprint to raise the standard of living and is a long-term development program which “aims to transform Kenya into a newly industrialising, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment.”<sup>6</sup> In addition to the economic pillar, the plan aims to target political and social concerns in the country.

Somewhat predictably, Kenya does not perform better when viewed under more nuanced measures of development. According to the most recent Human Development Index (HDI) study conducted in 2011 by the United Nations Development Programme, Kenya scored a 0.509, ranking 143<sup>rd</sup> out of 187 countries.<sup>7</sup> When the HDI is adjusted for inequality (IHDI), Kenya’s score drops to 0.338.<sup>8</sup>



The unemployment rate is extremely high in Kenya, with estimates ranging as low as 12.7% in 2006<sup>9</sup> to as high as 40% in more recent estimates.<sup>10</sup> According to one site of the

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<sup>5</sup> Mwai Kibaki, *Launching Of Kenya Vision 2030 Speech*, MINISTRY OF STATE FOR PLANNING, NATIONAL DEVELOPMENT AND VISION 2030 (June 10, 2008), [http://www.planning.go.ke/index.php?option=com\\_content&view=article&id=199:launching-of-kenya-vision-2030-speech-by-his-excellency-hon-mwai-kibaki-cgh-mp&catid=56:others&Itemid=96](http://www.planning.go.ke/index.php?option=com_content&view=article&id=199:launching-of-kenya-vision-2030-speech-by-his-excellency-hon-mwai-kibaki-cgh-mp&catid=56:others&Itemid=96).

<sup>6</sup> *About Us*, KENYA VISION 2030, <http://www.vision2030.go.ke/index.php/home/aboutus> (last visited Oct. 17, 2012).

<sup>7</sup> *Kenya Country Profile: Human Development Indicators*, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Kenya Unemployment Rate*, TRADING ECONOMICS, <http://www.tradingeconomics.com/kenya/unemployment-rate> (last visited Oct. 17, 2012).

<sup>10</sup> *The World Factbook: Kenya*, *supra* note 2.

Government of Kenya,<sup>11</sup> the unemployment rate is approximately 21%, with the rate among youth<sup>12</sup> neither in school nor work at an estimated 38%.<sup>13</sup> The unemployment rate for youth is double what it is for adults, comprising 75% of the total unemployed.<sup>14</sup> While the lack of work opportunities for the poor, and especially the young, has no doubt led many to drug and alcohol abuse as well as more desperate forms of earning a living—such as thievery, gang participation, and other criminal activity<sup>15</sup>—the lack of jobs has also encouraged many youth to try their hand in entrepreneurship.

Businesses in Kenya come in a variety of sizes, organizational structures and forms of registration. They encompass Youth Groups and Community Based Organizations, NGOs, sole-proprietorships and other more recognizable structures, not to mention the substantial number of other entrepreneurs doing business informally or outside the confines of the law.

The Micro and Small Enterprise (MSE) sector, commonly known in Kenya as *jua kali*, is an integral part of the economy. According to a study conducted in 2007, employment in MSE businesses comprised 79% of total employment while only contributing 18% to the

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<sup>11</sup> See *Kenya lacks statistics on joblessness, says IMF*, TRADEMARK SOUTHERN AFRICA, <http://www.trademarksa.org/news/kenya-lacks-statistics-joblessness-says-imf> (last visited Oct. 17, 2012) (unemployment figures are estimates—it appears that the Kenya National Bureau of Statistics does not compile data on unemployment due to lack of funding).

<sup>12</sup> The National Youth Council Act, (2009) § 2 (Kenya) (a “youth” is defined as a “person aged between eighteen and thirty-five years”).

<sup>13</sup> About KYEP, KENYA YOUTH EMPOWERMENT PROJECT, <http://www.kepsa.or.ke/kyep/index.php/about-kyep> (last visited Oct. 17, 2012).

<sup>14</sup> *Youth Enterprise Development Fund*, THE INSTITUTE FOR SOCIAL ACCOUNTABILITY, <http://www.tisa.or.ke/about-devolved-funds/youth-enterprise-development-fund/> (last visited Oct. 17, 2012).

<sup>15</sup> Kerubo Okioga, *Integral Human Development Report for Dandora*, DANDORA LAW AND HUMAN DEV. PROJECT (forthcoming 2012) (manuscript at 36) (on file with author).

nation's total GDP.<sup>16</sup> These statistics imply that despite considerable barriers to entry into a market, many entrepreneurs are crossing the breach but are not necessarily succeeding in obtaining a reasonable standard of living.

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<sup>16</sup> *Strategic Plan 2008-2012*, REPUBLIC OF KENYA MINISTRY OF LABOUR, at iv (2008), [http://www.labour.go.ke/index.php?option=com\\_docman&task=doc\\_download&gid=12&Itemid=206](http://www.labour.go.ke/index.php?option=com_docman&task=doc_download&gid=12&Itemid=206).

Most of the issues entrepreneurs face are applicable across the country. However, in certain areas like Dandora—a borough 11 kilometers east of Nairobi’s center— entrepreneurs face additional compounding factors that are specific to the locale. There is an extremely large dumpsite located here known formally as the Dandora Municipal Waste Dumping Site, which poses many problems, for

residents of Dandora as well as the adjacent areas of Korogocho, Kajiji, and Kariobangi, among others, affecting 750,000 people.<sup>17</sup>

The dumpsite, created in the 1970s by the City Council of Nairobi, is a 30-acre home<sup>18</sup> to virtually all of



the waste of Nairobi’s three to four million residents.<sup>19</sup> An estimated 2,000 tons of unsorted garbage is deposited at the dumpsite daily.<sup>20</sup> Despite the numerous health and environmental hazards attributed to the dumpsite, attempts to move the dumpsite to a proper landfill on the outskirts of the city have been stalled.<sup>21</sup> In addition to the expense of this endeavor, a second

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<sup>17</sup> *Slum Ministry: Environment, Water and Sanitation*, KUTOKA NETWORK, [http://www.kutokanet.com/slum\\_ministry/env/environment.htm](http://www.kutokanet.com/slum_ministry/env/environment.htm) (last visited Oct. 17, 2012).

<sup>18</sup> Njoroge G. Kimani, *Environmental Pollution and Impacts on Public Health: Implications of the Dandora Municipal Dumping Site in Nairobi, Kenya*, UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP), [http://www.unep.org/urban\\_environment/pdfs/dandorawastedump-reportssummary.pdf](http://www.unep.org/urban_environment/pdfs/dandorawastedump-reportssummary.pdf) (last visited Oct. 17, 2012).

<sup>19</sup> *Urban population trends, Kenya and Nairobi*, UNEP/GRID-ARENDAL, [http://www.grida.no/graphicslib/detail/urban-population-trends-kenya-and-nairobi\\_10f4](http://www.grida.no/graphicslib/detail/urban-population-trends-kenya-and-nairobi_10f4) (last visited Oct. 17, 2012).

<sup>20</sup> Kimani, *supra* note 18.

<sup>21</sup> Okioga, *supra* note 15 (manuscript at 17-18); *see also* Chrispinus Wekesa, *You can’t dump waste in Ruai, City Council told*, THE STAR (April 19, 2012), <http://www.the-star.co.ke/national/national/71961-city-council-of-nairobi-to-source-for-alternative-land-for->

source of hesitation is due to the fact that approximately 6,000 families make their living off of the dumpsite.<sup>22</sup> According to the United Nations Environment Programme, 50% of the children residing close to the dumpsite have some form of respiratory illness and blood samples taken reveal high levels of heavy metal toxins, such as lead.<sup>23</sup>

The issue of tribalism is another continuing concern. Although it is increasingly diminishing in urban areas and among the youth, the issue is still present as evidenced by the widespread riots that occurred after the contested elections in late 2007. The riots were largely divided along tribal lines and resulted in homes and businesses all over the country being razed to the ground, with an estimated 1,000 deaths and over 300,000 Kenyans displaced from their homes.<sup>24</sup> In Nairobi, Dandora was one of the epicenters of upheaval.<sup>25</sup>

The upcoming elections, currently scheduled for March 2013, have thus understandably been a source of concern for many residents in Dandora and other similar areas. During the last election accusations of a civilian coup abounded, partly due to voting irregularities such as finding 1.2 million dead voters on the voters' register.<sup>26</sup> With a new independent electoral body, the Independent Electoral and Boundaries Commission (IEBC), there was hope that the tallying

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dumping-waste-as-the-proposed-ruai-dumpsite-is-op (The latest hiccup to the movement of the dumpsite has come from the opposition of aviation stakeholders. The proposed location in Ruai lies close to the international airport and it is worried that large birds grazing the dumpsite may collide with aircraft engines, possibly causing them to crash. These fears may be unfounded as the proposed dumpsite is intended to be a proper landfill with little exposed garbage.).

<sup>22</sup> Interview with representative, White Charcoal, in Nairobi, Kenya (July 12, 2012).

<sup>23</sup> Kimani, *supra* note 18.

<sup>24</sup> Scott Baldauf, *Kenya's new chief justice pushes reform of courts*, THE CHRISTIAN SCIENCE MONITOR (Nov. 19, 2011), <http://www.csmonitor.com/World/Africa/2011/1119/Kenya-s-new-chief-justice-pushes-reform-of-courts>.

<sup>25</sup> *On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence*, KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, at 36 (Aug. 15, 2008), <http://www.knchr.org/dmdocuments/KNCHR%20doc.pdf> [hereinafter *On the Brink of the Precipice*].

<sup>26</sup> Bernard Namunane & Isaac Ongiri, *Fraud fears as IEBC turns to old poll kit*, DAILY NATION, Aug. 2, 2012, at 4.

of votes would be more transparent. However, these fears have resurfaced as a result of the IEBC's recent announcement that they were not able to come to an agreement on the use of a 3.9 billion KSh (\$463 million<sup>27</sup>) tender for the purchase of biometric voter registration kits and would be returning to the same system used in the last election.<sup>28</sup> Fortunately, the government decided to step in and was able to procure the kits through a concessionary loan from Canada in anticipation of a tightly contested election.<sup>29</sup> It remains to be seen whether the machines will lead the populace to honor the results of the election, or if previous conflicts will be renewed regardless.

