

Sustainable Enterprises for Sustainable Development:

A Kenyan case study into the potential of a Legal Empowerment of the Poor approach to nurturing sustainable enterprises

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1.0 Introduction

This paper is an investigation of the role that Legal Empowerment of the Poor can play in accelerating the development of sustainable enterprises. This comes in response to the findings of the Commission on Legal Empowerment of the Poor, which has concluded that the legal empowerment of business rights is one of four essential pillars of empowerment that can lift the poor out of poverty (CLEP, 2008).

In this paper we develop a definition of *sustainable enterprises*. This definition is based on theories of social enterprise, sustainability and development. We argue that rather than simply businesses, it is properly supported sustainable enterprises that can make a significant contribution to sustainable development by sustainably lifting the poor out of poverty.

Through a case study of sustainable enterprises in south-western Kenya, we show that it is the policy reform aspect of legal empowerment that needs to be emphasised over business legislation reform. Removing the legal barriers to sustainable enterprises will be essential for their success, but reforms must be focused primarily on building the asset base of the poor so that they gain the capability to engage in sustainable enterprises.

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2.0 Theoretical Background

Through the following review we introduce the Legal Empowerment of the Poor approach, and establish a definition of sustainable enterprises.

Legal Empowerment of the Poor – Business Rights

Legal Empowerment of the Poor (LEP) is a development approach proposed by the Commission for Legal Empowerment of the Poor (CLEP), a temporary institution affiliated with the United Nations. The Commission's findings have been published in the report *Making the Law Work for Everyone* (CLEP, 2008). The Commission argues that "4 billion people around the world are robbed of the chance to... climb out of poverty, because they are excluded from the rule of law" (CLEP, 2008, p.1). A LEP approach should focus on removing legal barriers and building supportive legal systems as a core development strategy.

Our research work focussed on the fourth pillar of Legal Empowerment of the Poor approach – Business Rights. The Commission states that the majority of the poor are "...unable to count on the law's protection and unable to enter national, let alone global markets" (CLEP, 2008: 3), and that businesses need information, identity, voice and organisation to be empowered with business rights. The Commission's report focuses on legal *barriers* to business in the form of regulatory and administrative hurdles that face small enterprises, but their agenda for change also stresses the importance of *policies* that assist small enterprises to become "productive and profitable" (CLEP, 2008, p.71). These policies need to include protection mechanisms and financing systems that have an appreciation of how the informal economy functions.

The Commission offers that the goal of legal empowerment research is to develop locally appropriate and feasible legal empowerment scenarios. These scenarios will be based on the five essential characteristics for successful legal empowerment strategies, to make them: bottom-up and pro-poor, affordable, realistic, liberating and risk aware (CLEP, 2008, p.77). Empowering poor-driven sustainable enterprises meets the Commission's vision for a potentially successful legal empowerment strategy, and thus is a valuable subject of LEP research.

Sustainable Development

The concept of sustainable development has been widely used since its publication in the Bruntland Report, but little consensus exists on what is to be sustained and what is to be developed (Kates et al., 2001). This flexibility in definition is healthy in making sustainable development a globally relevant idea, but it is essential that sustainability science research is based on an explicit understanding of the concept.

The Board on Sustainable Development provides a current and robust definition of sustainability in *Our Common Journey: A transition towards sustainability* that captures the important ideas of ecological limits, along with the need for inter and intra-generational equity. The Board defines sustainability as including the joint objectives of meeting human needs while preserving life support systems and reducing hunger and poverty. Preserving and restoring ecological systems may be a priority given their importance for human

wellbeing, but also because of their intrinsic and unknown values. Society, community and culture must also be nurtured, rather than sacrificed to the development process (Board on Sustainable Development, 1999).

In defining 'development' we are guided by Amartya Sen's work *Development as Freedom*. Sen shows that income and GDP measures are inappropriate and oversimplified as indicators of development. Instead, people's freedom to live the lives they want to lead is both the principle means and ends of development. As the ideas of 'freedoms' is to some degree exchangeable with that of 'rights' (Sen, 2001), the *Development as Freedom* approach of building universal freedoms correlates strongly with the LEP approach of ensuring universal legal rights.