The rule of law has not been known to be a forte of Kenya, however strides in the right direction have been made with an ongoing overhaul of the legal system—a new, stronger constitution was enacted in 2010 spelling out specific civil rights, and the judiciary has been undergoing reformation. At the helm of the judicial reform is the new Chief Justice of the Supreme Court, Willy Mutunga, who has aggressively instituted measures to address inefficiency and corruption. When he took the post in June 2011, the case backlog numbered around one million with the majority consisting of traffic violations<sup>30</sup> and other insignificant

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<sup>27</sup> 84.19 KES to 1 USD, June 19, 2012. When not noted in the article, an estimated exchange rate at the time of first use of the amount is given. It should be noted that monies appropriated over time will be more stable compared to the dollar, and may not hold the same value a year later as used in the conversion due to rapidly fluctuating rates.

<sup>28</sup> *Id.*

<sup>29</sup> Martin Mutua, *Canada to give IEBC 15,000 BVR kits free*, STANDARD DIGITAL NEWS (Aug. 17, 2012), <http://www.standardmedia.co.ke/?articleID=2000064238&pageNo=1>; *see also* Nzau Musau, *Canadian NGO winds up BVR kits company*, THE STAR (Aug. 9, 2012), <http://www.the-star.co.ke/national/national/88739-bvr-company-code-winds-up> (an offer by United States' Secretary of State Hillary Clinton to purchase and donate the kits from Canada was rejected as it might have a political impact on the independent body).

<sup>30</sup> Baldauf, *supra* note 24.

offenses because of a lack of a fine system to deal with these minor infractions.<sup>31</sup> After restructuring much of how the court system operates—including digitizing 60 million pages of cases for the High Court, dismissing cases the Commissioner of Police thought unsustainable,<sup>32</sup> and swearing in 109 new magistrates to deal with the docket<sup>33</sup>—he has significantly reduced the backlog and increased the population’s confidence in the court system all while continuing to make improvements.<sup>34</sup>

## II. The Process

Information on starting a business is not easily accessible for most people in Nairobi, while at the same time entrepreneurial ventures are susceptible to a fair amount of regulation. In fact, Nairobi ranked last out of 13 cities measured for “ease of doing business” in Kenya by the International Finance Corporation/World Bank’s “Doing Business 2012.”<sup>35</sup> Fortunately, it ranked fifth when it comes to starting a business.<sup>36</sup> While a few NGOs offer training on establishing your own business, individuals with the capacity to hire an attorney tend to do so for the guidance needed to navigate the process of registering a business.

There are a number of organizations that can be said to operate entrepreneurial businesses, yet are not registered as a typical business. Youth, in particular, are able to

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<sup>31</sup> Willy Mutunga, *Progress Report on the Transformation of the Judiciary: The First Hundred and Twenty Days*, KENYA LAW REPORTS (Oct. 19, 2011), <http://www.kenyalaw.org/kenyaLawBlog/?p=227>.

<sup>32</sup> Willy Mutunga, *Address by the Chief Justice at the Launch of the Judiciary Transformation Framework*, KENYA LAW REPORTS (May 31, 2012), <http://www.kenyalaw.org/kenyaLawBlog/?p=447>.

<sup>33</sup> *109 New Magistrates Sworn In*, CITIZEN NEWS (July 11, 2012, 7:18 AM), <http://www.citizennews.co.ke/news/2012/local/item/2328-109-new-magistrates-sworn-in>.

<sup>34</sup> Baldauf, *supra* note 24.

<sup>35</sup> *Ease of Doing Business in Nairobi, Kenya*, WORLD BANK GROUP, <http://www.doingbusiness.org/data/exploreconomies/kenya/sub/nairobi/> (last visited Oct. 17, 2012).

<sup>36</sup> This may simply be due to proximity to the Sheria House. Everyone in the country must file deeds and details with the Registrar of Companies at the Attorney General's Chamber in Nairobi.

coordinate themselves with like-minded individuals in order to create an entity called a “youth group.” The groups, comprised of 18 to 35 year-olds, form in communities often with a shared goal or purpose and register under the Ministry of Youth, Gender, and Social Services.<sup>37</sup> These groups most often operate their businesses informally and as such have no immediate need to register as a separate business.<sup>38</sup> This facilitates business creation, whereas the process of creating a business under the Registrar of Companies has been noted by many entrepreneurs to be cumbersome and difficult to navigate. There are other advantages to creating a business under



a youth group in addition to the ease of creation. Risk is spread amongst the group members, ideas can be bounced off one another, and groups are more likely to be granted loans by lending institutions.<sup>39</sup>

There are drawbacks, however. The ability to have the final say on decisions and the

satisfaction of creating and growing one’s own business by his or herself is not to be found in this model. Profits, if any, are shared. Yet another downside is the dependency on the group this method fosters, and questions remain as to what happens to group members when they grow too old to legally be a part of a youth group.

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<sup>37</sup> See *supra* note 12 and accompanying text.

<sup>38</sup> There are exceptions. For example, if a youth group were to operate a hotel/restaurant, registration and additional permits would be required. However, most youth group businesses are very small scale.

<sup>39</sup> Interview with Evance Ouma, Member, Pamoja Ghetto Youth Centre, in Nairobi, Kenya (June 26, 2012).

In areas such as Dandora, youth groups perform various functions including community policing—akin to security services for an entire neighborhood—for a small fee.<sup>40</sup> Many times they know the criminals and thus are able to guarantee that security improves.<sup>41</sup> A number of youth groups will also report thieves and other criminal acts to the local police.<sup>42</sup> With time the youth group solidifies its presence in the community, at which point some groups will assume additional responsibilities, such as dispute resolution or mob justice.<sup>43</sup>

Other types of businesses are also executed under the youth group. For example, Pamoja Ghetto Youth Centre runs a combination car park and carwash, a sportswear business selling football jerseys, and a store that sells a variety of animals for farming (poultry, rabbits, and ducks) as well as for pets (doves and guinea pigs).<sup>44</sup>

Another type of entrepreneurial entity is the Community Based Organization (CBO) which registers with the Ministry of Social Services. One such organization located in another slum of Nairobi, the Kibera Recycled Bone Products Self-Help Group, makes jewelry out of cow and camel bone. 35-40% of the proceeds from this group go to support a neighborhood nursery—roughly equivalent to our preschool and kindergarten—while another 10% goes to supporting an NGO that works in the neighborhood supporting the population with education, medicine, and in more dire cases, basic foodstuffs.<sup>45</sup>

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<sup>40</sup> Okioga, *supra* note 15 (manuscript at 45).

<sup>41</sup> Interview with Kerubo Okioga, Coordinator, Dandora Law and Human Development Project (Oct. 29, 2012).

<sup>42</sup> See Ouma Interview, *supra* note 39 (unfortunately this method is not particularly effective in eliminating or decreasing criminal threats as many times the police officers are merely bribed to release the criminal from custody).

<sup>43</sup> See Okioga Interview, *supra* note 41 (occasionally, however more rarely, these groups will effectively transform into a gang or other criminal entity).

<sup>44</sup> *Id.*

<sup>45</sup> Interview with Raphael Owino, Director, Kibera Recycled Bone Products Self-Help Group, in Nairobi, Kenya (June 14, 2012).

Many NGOs can be said to operate as businesses as well. For example, Youth Initiatives Kenya (YIKE), in addition to providing entrepreneurship and business training, operates as a microfinance organization by giving loans at low interest rates to youth in order to start a business. YIKE has also recently started a plastic recycling plant employing youth groups in Dandora, Kariobangi, and other boroughs to collect and supply the plastic and additional youth groups to run the recycling machine. The venture will eventually employ approximately 215 people.<sup>46</sup>

### **A. Registration**

The process to register a typical business, however, is not so straightforward, necessitating even those with entrepreneurial know-how and training to hire attorneys to guide them through the process. Unlike business registration processes in the United States which are more automated and often online, the procedure in Kenya is completed through a combination of multiple forms and payments, and visits to numerous offices. According to “Doing Business” the process takes 27-35 days,<sup>47</sup> however multiple entrepreneurs have noted the process usually takes months.<sup>48</sup> The procedure differs slightly depending on the type of business organization one is attempting to create: a partnership, a sole proprietorship, branch offices of companies registered

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<sup>46</sup> Interview with representative, Youth Initiatives in Kenya (YIKE), in Nairobi, Kenya (June 21, 2012).

<sup>47</sup> *Starting a Business in Nairobi, Kenya*, WORLD BANK GROUP, <http://www.doingbusiness.org/data/exploreconomies/kenya/sub/nairobi/topic/starting-a-business> (last visited Oct. 17, 2012).

<sup>48</sup> See Interview with Serah Kanyua, Co-Owner, Closet 49, in Nairobi, Kenya (June 4, 2012); see also Interview with Joseph Thuita, Marketing Manager, Green Leaf Insurance Agency, in Nairobi, Kenya (July 19, 2012).

outside Kenya, societies, or private and public registered companies.<sup>49</sup> The process to establish the latter is as follows.

First, one must reserve a name with the Registrar of Companies, and it must be substantially different than names already in use (e.g. Providence Insurance was too similar to a company starting with the name Provide).<sup>50</sup> This process takes three days and costs 1,000 KSh (\$12<sup>51</sup>) per name reservation.<sup>52</sup> One also has to file a Memorandum and Articles of Association with the Registrar of Companies, which declare the directors of the company, how much start-up capital there is, and the objectives and rules of the company. In this latter area, a lawyer is especially useful as he can detail virtually every field under the sun as a potential area to expand or move into—moves most entrepreneurs would not think even possible. For example, Green Leaf Insurance Agency, should it decide to do so, can become an M-Pesa<sup>53</sup> agent, sell printing and copying services, sell prepaid airtime for mobile phone networks, or become an agent for a bank, among many other possibilities.<sup>54</sup> Once this is complete, a Certificate of Incorporation is issued.

Next, a stamp duty costing at least 2,200 KSh (\$26<sup>55</sup>) must be paid at the bank accompanying a form collected from the Kenya Revenue Authority for up to 100,000 KSh (\$1,190<sup>56</sup>) of initial capital. For every additional 20,000 KSh (\$238<sup>57</sup>) there is an extra fee of 120

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<sup>49</sup> *Starting a Business in Kenya*, KENINVEST, <http://www.investmentkenya.com/starting-a-business-in-kenya-2> (last visited Oct. 17, 2012).

<sup>50</sup> Thuita Interview, *supra* note 48.

<sup>51</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>52</sup> *12 Steps to Registering your Business*, GREEN TEAM INITIATIVE, [http://www.thegreenteams.org/index.php?option=com\\_content&view=category&id=55&layout=blog&Itemid=79](http://www.thegreenteams.org/index.php?option=com_content&view=category&id=55&layout=blog&Itemid=79) (last visited Oct. 17, 2012).

<sup>53</sup> A discussion of the mobile money system M-Pesa may be found in part IV. A. 2.

<sup>54</sup> Thuita Interview, *supra* note 48.

<sup>55</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>56</sup> *Id.*

KSh (\$1.40<sup>58</sup>), up to a maximum of 60,000 KSh (\$714<sup>59</sup>).<sup>60</sup> Afterward, a Declaration of Compliance must be signed before a Commissioner for Oaths or a Notary Public. The deed and details must then be filed with the Registrar of Companies which necessitates the filing of three forms carrying a charge of 600 KSh (\$7<sup>61</sup>). One must also register for a personal identification number (PIN) with the Kenya Revenue Authority to identify persons when they are conducting business. All partners in a business must obtain their own PIN, but only a single PIN is needed for all transactions of sole proprietorships.

Entrepreneurs must also register with the Value Added Tax office so that a tax on the consumption of imported goods and services may be collected, if sales are more than 5 million KSh (\$59,500<sup>62</sup>) per year.<sup>63</sup> Certain fields, such as dealers for motor vehicle parts, jewelers, and consultants are subject to the tax, regardless of turnover.<sup>64</sup> The 16% tax is collected by registered individuals at designated locations, where it is then forwarded to the Commissioner.

A business permit granted by the City Council is also required, but many times not obtained. The amount of the fee depends on the type of business, number of employees, and size of the organization's premises as well as whether the applicant applied for a one or a two-year permit. Office space is required before submitting the application, but once the permit is granted, the applicant need not apply again in another locality should the business expand or move.

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Starting a Business in Nairobi, Kenya, supra* note 47.

<sup>61</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>62</sup> *Id.*

<sup>63</sup> *Value Added Tax at a Glance*, KENYA REVENUE AUTHORITY, <http://www.revenue.go.ke/portal/dtd/vat/VATataglance.pdf> (last visited Oct. 17, 2012).

<sup>64</sup> *Id.*

Businesses often do not register with the National Social Security Fund as well, either because they do not realize it is mandatory or to save money despite the relatively low cost of participation. The employer submits a monthly contribution of 1% of the employee's salary up to a



maximum of 400 KSh (\$4.80<sup>65</sup>), of which half is deductible from the employee's salary.

Yet another requirement that budding entrepreneurs neglect is registering for the National Hospital Insurance Fund. Oftentimes participation is thought to be optional when the company retains less than five full-time employees.<sup>66</sup> The employer deducts from the employee's salary a fixed monthly payment to the Fund up to a maximum of 320 KSh (\$3.80<sup>67</sup>) per month, per employee.<sup>68</sup> There is considerable incentive to register for this program as insurance companies will pay only a portion of claims made by companies, expecting that the rest is covered by the Fund.<sup>69</sup>

Business owners must also register for Pay As You Earn—a program whereby employers deduct income tax directly from employee paychecks.<sup>70</sup> This program is applicable if the worker

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<sup>65</sup> *Id.*

<sup>66</sup> Interview with Emmanuel Muthama, Production Manager, Jafa Food Products, in Nairobi, Kenya (July 11, 2012).

<sup>67</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>68</sup> *Starting a Business in Nairobi, Kenya, supra* note 47.

<sup>69</sup> Thuita Interview, *supra* note 48.

<sup>70</sup> *Income Tax*, NATIONAL TAXPAYERS ASSOCIATION, <http://www.nta.or.ke/about-taxes/types-of-taxes/income-tax> (last visited Oct. 17, 2012).

makes more than 11,135 KSh (\$132<sup>71</sup>) per month and is not a casual employee of less than a month.<sup>72</sup>

Needless to say the process is neither straightforward nor simple. It is also open to abuse: officials will cite an imaginary backlog for delays, hoping to obtain bribes.<sup>73</sup> Furthermore, because the government registration offices are overcrowded and chaotic, many entrepreneurs avoid the hassle of navigating the disorganized system by giving bribes.<sup>74</sup> Automating the process could help bypass corruption as well as quicken business registration—Kenya’s months-long process can be contrasted with state procedures in the United States that can be completed online in a matter of hours.

Problems can also occur when vendors either willfully or negligently choose not to fulfill one of the requirements, such as obtaining a business permit. The City Council’s police unit typically makes intermittent visits to verify all paperwork and permits are in order. Permanent offices in the Central Business District are especially likely to have City Council police visit, whereas businesses within neighborhoods in the outlying boroughs may never be checked on. Not having registered your business or having the proper permits with the City Council carries big fines, and the police can even take a business’s stock of products as collateral, sometimes returned in a damaged form or never to be seen again due to corruption.<sup>75</sup>

Because of the extremely large number of rules and licensing requirement that one must abide by, most entrepreneurs do not know all of them or simply cannot keep up with them. This

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<sup>71</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>72</sup> *Employer’s Guide to Pay as You Earn in Kenya*, KENYA REVENUE AUTHORITY, <http://www.kra.go.ke/incometax/pdf/PAYEGUIDE11-1-07.pdf> (last visited Oct. 17, 2012).

<sup>73</sup> Interview with Dorin Wagithi, Community Outreach Officer, Dandora Law and Human Development Project (Oct. 22, 2012).

<sup>74</sup> *Id.*

<sup>75</sup> Kanyua Interview, *supra* note 48.

gives the police an advantage to extort bribes through intimidation, as shop owners do not have time to research on the spot, nor do they typically know their rights or how much a fine for noncompliance should be. However, after a time business owners and managers tend to adapt to the situation and learn how to cope with the reality on the ground.

## **B. Informal Businesses**

Most MSEs are not registered businesses under the Registrar of Companies and thus are commonly referred to as “informal.” Hawkers and other *jua kali* businesses are required to obtain licenses and permits, although the requirements are much less stringent and cumbersome than for registered companies explained above. The process is by no means streamlined, often requiring widely differing licenses and permits depending on the type of business (textiles, meat products, motor mechanics, etc.).

Hawkers, for example, must apply for licenses every year from the City or County Council. These licenses are given with the production of a valid identity card and a certificate of good conduct.<sup>76</sup> They must limit their selling to designated areas and are required to pay a fee of roughly 25 KSh (\$0.30<sup>77</sup>) for every day they are in operation;<sup>78</sup> the price varies with the location’s desirability.<sup>79</sup>

The government has recently moved to simplify the licensing of businesses and other measures have been discussed to open opportunities for entrepreneurs.<sup>80</sup> However, few people

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<sup>76</sup> Mary Mbithi & Jamuhuri Mainga, *Doing Business in Kenya: Procedures and Regulations, Opportunities, Sources of Finance and Incentives*, KENINVEST, at 15 (Jan. 2006), <http://www.investmentkenya.com/resources/publications?download=8:handbook-for-local-investors>.

<sup>77</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>78</sup> Mbithi & Mainga, *supra* note 76.

<sup>79</sup> Ouma Interview, *supra* note 39.

<sup>80</sup> Mbithi & Mainga, *supra* note 76, at 2.

but legislators and business elites are aware of these actions.<sup>81</sup> Similar to those who are required to register their business, micro-scale entrepreneurs are even less likely to have access to pertinent information necessary for operating a successful business; this includes knowledge of the different requirements that are needed to legally run their enterprise.

While running the business informally requires a lesser initial investment and provides flexibility, it also hinders growth and expansion. Unfortunately, because of the lack of oversight in this sector, workers rights are virtually unheard of, allowing business owners to subject employees to unsafe working conditions.<sup>82</sup> Operating the business informally precludes the entrepreneur from taking advantage of incentives available only to formally registered businesses as well.<sup>83</sup>

Furthermore, as most informal businesses are run without contracts and written agreements, they are exposed to additional liability. In the case of a dispute, most claimants cannot meet the rigorous requirements of proving one's position in a civil court.



### III. Education and Other Forms of Aid

While information on starting businesses is for the most part not readily available, there are institutions that provide these services as well as continuing education opportunities for young entrepreneurs. However, having spoken with numerous entrepreneurs and business

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<sup>81</sup> *Id.*

<sup>82</sup> Okioga, *supra* note 15 (manuscript at 21).

<sup>83</sup> Mbithi & Mainga, *supra* note 76, at 2.

owners, it is evident that most are not aware of the educational and other opportunities for aid that are available in Dandora and the surrounding boroughs.

This seems to be linked to the fact that most organizations do not spend money advertising their services, oftentimes due to limited funds of which the organization's owners or managers believe can be better spent directly aiding or working with the people. Thus, it is almost entirely through word of mouth that people come to find these organizations exist. That said, most of the organizations reviewed are barely staying afloat as it is and have neither the manpower nor the money to expand their services.

Despite this reality, there is not a dearth of organizations offering all manners of aid, from specific training in starting a Kenchic (fried chicken) franchise to round-table discussions involving the challenges new entrepreneurs face with an established businessperson advising. With what seems to be little cooperation between the organizations, these overlapping groups surprisingly cover the different aspects and challenges of starting a business relatively well.