Poverty needs to be seen not as a lack of income, but as a deprivation of capabilities and opportunities. Expanding individual freedoms requires a social commitment to improve the institutions that influence individuals' capabilities and opportunities (Sen, 2001).

The *Report of the Commission on the Measurement of Economic Performance and Social Progress* outlines how Sen's theory might be applied in practice. Presented as recommendations on measuring progress, their concept of development is one of broad improvements in social wellbeing. Income, education and health are certainly important indicators of wellbeing, but so are rights, equality, political voice, social relations, the environment and security (CMEPSP, 2009).

If a development initiative is to contribute to sustainable development, then it must result in tangible improvements in social wellbeing and preservation of the natural environment.

Social Enterprises

Entrepreneurs are a vital component of economic development. This is not just because they take risks, but because they create new combinations of economic activities and design new ways of creating social value (Auerswald & Zoltan, 2009). The World Bank study *Voices of the Poor* asked 60,000 poor people around the world about the possible routes out of poverty. The answers showed that the majority are putting their hopes on either income from their own enterprise, or working in someone else's (The World Bank, 2009).

Entrepreneurs are innovators who introduce new products, reorganise production methods, open new markets, and create new material supplies (Borzaga & Defourny, 2001). The enterprises that they create can be a valuable means of tackling key sustainability challenges of resource limits, social inequality, and meeting the basic needs of society. Sadly, this potential for social responsibility is not realised by modern corporations that are bound by the imperative to produce financial profits for their shareholders (Vogel, 2006).

In recent decades corporate enterprises have often played a powerful role in creating social and environmental problems. Despite an emerging awareness of the importance of sustainability in business ethics, the conflict with economic imperatives means there is little prospect of a balanced triple-line corporate approach emerging without government regulation (Crane & Matten, 2007; Vogel, 2006).

Social entrepreneurs are the drivers behind social enterprises. They are motivated by changing society for the better, with profitability as a means not an end. They take their innovative ability to create change, beyond the corporate world and into society and are described as transformative forces that can create systemic changes. In this way they are able to capture the positive aspects of entrepreneurship, innovation, markets and business management, but for the wider benefit of society (Bornstein, 2007; Skoll Foundation, 2009).

Social enterprises are an emerging form of organisation within a 'third sector' that exists between public institutions and private companies – not inside or outside of the market. They also are distinct from the established third sector entities - associations, cooperatives, mutual societies and foundations, though overlaps can and do exist due to a general lack of legal structures that allow for social enterprises as a unique form of organisation (Borzaga & Defourny, 2001).

A European study has identified key challenges that face social enterprises (Borzaga & Defourny, 2001), including:

- A lack of legal mandate as social enterprises
- The high administration costs of democratic governance structures
- The need for external support to offset risk taking that is not intended to result in profit

Supportive legal structures, strategic policies, and financial support for social enterprise development are essential (Borzaga & Defourny, 2001). Given that social enterprises are working to generate social capital, society needs to invest in them if they are to effectively meet their social objectives. There is clear case for state investment in social enterprises, but South Africa and Brazil are experimenting with social investment 'stock exchanges' to raise donations for social enterprises (Paskin, 2010). The UK is leading the way to provide social enterprises with legal form, creating limited liability Community Interest Companies under the Companies Act of 2006 (UK Government, 2009).

A Sustainable Enterprise

Sustainable enterprises are social enterprises that result in sustainable development outcomes. To meet the following criteria of a social enterprise (Borzaga & Defourny, 2001), a sustainable enterprise must:

- Have explicit aims to benefit the community
- Be launched by a group of citizens
- Be governed by democratic decision making that is not based on capital ownership
- Involve the people affected by their activities in a participatory manner
- Avoid maximisation of profits.