## **A. Government**

The Government of Kenya itself has not been completely uninvolved in combating unemployment and providing opportunities for entrepreneurs. In 2010, the World Bank approved a \$60 million loan to fund the Kenya Youth Empowerment Project (KYEP) which was intended to increase temporary employment programs targeting the youth in labor-intensive work and social services as well as private sector internships and training.<sup>84</sup> Some funds dispersed out of the temporary work program—which received the largest share of the loan at \$43 million (4.3 billion KSh)—have been questioned as to their propriety after an audit conducted by the World

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<sup>84</sup> Press Release, The World Bank, World Bank Approves US\$60 Million for Kenya's Youth Empowerment Program (May 4, 2010), <http://go.worldbank.org/FA5WEGNSW0>.

Bank<sup>85</sup> found some 33 million shillings (\$383,000<sup>86</sup>) paid to senior officials in the prime minister's cabinet and to companies for services that were never rendered.<sup>87</sup> The program operates by providing training for interns, having them learn from a master craftsman. It also teaches life and core business skills to the trainees, as well as entrepreneurship training for those in the informal sector.<sup>88</sup>

In 2006, the Government of Kenya established the Youth Enterprise Development Fund (YEDF), which provides loans and entrepreneurial training to individuals and youth groups who operate or want to start their own business. One billion Kenyan Shillings (\$13.6 million<sup>89</sup>) were appropriated in the 2006-2007 budget to jump-start this program.<sup>90</sup> Despite claims of impropriety and misuse of funds, in April 2012 the government chose to almost double the yearly budget of YEDF from 550 million KSh to one billion KSh (\$6-12 million).<sup>91</sup> When an audit was released later that month, it detailed the misappropriation of millions of shillings of funds in fraudulent claims.<sup>92</sup> The initial flexibility on the part of the Ministry of State for Youth Affairs in order to determine how funds should best be allocated and distributed—which resulted

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<sup>85</sup> Press Release, The World Bank, Statement from the World Bank on Kenya Youth Empowerment Project (Oct. 25, 2011), <http://www.worldbank.org/en/news/2011/10/25/statement-world-bank-kenya-youth-empowerment-project>.

<sup>86</sup> 86.12 KES to 1 USD, average exchange rate for Jan. 2012.

<sup>87</sup> Lordrick Mayabi, *Pressure mounts for Raila, ministers to quit over KKV*, CAPITAL NEWS (Nov. 1, 2011), [http://www.capitalfm.co.ke/news/2011/11/pressure-mounts-for-raila-ministers-to-quit-over-kkv/?wpmp\\_switcher=mobile](http://www.capitalfm.co.ke/news/2011/11/pressure-mounts-for-raila-ministers-to-quit-over-kkv/?wpmp_switcher=mobile).

<sup>88</sup> *KYEP Programmes*, KENYA YOUTH EMPOWERMENT PROJECT, <http://www.kepsa.or.ke/kyep/index.php/kyep-programmes> (last visited Oct. 17, 2012).

<sup>89</sup> 73.3 KES to 1 USD, exchange rate for Nov. 1, 2005.

<sup>90</sup> The Government Financial Management Act, (2009) Cap. 412B Subsidiary Legislation (Kenya).

<sup>91</sup> *Increase Youth Enterprise Fund to one billion shillings- President Kibaki directs*, STATE HOUSE, KENYA (April 5, 2012), <http://www.statehousekenya.go.ke/news/april2012/2012050401.htm>.

<sup>92</sup> *Youth Enterprise Fund Embezzlement*, GOOD NEWS BROADCASTING SYSTEM, <http://gbskenya.com/youth-enterprise-fund-embezzlement/> (last visited Oct. 17, 2012).

in the program being implemented without a comprehensive policy nor a legal framework to follow—may have provided the impetus for abuse in this case.<sup>93</sup> The fund has supposedly dispersed 5.9 billion KSh (\$75.5 million<sup>94</sup>) to 157,000 youth groups thus far in addition to having provided entrepreneurship training to over 200,000 youths.<sup>95</sup>

The government has a similar program called the Women Enterprise Fund (WEF), confusingly run by a different department, that of the Ministry of Gender, Children, and Social Development.<sup>96</sup> Funds are dispersed in essentially the same manner as under the YEDF, but are only available to women over the age of 17 to use towards an income generating activity.<sup>97</sup>

However noble the intentions of the government programs, those in the populace who are aware that they exist continue to harbor a lingering skepticism towards them. As with both KYEP and YEDF, news outlets frequently release stories on the latest government scandal or embezzlement. Unfortunately, it seems to have become so commonplace that it is almost accepted as a fact of life—ministers caught virtually red-handed often refuse to resign. The problem is endemic—according to the Kenya Anti-Corruption Commission (KACC), Kenya loses up to 40% of its gross domestic product to graft annually.<sup>98</sup>

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<sup>93</sup> *Youth Enterprise Development Fund*, KCSE ONLINE, [http://www.kcse-online.info/devolution/youth\\_enterprise\\_development\\_funds.html](http://www.kcse-online.info/devolution/youth_enterprise_development_funds.html) (last visited Oct. 17, 2012).

<sup>94</sup> 78.18 KES to 1 USD, average exchange rate for Nov. 2008.

<sup>95</sup> *About YDEF*, YOUTH ENTERPRISE DEVELOPMENT FUND, <http://www.youthfund.go.ke/index.php/about-us/about-yedf> (last visited Oct. 17, 2012).

<sup>96</sup> *Introduction - Women Enterprise Fund*, GOVERNMENT OF KENYA: MINISTRY OF GENDER, CHILDREN AND SOCIAL DEVELOPMENT, <http://www.gender.go.ke/index.php/Women-Enterprise-Fund-WEF/intro-women-enterprise-fund-wef.html> (last visited Oct. 17, 2012).

<sup>97</sup> *Guidelines for the Women Enterprise Fund*, GOVERNMENT OF KENYA: MINISTRY OF GENDER, CHILDREN AND SOCIAL DEVELOPMENT, at 1-2, <http://www.gender.go.ke/index.php/Download-document/1-Women-Enterprise-Fund-Guidelines.html> (last visited Oct. 17, 2012).

<sup>98</sup> *Former Kenya minister to be tried for graft: court*, REUTERS AFRICA (July 29, 2011, 10:40 AM), <http://af.reuters.com/article/topNews/idAFJJOE76S0BS20110729>.

The government may also be unreasonably and excessively relying on sponsoring entrepreneurship in order to compensate for the lack of jobs among the youth.<sup>99</sup> Not all youth may have the proper mindset to become a successful entrepreneur and businessperson, predisposing some youth to fail. As this is often the only opportunity available, a failed enterprise may only serve to increase the indebtedness among those youth.

Basic education is critical to success in every walk of life; entrepreneurship is no exception. Even though the Ministry of Education is yet another department racked with corruption,<sup>100</sup> they have taken steps to increase the accessibility of basic education. In 2008, in an effort to provide free secondary education for everyone by 2015 in an attempt to comply with the Millennium Development Goals, the government approved the allocation of 10,265 KSh (\$131<sup>101</sup>) per annum per student for use on secondary education.<sup>102</sup> This, however, is not enough to cover the cost of most secondary schools. The Ministry of Finance also supports secondary education through the Constituency Development Fund (CDF), which is divided among the constituencies. Only a limited amount of the fund is allocated to make scholarships available for needy and bright students.<sup>103</sup> The fund is managed by CDF Committees, which are appointed by the local Member of Parliament. Scholarships have become extremely difficult to obtain—not

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<sup>99</sup> Okioga Interview, *supra* note 41.

<sup>100</sup> See Yara Bayoumy, *Kenya sentences education official to jail for graft*, REUTERS (Mar. 20, 2012, 3:47 PM), <http://www.reuters.com/article/2012/03/20/us-kenya-corruption-idUSBRE82J14620120320> (4.2 billion KSh (\$51 million) in funds were stolen from the 2005-2009 education budget).

<sup>101</sup> 78.18 KES to 1 USD, average exchange rate for Nov. 2008.

<sup>102</sup> *Free Secondary Education*, KCSE ONLINE, [http://www.kcse-online.info/devolution/free\\_secondary\\_education.html](http://www.kcse-online.info/devolution/free_secondary_education.html) (last visited Oct. 17, 2012).

<sup>103</sup> Interview with Gerald Otieno, Community Mobilizer, Dandora Law and Human Development Project, in Nairobi, Kenya (Aug. 8, 2012).

only from the high quantity of applicants but also because the selection criteria are not known and thus the opaqueness of the procedure has led to its abuse.<sup>104</sup>

Because of this lack of support, families often struggle to come up with school fees to allow their children the opportunity to attend secondary school. Sacrifices are made so that a child may attend a better school as the quality of the school usually directly correlates with the cost of attendance. When school fees are late or simply not paid, the student does not attend; it is not uncommon to see students walking around the streets during school hours in their uniforms.

## **B. Private Organizations and Nonprofits**

Picking up the pieces left by an inadequate public education system, NGOs seem to be best filling the gap in knowledge that is pervasive among many aspiring young entrepreneurs. Youth Banner is such an organization that has been filling this niche need with programs such as the Business



Economic Empowerment Program. The program recruits young entrepreneurs into business clubs led by experienced business professionals who train them, mentor them, and expose them to markets.<sup>105</sup> They have a few other programs as well, helping youth write business plans and linking youth who are in the planning stage or early stage of running their business with professionals to discuss their business to find solutions to problems.<sup>106</sup>

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<sup>104</sup> *See id.* (scholarships are often awarded in a nepotistic fashion to students who often are not in need).

<sup>105</sup> Interview with Titus Ayusa, Manager, Youth Banner, in Nairobi, Kenya (July 5, 2012).