Sustainable enterprises must generate sustainable development in line with the understanding outlined above, this means that their outcomes should contribute to the following:

- A reduction in poverty and social inequalities
- Improvements in social wellbeing
- Conservation of life-supporting ecological systems
- Eventual restoration of ecological systems for both intrinsic and life-supporting values.

3.0 Research Methodology

Rural Livelihoods Analysis and a Sustainable Enterprise System

The Rural Livelihoods Analysis approach focuses research on the livelihood strategies of rural households (Ellis, 2000). The approach is also applicable to the individuals, groups, companies and community organisations that were the subject of our study. The livelihoods analysis approach applies Sen's philosophy to the field by relating capabilities to *assets*, functionings to *activities*, and describes how people's freedoms to engage in different activities are affected by *context* and activity *access* factors. These are broken down as follows:

- **Assets** are represented by various forms of capital – social, financial, physical, natural and human
- Institutions, Social relations and Organisations affect **access** to different livelihood activities
- There are also national and global Trends and Shocks that affect the **context** in which activities are undertaken (including climate change, globalisation and conflict)
- A **livelihood strategy** is a combination of livelihood **activities**, and has implications for societies' sustainability and security.

In Figure 1 the rural livelihoods analysis approach is expressed in a modified form as a *Sustainable Enterprises System* that provides the basis for analysis. Embarking into an **Enterprise Activity** is a process of innovation that relies on an entrepreneurial individual's or group's **Assets**. To result in a successful enterprise activity, entrepreneurs must overcome numerous **Barriers**. These barriers are the access and context factors noted above, and include institutional legal barriers. Sustainable enterprises must produce **Sustainable Development Outcomes**.

While legal empowerment of business is most directly related to the legal barriers facing enterprise activities, wider policy context affects the entire social innovation process. Effective **Sustainable Enterprise Supporting Policies** have the potential to accelerate the whole Sustainable Enterprise System. The system is also self-reinforcing as entrepreneurs grow their asset base through the process of innovating and operating their enterprises.

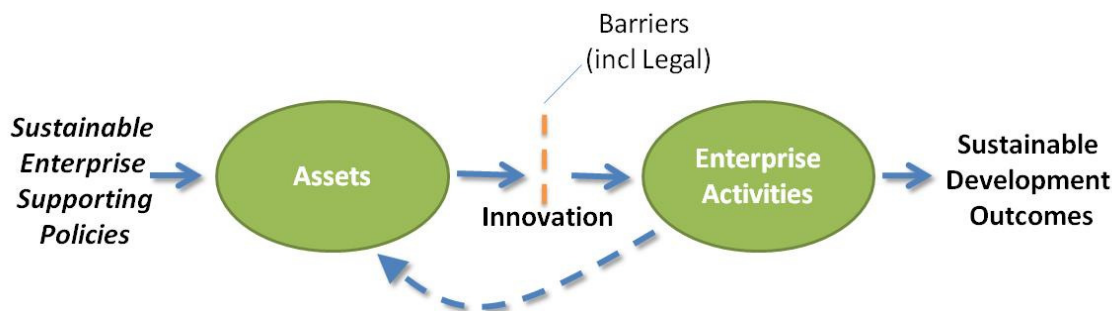


Figure 1 – The Sustainable Enterprises System

This research did not include an investigation into the importance of wider contextual barriers (trends and shocks) on respondents. Factors like global market effects, famines, wars and climate change are clearly significant barriers. They may combine to the extent that in some contexts sustainable enterprises are not an appropriate development approach. However, these cases are likely to be rare and sustainable enterprises can be successful even in difficult contexts.

Fieldwork Methods

This research was a case study of sustainable enterprises in Nyanza and Western Provinces near Kisumu in south-western Kenya.