<sup>106</sup> *Id.*

Youth Initiatives Kenya (YIKE) is based in the neighboring borough of Kariobangi, and offers unique and progressive educational programs to youth groups that are deemed reliable to work with.<sup>107</sup> One such program, Girl Empowerment Through Micro-franchise, teaches groups of 17-19 young women how to start their own Kenchic chicken restaurant or Darling hair salon. The program takes them through the entire process, including obtaining franchise rights, business planning, location advice, accounting and management. Although the program only started in 2012, its goal is to reach and train 1,200 youth by the end of 2013.<sup>108</sup>

For those entrepreneurs who have their own ideas for a business venture, YIKE has the Training & Research Project which offers training in small businesses, peaceful conflict resolution, team building, and financial management. The training lasts one week and is given for the first three years of the entrepreneur's business. This program also works in conjunction with the Youth Desk, another program under YIKE, which provides small loans to entrepreneurs at low interest rates of approximately 10%.<sup>109</sup> The loan program has been largely successful with a 95% repayment rate, though it is not always within the time stipulated.<sup>110</sup>

While the programs that YIKE offers are quite successful, they are not without challenges of their own. One of the largest problems facing YIKE is tied to the organization's limited resources. Simply put, there are not enough resources to meet the demand. Compounding this situation is the inability to reach everyone, as it is difficult to inform youth in neighboring informal settlements of the NGO's services. This leaves out youth who often need the most

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<sup>107</sup> Youth Initiatives in Kenya (YIKE), Interview, *supra* note 46.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*; *see also id.* (the Government of Kenya occasionally provides funding to the Training & Research Project while the Citi Foundation helps the Youth Desk keep loan rates low); A more thorough discussion of the Youth Desk and other NGO lending can be found in part IV. A. 3.

<sup>110</sup> *Youth Desk Micro-Credit Performance 2011*, YOUTH INITIATIVES KENYA (YIKE), <http://www.yike.org/pdf/December.pdf> (last visited Oct. 17, 2012).

assistance. Funding that is limited to specific usage can lead to additional issues. Young men frequently ask why an effective program like Girl Empowerment Through Micro-franchise is limited to women, but there are not sufficient resources to start a similar program for men. YIKE, to its credit, is also aware of less formal challenges to individual group members. As a member nears the age of 35, YIKE attempts to teach these individuals how to transition and to gain independence from the group.<sup>111</sup>

Another organization focused on the issue of entrepreneurship by the youth is the Africa Youth Trust. An independent and nonpartisan development organization, it offers a number of programs ranging from gender empowerment to civic education.<sup>112</sup> The Youth Employment Initiative of Nairobi (YEIN) is one such program that has offered free courses in Dandora. For example, the five-week “Business Skills and Entrepreneurship Development” course covers how to generate business ideas, basic record keeping, and an introduction to marketing.<sup>113</sup> Participants are also taught and required to create a business plan at the end of the course. One company that grew out of this course, Jafa Food Products, later participated in the YIKE Business Challenge and was awarded a grant of 100,000 KSh (\$1,183<sup>114</sup>) for having the best business idea.<sup>115</sup> Jafa has since substantially grown and now has three full time employees with another three casual laborers and has expanded their product line from a single pickled product to seven with hopes of soon manufacturing tomato and chili sauce.<sup>116</sup> YEIN offers another free course on the Training of Trainers on Employability that one of the creators of Jafa now

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<sup>111</sup> *Id.*

<sup>112</sup> *About Us*, AFRICA YOUTH TRUST, <http://africayouthtrust.org/index.php/corporate> (last visited Oct. 17, 2012).

<sup>113</sup> Emilie N. Hovgaard, *The Story of a Successful Entrepreneur*, YOUTH EMPLOYMENT INITIATIVE OF NAIROBI (Dec. 7, 2011), <http://youthemployment.or.ke/?p=104>.

<sup>114</sup> 84.5 KES to 1 USD, exchange rate for Mar. 25, 2008.

<sup>115</sup> *Id.*

<sup>116</sup> Muthama Interview, *supra* note 66.

participates in.<sup>117</sup> The aim of this program is for the trainees to then turn around and teach what they have learned to other youth in the area on topics such as writing successful CVs and cover letters to job interviews and searches.<sup>118</sup>



Epitomizing almost every aspect of Catholic Social Teaching, the Kutoka Network is an NGO comprised of a coalition of 26 Catholic parishes<sup>119</sup> that work in the slums all over Nairobi.<sup>120</sup> With an eye towards respect for human dignity, creating

social justice, and charity, Kutoka has an advocacy program that gives civic education training on how to get people to stand up for their rights, and a radio/newsletter program called “Maisha ya Ghetto” (life in the ghetto) that gives a voice to people in the slums. They also have a livelihood program that promotes alternative ways of making a living—which includes a finance wing—as well as a program that offers training for entrepreneurs.<sup>121</sup> While much of the training for entrepreneurs is basic, oftentimes given by volunteers from banks, guidance is given for business planning, financing, bookkeeping, and planning for the future.<sup>122</sup> At a few of the

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<sup>117</sup> Hovgaard, *supra* note 113.

<sup>118</sup> *Id.*

<sup>119</sup> Interview with John Webootsa, Coordinator, Kutoka Network, in Nairobi, Kenya (June 27, 2012) (Plans have been made that will soon expand the network to include another five parishes from Mombasa, as well as five from Kisumu.).

<sup>120</sup> Francisco Carrera, *With The Slum Dwellers: Interview with Fr. John Webootsa*, NEW PEOPLE, no. 139, July-Aug. 2012, at 11 [hereinafter *With The Slum Dwellers*].

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

parishes, vocational training is offered for professions in crop management, sewing, dressmaking, handcrafts, masonry, and carpentry, among others.<sup>123</sup>

Kutoka has been instrumental in supporting local businesses in other ways, as well. Through Kutoka, donors associated with the local Holy Cross Parish in Dandora and St. John's Catholic Church in Korogocho

jumpstarted a local “white charcoal” business, which produces combustible blocks made from a combination of waste paper and sawdust or wood shavings.<sup>124</sup> A grant was provided to buy the first machine needed to create



the cheaper, longer burning alternative to traditional charcoal that is widely used to heat stoves for cooking. The business, which is registered as self-help group and employs 10 people, effectively operates on the dumpsite and was burned to the ground during the post-election violence.<sup>125</sup> Kutoka helped with the rebuilding and later aided expansion by facilitating the procurement of an additional machine from UN Habitat.<sup>126</sup> Here, additional issues exist: the process to obtain a grant through UN Habitat was very complicated and it took more than half a year to procure the machine.<sup>127</sup>

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<sup>123</sup> *Slum Ministry: Education*, KUTOKA NETWORK, [http://www.kutokanet.com/slum\\_ministry/edu/edu.htm](http://www.kutokanet.com/slum_ministry/edu/edu.htm) (last visited Oct. 17, 2012).

<sup>124</sup> White Charcoal Interview, *supra* note 22.

<sup>125</sup> *Id.*

<sup>126</sup> Webootsa Interview, *supra* note 119.

<sup>127</sup> *Id.*

Surprisingly, banks themselves offer services outside of regular banking and loan making. They are typically not as extensive as some of the other programs, such as several of the ones offered by NGOs.

Equity Bank has experienced precipitous growth during the last decade while the entire world was feeling the recession. It is now the largest bank in Eastern Africa by customers, serving 8 million out of a total of 14 million banking Kenyans.<sup>128</sup> Having a socially conscious outlook, Equity has pioneered unique banking initiatives in various areas, including education and the agency model in order to reach more disadvantaged sectors of the population. Equity Bank offers a financial literacy program, that covers topics such as marketing, stock control, budgets, targets, and cash flow.<sup>129</sup> They also offer Financial Education for Entrepreneurship, a three-month program for youth groups that takes them through topics necessary to run a successful business, which is especially useful when none of the members of the youth group have any formalized training on running a business.<sup>130</sup> The Equity Group Foundation has also partnered with the MasterCard Foundation to create a program called Wings to Fly, which is the largest secondary school scholarship program in Kenya,<sup>131</sup> supporting over 10,000 students.<sup>132</sup> Also through the foundations, a program called Financial Knowledge for Africa (FiKA) offers 12-week covering budgeting, savings, debt management, financial negotiations and banking

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<sup>128</sup> *James Mwangi: Africa's Inclusive Finance Guru Is World's Best Entrepreneur*, FINANCIAL NIGERIA (July 18, 2012), [http://www.financialnigeria.com/DEVELOPMENT/developmentreport\\_category\\_item\\_detail.aspx?categoryid=11&item=249](http://www.financialnigeria.com/DEVELOPMENT/developmentreport_category_item_detail.aspx?categoryid=11&item=249) [hereinafter *Mwangi: World's Best Entrepreneur*].

<sup>129</sup> Interview with Robert Kamanja, Business Growth & Development Manger, Equity Bank Kariobangi Branch, in Nairobi, Kenya (June 27, 2012).

<sup>130</sup> *Id.*

<sup>131</sup> *Equity Group Foundation Scholarships*, THE MASTERCARD FOUNDATION, <http://mastercardfdn.org/Projects/equity-group-foundation-scholarships> (last visited Oct. 17, 2012).

<sup>132</sup> *Mwangi: World's Best Entrepreneur*, *supra* note 128.

services that is free.<sup>133</sup> In just over half a year from its conception, the program has trained almost 250,000 people.<sup>134</sup> A subset of 7,500 individuals are planned to be selected for intensive entrepreneurship and business mentorship training.<sup>135</sup>

Faulu Kenya, a deposit-taking microfinance company, offers some basic business training programs as well, albeit for a small fee. There is the Faulu Advisory program that costs only 150 KSh (\$1.80<sup>136</sup>) for a three-day course, including lunch, to become certified.<sup>137</sup> It covers budgeting, financial and business management, and economic empowerment in addition to developing other entrepreneurial skills. There is also the Loan Orientation Seminar, which costs 500 KSh (\$5.90<sup>138</sup>) to become certified with lunch and transportation included.

More specific microfinance organizations many times offer education to their clients as well. One such institution, the Welfare Advisory Committee, operates much like a SACCO (savings and credit cooperative) despite being more of a microfinance organization. It offers training on group cohesiveness, group guaranteeing of loans, saving, bookkeeping, recordkeeping, the importance of keeping clients, the importance of loans, and—amazingly—the disadvantages of taking out loans.<sup>139</sup> Possibly just as important as the formal training is the

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<sup>133</sup> *Financial Literacy & Access*, EQUITY GROUP FOUNDATION, <http://equitygroupfoundation.com/index.php/our-pillars/financial-literacy-access> (last visited Oct. 17, 2012).

<sup>134</sup> *Id.*

<sup>135</sup> *Equity Group Foundation Financial Literacy*, THE MASTERCARD FOUNDATION, <http://mastercardfdn.org/Projects/equity-group-foundation-financial-literacy> (last visited Oct. 17, 2012).

<sup>136</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>137</sup> Interview with representative, Faulu Kenya, Kariobangi Branch, in Nairobi, Kenya (June 27, 2012).

<sup>138</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>139</sup> Interview with Benson Oduya, Community Officer, Welfare Advisory Committee, in Nairobi, Kenya (July 10, 2012).

feedback you get from the other entrepreneurs and business owners in the group, in order to learn tactics that work and how to adjust one's business in order to thrive.

It is evident that there is not a complete shortage of aid opportunities. The primary challenge is educating the public on the opportunities available in their community, the services each organization provides, and how to best take advantage of those services.

#### **IV. Access to Capital and Other Challenges**

##### **A. Availability of Credit**

Access to capital is an issue at the forefront of anyone looking to start a business in Kenya. At first glance, this seems somewhat at odds with the veritable plethora of financial institutions available to make loans to business owners and entrepreneurs. The reality is that few organizations are willing to take risks on beginning entrepreneurs and thus their microfinance is directed towards those existing entrepreneurs who are looking to expand their business. Where does one then find the capital to actually start one's business? Many times it is from informal merry-go-rounds, savings from previous work, and loans from friends and family.<sup>140</sup> There is, however, a number of interesting loan programs and schemes that are utilized to make access to credit more affordable. Some NGOs, such as YIKE, offer loans at lower than market interest rates. Other options include microfinance organizations and alternative financial instruments, such as SACCOs (savings and credit cooperatives), some of which effectively provide capital with an interest rate below 1%.

Interest rates on traditional loans are extremely high when compared with most Western institutions, with rates hovering around 20% in most cases. This is likely due in large part to the extremely high inflation rate in Kenya, currently just below 8% but which has been over 30%

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<sup>140</sup> Interview with groups, Welfare Advisory Committee, in Nairobi, Kenya (July 10, 2012).

within the last four years.<sup>141</sup> While interest rates on loans are quite high, there is opportunity to save at high interest rates as well. Faulu Kenya, for example, offers a savings account with 13% interest, assuming you have over 5,000 KSh (\$59<sup>142</sup>).<sup>143</sup> However, for the majority of the residents of lower income communities, such as Dandora, this is still far above what most residents are able to save.



Kenya does not have any licensed credit bureaus with standardized data procedures

providing credit risk scores.<sup>144</sup> There is also no alternative method currently employed to cost effectively rate credit risk, so banks and other financial institutions often require collateral (often physical goods as well as reputational) or rely on group lending in order to secure the loans.<sup>145</sup>

As a consequence, institutions are extremely hesitant to loan to unproven ventures that do not have the backing of a group for collateral. This makes it difficult for a group to obtain a loan in order to start a business (as opposed to expansion), and even harder for an individual to gain access to credit. Additionally, this contributes to high interest rates as banks attempt to compensate for the unknown and perceived high credit risk.

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<sup>141</sup> *Kenya Inflation Rate*, TRADING ECONOMICS, <http://www.tradingeconomics.com/kenya/inflation-cpi> (last visited Oct. 17, 2012).

<sup>142</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>143</sup> *Faida Fixed Deposit Account*, FAULA KENYA, [http://www.faulukenya.com/index.php?option=com\\_content&view=category&id=53&layout=blog&Itemid=126](http://www.faulukenya.com/index.php?option=com_content&view=category&id=53&layout=blog&Itemid=126) (last visited Oct. 17, 2012).

<sup>144</sup> David Snyder, *The Potential for Credit Scoring for SME Lending in Kenya*, FINANCIAL SECTOR DEEPENING KENYA, at 1 (Oct. 2008), [http://www.fsdkenya.org/pdf\\_documents/08-11-24\\_Credit\\_Scoring\\_for\\_SME\\_lending.pdf](http://www.fsdkenya.org/pdf_documents/08-11-24_Credit_Scoring_for_SME_lending.pdf).

<sup>145</sup> *Id.* at 9.

## 1. Government

The Government of Kenya has recognized the need for capital among many entrepreneurs and created the Youth Enterprise Development Fund (YEDF) and the Women Enterprise Fund (WEF) in order to address such need. The primary objective of the YEDF is to provide financing to entrepreneurs and business owners through intermediaries such as SACCOs, the Family Finance Bank, the Kenyan Women's Finance Trust (KWFT), K-Rep Bank, and others, which are then distributed to individual young people and youth groups. SACCOs are



present virtually everywhere, but only KWFT out of the list above has a significant presence in Dandora. YEDF loans feature an attractive 8% interest rate, and are initially only available to youth groups.<sup>146</sup> Only after a group has maintained good standing through repayment of the loan is credit extended to individuals

within the group.<sup>147</sup> The terms of the loans given through the Youth Enterprise Development Fund are not well known to youth, and some have misconceptions or are distrustful about the services offered. Another issue is that once the money is accepted, the youth group often does not have the proper background to know how to best make use of the loan and how to repay it.

## 2. Innovation and Change

Kenya is at the forefront of mobile money technology and implementation. A telecommunications company named Safaricom introduced M-Pesa ("M" standing for mobile, and "pesa" meaning "cash" in Kiswahili) in March 2007 and the adoption of the system has been

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<sup>146</sup> *Frequently Asked Questions*, YOUTH ENTERPRISE DEVELOPMENT FUND, <http://www.youthfund.go.ke/index.php/faq> (last visited Oct. 17, 2012).

<sup>147</sup> *Id.*

swift and widespread. Now actively used by over 14 million out of Kenya's population of some 40 million, the company now has over 37,000 agents scattered around the country enabling customers to deposit or withdraw money which is held in connection with one's mobile number.<sup>148</sup> With other mobile networks quickly following suit and rolling out competing versions of M-Pesa, the adoption of all mobile money systems in Kenya is now a reported 68% of the population.<sup>149</sup>

It is not only the convenience and simplicity of the system that is responsible for its widespread use. Safety aspects are readily apparent: it eliminates the need to carry money on oneself, thus deterring potential thieves; it also creates an alternative to the risky practice of sending hard currency by courier over long distances—like many city dwellers do for their relatives who reside in rural areas.<sup>150</sup> A recent study on the effects of M-Pesa found it to have numerous positive effects. In addition to ease of transaction and monetary security, money circulation grew, increasing consumption within communities.<sup>151</sup> For entrepreneurs, the introduction of M-Pesa was found to have a larger effect on the expansion of businesses rather than the opening of new businesses, however an increase in the number of informal businesses was noted.<sup>152</sup> M-Pesa has also been reported by many to be used as a vehicle of saving, thus

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<sup>148</sup> *Timeline of M-PESA*, SAFARICOM, [http://www.safaricom.co.ke/mpesa\\_timeline/timeline.html](http://www.safaricom.co.ke/mpesa_timeline/timeline.html) (last visited Oct. 17, 2012).

<sup>149</sup> *Mobile Payments Readiness Index: Kenya*, MASTERCARD WORLDWIDE, <http://mobilereadiness.mastercard.com/kenya> (last visited Oct. 17, 2012).

<sup>150</sup> William Jack & Tavneet Suri, *Mobile Money: The Economics of M-PESA*, MASS. INST. TECH., at 23 (Jan. 2011), <http://www.mit.edu/~tavneet/M-PESA-Final2.pdf>.

<sup>151</sup> Megan G. Plyler, Sherri Haas and Geetha Nagarajan, *Financial Services Assessment, Community-Level Economic Effects of M-PESA in Kenya: Initial Findings* (June 2010), p. 20-21.

<sup>152</sup> *Id.*

relieving the need for many traditional banking services as well as effectively providing accessible bank-like services to the poor.<sup>153</sup>

The rapid adoption of M-Pesa and other competing mobile money schemes by Kenyans has initiated a response by the banking sector. In addition to a spur of lawsuits attempting to place long-established bank regulations on M-Pesa, traditional banks have also realized that there is a market to be had in the previously avoided low-income areas. In Dandora, Equity Bank and Coop Bank have created branches nearby. Equity's center in the neighboring borough of Kariobangi has 135,000 accounts at this branch alone, where 60 accounts are opened every day with little marketing. This has created the need for some 75 sub-agents in the area in order to deal with the congestion as well as compete with the prevalence of M-Pesa agents for the storage of resident's money.<sup>154</sup>

Unfortunately, the success and proliferation of M-Pesa shops has also drawn the attention of thieves. A recent string of violent robberies<sup>155</sup> has resulted in more agents closing their businesses as it becomes increasingly risky to keep the large sum of money on hand that is needed to operate.

### **3. Private Organizations and Nonprofits**

Equity Bank does not offer direct loans to aspiring entrepreneurs, but it does operate group-lending schemes that the organization deems lower risk and which are quite similar to SACCOs.<sup>156</sup> The youth groups are trained for six weeks, one hour a week on group dynamics, saving, budgeting, marketing, and business management. The members then start saving every

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<sup>153</sup> Jack & Suri, *supra* note 150.

<sup>154</sup> Kamanja Interview, *supra* note 129.

<sup>155</sup> Lydia Matata, *Police foil Mpesa robbery*, THE STAR (Oct. 10, 2012), <http://www.the-star.co.ke/news/article-88935/police-foil-mpesa-robbery>.

<sup>156</sup> *Id.*

week and after some time an individual is able to take out loans up to 10 times the amount of the savings, which are guaranteed by other members' savings. The group as a whole is also able to enroll in Equity's 12-week Financial Knowledge for Africa (FiKA) training.

Faulu Kenya began as program with the Food for the Hungry International (FHI)—a Christian relief and development organization—as a small microfinance network serving the East African community with support from USAID and the European Union, among others.<sup>157</sup> In 1999 it registered as a limited liability company; it now offers full banking services and is profitable. Faulu Kenya does not have an office in Dandora, but they do have a presence in the neighboring borough of Kariobangi where they offer loans at an 18% interest rate with four-year terms. They also offer a product called the Asset Financing Loan, where the customer will deposit 20% of the total loan amount, while the bank floats the remaining 80%. Apart from offering a competitive rate of interest, the fact that the bank is willing to put up such a large amount with little collateral is especially useful to the single young entrepreneur, who may not be a member of a youth group to take advantage of certain loans or who may simply not be aware of other group-lending options.

The Kenya Women's Finance Trust was started as a youth fund, but has shifted to target only women, who are typically low-income.<sup>158</sup> KWFT also used offer loans in order to start a business, but now only issues loans for business expansion. The loans are given at a 20% interest rate, with a term ranging between one and three years.<sup>159</sup> Household assets, such as televisions, radios, and furniture, are often used to guarantee the loan, which are estimated to be successful

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<sup>157</sup> *About Faulu*, FAULA KENYA, [http://www.faulukenya.com/index.php?option=com\\_content&view=article&id=47&Itemid=53](http://www.faulukenya.com/index.php?option=com_content&view=article&id=47&Itemid=53) (last visited Oct. 17, 2012).

<sup>158</sup> Interview with representative, Kenya Women's Financial Trust (KWFT), Dandora Branch, in Nairobi, Kenya (June 26, 2012).

<sup>159</sup> *Id.*

80-90% of the time at the Dandora branch.<sup>160</sup> Unless a woman is running a large-scale business, however, individuals are not able to access the loans.<sup>161</sup> Credit is only extended for small businesses through a group-lending scheme.<sup>162</sup>

The Welfare Advisory Committee is a microfinance organization that operates much like a SACCO. Members are arranged in self-organized groups,<sup>163</sup> now numbering 25, who elect a chairman that oversees the group when they meet once a week.<sup>164</sup> During the meetings the members make their weekly payments, which depend on the amount agreed upon, and if a person has an outstanding loan, they also make a payment towards the principal and interest. For the first loan, WAC will make loans to the group as long as the group has put forth 20% of the total loan amount.<sup>165</sup> Since WAC will only make loans to the groups based upon how much the group has put forth as collateral, the group will also discuss and vote on whether they want to take out a loan for a member of the group or continue saving.

One of the prevalent issues has to do with what happens to the disbursed funds. Many times a business owner needs the whole amount that was given for the business, but spends the money on more pressing issues like the payment of their children's school fees, in turn leaving the business to not realize the changes that were the purpose of the loan.<sup>166</sup> Another issue, although somewhat rare, is when a member is not able to pay back the loan or does not attend the meetings. If the group deems that the member is merely going through a rough spot, they divide

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<sup>160</sup> *Id.*

<sup>161</sup> *Business Loan Products*, KWFT, <http://www.kwft.org/page.php?id=23> (last visited Oct. 17, 2012).

<sup>162</sup> *Id.*

<sup>163</sup> See Oduya Interview, *supra* note 139 (entrepreneurs must be in groups of up to 10 people to be eligible for loans).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> Groups Interview, *supra* note 140.

the amount to be paid amongst the other members of the group. In the most extreme of cases, if a member who took out a loan cuts off all communication, the other members of the group will have to visit his home in order to recoup the amount they had put forward as collateral.<sup>167</sup>

The Holy Cross Dandora Catholic Church Self-Help Group is similar to the WAC, and often works with them to make sure people's needs are met and that a client is not being overfunded.<sup>168</sup> The group is a member of the Nairobi Caritas Self-Help Programme and has a membership of over 2,000 in this parish alone.<sup>169</sup> The Self-Help group acts much more like a SACCO than the WAC, as it does not work for a profit—taking only a small amount for administration costs. On the other hand, it puts no money of its own forward and thus takes zero risk. In order for a member to take out a loan, the member must have been able to save a minimum of 100 KSh (\$1.20<sup>170</sup>) for six continuous months.<sup>171</sup> A loan may be taken out that is up to three times the amount saved. The entire loan amount, as well as a bit extra to cover the potential lost interest, must be fully guaranteed by other members. This step serves as both a filter to determine who is credible to loan to and as a strong incentive to pay back the loan, as it is usually friends who have put their money on the line. The downside is the social repercussions from the community towards the loan taker and the loss of both the taker and guarantors from the program in the case of a default—which make up an estimated 10% of total loans made. Unlike other organizations like banks that issue loans, there is no requirement as to what the money is used for. Hence, many of the loans are used to pay for school fees, business startups, home development, and emergencies like sudden illnesses. The interest rate is extremely low at 1%;

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<sup>167</sup> *See id.* (this is a rare, but a not unheard of scenario).

<sup>168</sup> Oduya Interview, *supra* note 139.

<sup>169</sup> Interview with representatives, Holy Cross Dandora Catholic Church Self-Help Group, in Nairobi, Kenya (July 12, 2012).

<sup>170</sup> 84.05 KES to 1 USD, average exchange rate for Aug. 2012.

<sup>171</sup> Holy Cross Dandora Catholic Church Self-Help Group Interview, *supra* note 169.

65% of this interest collected is returned to the members in the form of a dividend, with 10% going as a tithe, and the remaining 25% going to a reserve fund for eventualities. Nothing is perfect, however. While low barriers, such as these very minimal interest rates, help create a very innovative and accessible model for many youth to get capital, there are additional challenges resulting from the diminutive size of the institutional structure. Noted issues of educating the clients on the group's services and helping the client accurately utilize what they have received are obviously related to this lack of capacity.<sup>172</sup> However, many of these shortcomings could be overcome if users were aware of educational and other services offered by NGOs and other organizations in the area.

NGOs such as YIKE offer loan services as well. In conjunction with their Training & Research Project, YIKE contains a program called the Youth Desk—supported by the Citi Foundation—which gives youth groups small grants in order to start a business.<sup>173</sup> The interest rate is quite low at 10%, and is accompanied with specific training on loans and regulations, which itself is also followed up with additional training after the second and third years.<sup>174</sup> The Kutoka Network also has a loan program that has enabled 300 people to leave a life of dependency on the dumpsite by receiving help from the microcredit program.<sup>175</sup>

Despite the many different ways in which one can get a loan, many aspiring young entrepreneurs must resort to more informal means to obtain funds for starting a business. However, this alternative is obviously not always possible in poverty-stricken areas, such as Dandora, as it requires a friend or family member to be able and willing to loan money. Due to

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<sup>172</sup> *Id.*

<sup>173</sup> Youth Initiatives in Kenya (YIKE), Interview, *supra* note 46.

<sup>174</sup> *Id.*

<sup>175</sup> *With The Slum Dwellers*, *supra* note 120, at 12.

their age and lack of work opportunities, many young people have not been able to accumulate money through previous work experience to use in order to start a business.

While there seems to be an adequate support structure with the many different means of obtaining a loan, fewer than 20% of small to medium sized enterprises have ever received credit through formal financial institutions.<sup>176</sup> The few loan programs that take the extra risk to loan to individuals instead of groups do not loan to entrepreneurs initially starting their business—they only provide loans to proven businesses for expansion. Many youth are not members of a youth group to take advantage of youth group specific loans. These loans carry ramifications past

making it difficult for individuals to obtain credit. While the government and other organizations choose to work with youth groups over individuals in order to minimize risk, this adversely affects group formation. Youth will form groups in order to take advantage of benefits



that are only available to youth groups, rather than from sharing a common vision or goal. This leads to an abundance of weak youth groups that often do not survive the first year or the first financial downturn.

Due to a lack of advertising, the individual may simply not know of the services of other group-lending schemes that may offer the most advantageous option. However, these group-

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<sup>176</sup> *The Potential for Credit Scoring for SME Lending in Kenya*, *supra* note 144, at iii; *see also id.* at 1 (fewer than 10% of informal non-registered businesses have ever received credit from a formal source).

lending schemes require that the youth is able to find a job in the first place in order to save money on a regular basis. Considering the extremely high unemployment rate among the youth, saving cannot be counted upon to break the loop open to provide the room for young entrepreneurs to enter the market. Overall, this leads to a culture that performs reasonably well in supporting existing entrepreneurs, but which can be extremely difficult for a young individual trying to start a business on his own.

## **B. External Factors**

Having an efficient and transparent court system is integral to the entrepreneur as it promotes new business relationships—should a new customer fail to honor a contract, businesses know they can rely on the courts. Kenya is ranked 149<sup>th</sup> out of 185 countries measured for enforcing contracts.<sup>177</sup> It takes an average number of 465 days to resolve a dispute, and it costs 47.2% of the claim amount to resolve the dispute (compared with 14.4% for the United States).<sup>178</sup> The high cost and sluggishness of the court system cause 60% of Kenyans to not utilize the court system at all,<sup>179</sup> instead turning to the local administration—particularly the office of the chief, district officer, and village elders—to informally resolve disputes.<sup>180</sup> This may also be due to the fact that many informal businesses do not work with written contracts.<sup>181</sup> To circumvent these issues, it is not unusual for Kenyans to refer suits that are primarily civil in nature to the criminal justice system. In many instances the wronged party will file a report with

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<sup>177</sup> *Enforcing Contracts, Kenya*, WORLD BANK GROUP, <http://www.doingbusiness.org/data/exploreeconomies/kenya/#enforcing-contracts> (last visited Oct. 17, 2012).

<sup>178</sup> *See id.* (the costs are comprised of attorneys fees, court fees, and enforcement costs).

<sup>179</sup> Brenda Brainch, *ADR in the World: an African perspective on community mediation*, DISPUTE RESOLUTION CENTRE, KENYA (Jan. 5, 2007), <http://www.disputeresolutionkenya.org/pdf/ADR%20in%20the%20World.pdf>.

<sup>180</sup> Okioga Interview, *supra* note 41.

<sup>181</sup> *Id.*

the local police station, trying to compel action from a defaulting party through the fear of possible criminal prosecution.<sup>182</sup> Using the criminal justice system also has advantages in terms of cost, proximity, and ease of use—one only needs to make a report to the local police station to have an investigation launched.

The expense of using the courts disproportionately affects micro and small business owners who lack the resources to both stay in business *and* afford a long, drawn-out trial. Creating a small claims court<sup>183</sup> and an integrated system of alternative dispute resolution (ADR) may help relieve some of the burden from the backlogged court system and provide a more efficient method to settle disputes. Once this process is streamlined, educating business owners on the value of forming contracts would be of the utmost importance.

Security is another ever-present issue, whether it emanates from tribal or gang tensions, petty theft, or even the police themselves.<sup>184</sup> Looking at the post-election riots, law enforcement has not been effective in maintaining a safe environment in which to live or operate a business. For example, there were 38 burned houses in one portion of the Kibera slum that were burned to the ground.<sup>185</sup> Dandora was another violent hotspot in Nairobi. In Dandora's Phase 4, Kinyago Church along with all of the kiosks over a distance of 300 meters and two plots with permanent structures were razed.<sup>186</sup> Residents of primarily the Luo tribe were violently evicted by their predominately Kikuyo landlords.<sup>187</sup> In other cases, tenants forced their landlords and other

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<sup>182</sup> *Id.*

<sup>183</sup> A bill to create a small claims court has been put forward on a number of occasions but has yet to be enacted.

<sup>184</sup> *The Stars*, TOGETHERNESS SUPREME, <http://togethernesssupreme.com/the-stars/> (last visited Oct. 17, 2012).

<sup>185</sup> Owino Interview, *supra* note 45.

<sup>186</sup> *On the Brink of the Precipice*, *supra* note 25, at 39.

<sup>187</sup> *Id.* at 40.

tenants out of buildings and sometimes started reducing the rent.<sup>188</sup> This precipitated another round of violence as the owners responded by hiring gangs to help reclaim the property.<sup>189</sup> It is evident then that tribalism, while hard to measure, still persists to this day. Poverty itself may fuel tribalism by making residents more vulnerable to political manipulation.<sup>190</sup>



A young woman in Dandora who wanted to open a hotel—also a term for a small restaurant—was so worried about having her potential place of business robbed that she voiced her concern at a Youth Banner meeting about not being able to afford insurance in addition to the initial costs of opening the business.<sup>191</sup> The advice she received in return was that as an entrepreneur, one has to take risks, and until the business has shown to be viable long-term, the added expense probably was not worth it.<sup>192</sup>

The crowded nature of Dandora creates a ready demand for virtually any entrepreneurial endeavor. However, youth groups often do not innovate and instead emulate other proven businesses operated by other youth groups.<sup>193</sup> This is very likely related to the government’s over-encouragement of entrepreneurship, creating business owners out of youth who are not

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<sup>188</sup> *Report of the Commission of Inquiry into Post-Election Violence*, KENYA LAW REPORTS, at 199 (Oct. 15, 2008), [http://www.kenyalaw.org/Downloads/Reports/Commission\\_of\\_Inquiry\\_into\\_Post\\_Election\\_Violence.pdf](http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf).

<sup>189</sup> *Id.*

<sup>190</sup> *See Kenyatta and Ruto to face ICC trial over Kenya violence*, BBC NEWS (Jan. 23, 2012, 6:00 PM), <http://www.bbc.co.uk/news/world-africa-16675268> (prominent politicians are currently slated to stand trial for crimes against humanity before the ICC for “organising attacks on members of ethnic groups” seen as supporting opposition candidates).

<sup>191</sup> Interview with group, Youth Banner, in Nairobi, Kenya (June 28, 2012).

<sup>192</sup> *Id.*

<sup>193</sup> Ouma Interview, *supra* note 39.

naturally inclined to be entrepreneurs. It has resulted in the flooding of certain markets, such as carwashes and security services, which diminishes the returns for all involved.<sup>194</sup>

HIV, not to mention other diseases and health issues, is still quite prevalent and can have obvious effects on families and their businesses. For example, an entrepreneur in the slums in Kibera lost both of his brothers as well as their wives to AIDS and has since adopted their children, putting extra strain on him and his business in order to make ends meet.<sup>195</sup>

Additionally, disabled persons are often neglected and are frequently not able to reach crucial support services for entrepreneurs.<sup>196</sup>

The dumpsite in Dandora has been a cause of respiratory illnesses, including chronic bronchitis and asthma.<sup>197</sup> It was also deemed to be the cause of toxic levels of heavy metals in the blood, such as lead in amounts exceeding international accepted levels, in about half of the children living in the area.<sup>198</sup> Since heavy metals persist in the environment for quite some time, even people living relatively far away can be affected by eating foods grown with contaminated compost or from drinking contaminated water.<sup>199</sup> Pigs, chickens, and ducks—used for food—also graze the dumpsite and are hazardous to eat.<sup>200</sup> The amalgamation of toxic fumes and tainted food and water sources are estimated to adversely affect a total of approximately 900,000 people.<sup>201</sup>

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<sup>194</sup> *Id.*

<sup>195</sup> Interview with confidential source, in Nairobi, Kenya (June 2012).

<sup>196</sup> Peter Kibas, *Women Entrepreneurs in Kenya*, ILO, at 11 (2008), [http://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_ent/@ifp\\_seed/documents/publication/wcms\\_107507.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_seed/documents/publication/wcms_107507.pdf)

<sup>197</sup> Kimani, *supra* note 18.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Slum Ministry: Environment, Water and Sanitation*, *supra* note 17.

<sup>201</sup> Kimani, *supra* note 18.

Basic services can also be hard to obtain in Dandora. Poor infrastructure leads to subpar waste disposal, electricity outages, and water shortages,<sup>202</sup> which affect the daily lives of the residents, not to mention the ability of businesses to perform well. Businesses that require water and electricity to operate, such as restaurants, are especially affected and require extra effort and expense in order to stay open. Those businesses located within informal settlements face additional challenges as they oftentimes rely on illegal connections to electricity and water.<sup>203</sup> Not only do they typically pay a higher price for these services, they are subject to disconnection without notice and possible prosecution.<sup>204</sup>



These factors combine to create an especially challenging environment for young entrepreneurs. Limited access to credit for youth just starting a business, together with a difficult environment on a number of fronts, leads to a system that disproportionately affects poor

boroughs such as Dandora. The success of a number of invaluable support services enables many youth to break the cycle of poverty. However, while it is not impossible for youth to succeed in bringing their business ideas into fruition, the current situation leaves much room for improvement.

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<sup>202</sup> Okioga, *supra* note 15 (manuscript at 28).

<sup>203</sup> *Id.* at 37.

<sup>204</sup> *Id.*

## **V. Conclusion and Recommendations**

Starting and running a successful business is not a trivial task in Kenya. When compounded with a demanding environment, it is made even more difficult for the people of Dandora.

Despite numerous barriers to entry, however, small and medium sized businesses are thriving in Dandora and throughout Kenya. The entrepreneurial spirit is most definitely alive and well, which is readily evident as one walks through the streets, seeing everything from mobile phone repair shops to hawkers selling shoes. In addition, Dandora's overpopulation presents a ready market for any entrepreneur. This is not to say, however, that everything is as easy as a walk in the park.

In order to combat unemployment, the government has instituted programs which widely push entrepreneurship on many youth. This had led to poorly formed youth groups that exist for not much more than to take advantage of these programs. It has also resulted in numerous enterprises being started by youth who may not have a natural inclination for entrepreneurship, which contributes to the failure of many of these businesses. Taxpayers' money may be more efficiently spent on other endeavors that support the youth; however, graft and corruption need to be eliminated for any governmental program to be truly successful.

While there are a number of ways that an organization can operate a business, the process of registering an ordinary business is needlessly cumbersome. Streamlining or automating the business registration process (e.g. automated online registration forms) would ease the creation of new businesses. By reducing this barrier, entrepreneurs would likely need less time, knowledge, and money to navigate the process, thus allowing the entrepreneur to focus on

creating a profitable enterprise. It would also eliminate the ability of officials to take bribes as well as the need for entrepreneurs to give bribes in order to expedite the process.

Like other parts of the world, access to capital remains the biggest issue and challenge for the budding entrepreneur. While it remains relatively easy for more established entrepreneurs to obtain a loan in order to expand a business, difficulties persist for the poor. In response, Kenya has developed innovative financial models that allow people with little income to overcome this barrier and obtain a loan. However, it remains difficult for young individuals to obtain loans. A widespread implementation of a credit scoring system could open doors to individuals, thus relaxing the need to be in a youth group or to partake in another group-lending scheme.

In locations such as Dandora, lack of security remains an issue that entrepreneurs must take into account. One has to be aware of gangs and thieves, as well as paying the local youth group for protection. Corruption of officials comes into play on a similar level, with business owners often having to bribe the police in order to avoid having to pay frivolous fines.

The business owner must also take their children's health and schools fees into account. Often because of the presence of the dumpsite, funds intended for business growth are being diverted in order to pay for doctor's visits. Likewise, the payment of school fees is frequently taken from a business loan thus reducing the efficacy and desired effect of the loan.

While the judiciary is taking steps to improve how disputes are handled when cases arise, more could be done to improve access to formal dispute resolution mechanisms. Legislation has been proposed in recent years to create a small claims court; the passing and enactment of this or a similar bill would be a step in the right direction. An integrated system of alternative dispute resolution would also help with the severely backlogged court system and provide a more

efficient method for entrepreneurs to resolve their disputes. Once the court system becomes more accessible, it would become essential to educate business owners on the importance of contracts.

Despite the seemingly grim outlook, however, there are numerous forms of aid available to the entrepreneur. The Government of Kenya has programs in place to allow the young people access to education, as well as access to capital in order to start a business. While the programs are touted as being wildly effective, they are also racked with corruption, leading one to question the claims of efficacy.

NGOs, often with the assistance of intergovernmental agencies, seem to be doing a better job. They fill a much needed role of facilitating the start up and growth of small business and, more broadly, economic development throughout the area. From teaching youth how to write a business plan to providing courses on running a franchise, aid is available on a number of levels.

One of the biggest challenges for many of these organizations is the lack of capacity to help everyone who needs it. Additionally, many impoverished youth are not aware of these organizations or the services they provide. Aid organizations could be much more effective if a program was created which educates the public on the services in their communities as well as how to best take advantage of them.

On the whole, Kenyans are well educated and have the potential to do great things. If but a few of the barriers and inhibitions were knocked down—whether political, social, or legal—avenues for reform may open, possibly sparking further positive change.