The Commission for Legal Empowerment of the Poor notes that LEP research must start with a contextual analysis of the legal barriers (CLEP, 2008). By starting from a ‘clean slate’ in considering the context in south-western Kenya, the fieldwork approach drew on the methods of grounded theory. During the field study an initial theory was developed through interviews and preliminary analysis, iteratively returning to the field to conduct deeper interviews with increasingly better understanding (Charmaz, 2006). In this way the research constructed an understanding of the challenges facing a range of sustainable enterprises around Kisumu, focussing on their assets and the barriers these enterprises face.

The investigation snowballed by identifying sustainable entrepreneurs, through a range of key government and NGO informants (Kvale, 1996). The snowballing approach provided opportunities for unanticipated perspectives and ideas for further investigation.

The main interview approach used was semi-structured observational interviews with respondents in their home or working space, also described as ‘narrative walks’ (Olsson, 2009). Narrative walks lead to an iterative process of observation-led questioning mixed with planned questions. An advantage of this approach is that respondents feel comfortable in their normal environment, reducing the inherent risk of power imbalance between respondent and researcher (Scheyvens & Storey, 2006). Respondents can conduct their normal activities to some degree, while the interviewer may ask why and how this activity is carried out. This leads to a more natural conversation, where the respondent is free to explain issues as they see them (Kvale, 1996).

Semi-structured interviews were used when meeting governmental officials and representatives of various organizations, banks and NGO's to gain specific information.

Data Analysis

The qualitative research approach resulted in a complex set of data that is focused on respondents' stories rather than answers to a list of set questions. The stories presented are representative of the complete set of the different stories heard in the field. The location of the five presented respondents is shown on the map in Appendix I and a complete list of respondents is available on request.

Analysis of the patterns in these stories condensed them to the data shown in Table 1 and Table 2. Information gained from government staff is included in the background on enterprise and legal empowerment of business in Kenya, provided in Section 4.0.

Explanation of Terms Used in Analysis

The terms used for analysis are a combination of the Rural Livelihood Analysis and Legal Empowerment of the Poor analysis approaches, divided into two main sections – Assets and Barriers.

Assets are represented by five forms of capital - human, social, natural, financial and physical (Ellis, 2000). These forms of capital are broken down to key factors for the success of sustainable enterprises; as follows:

Human capital refers to *education*, skills and health (Ellis, 2000), with *leadership* and *vision* added. Individuals with a vision of the difference their enterprise can make, and the leadership to engage others are essential characteristics of successful social enterprises (Bornstein, 2007). While the respondents had a diverse range of skills, this research focussed on *entrepreneurial skills* needed to organise and run an enterprise, and the *technical skills* specific to the product or service they offer. It did not include health, which is a general prerequisite for being able to engage effectively in any livelihood activity (Sen, 2001).

Natural capital is simplified to *land*, *water* and *biological resources*. While all sustainable enterprises must have a positive effect on the natural world, this can be indirect. So there is variation in how important these resources are to each enterprise.

Financial capital may be the *savings* of the individual or group, but given that this case study is focused on the empowerment of poor communities the high importance of *credit* and *grants* are common.

Social capital is represented by the *informal networks* within and between families and communities, and the more *formal networks* of groups, Community Based Organisation's, and Associations

Physical capital is created by human activities (Ellis, 2000). Included here are *transport*, *electricity*, *buildings* and *technologies* that make the enterprise more effective.

To describe the Barriers facing sustainable enterprises rural livelihood access factors are simplified to institutional and organisational factors - the deeper analysis of social relations being beyond the scope of this research. The CLEP has identified information, identity, organisation and voice (representation) as representing important aspects for legal empowerment.

The **Institutional** barrier factors used were:

- *No Legal Identity* - meaning not having a legal entity such as a company, cooperative or association (groups and Community Based Organisations are classed as informal networks)
- *Legal Procedures* that have to be undertaken in order to operate a formal enterprise.
- *Taxes* that are charged on formal legal entities, while informal enterprises only need to pay municipal daily charges or for a Single Business Permit to operate from fixed premises.
- The difficulty of *Getting Information* on legal and organisation options, market opportunities, technical innovations, and potential sources of funding
- The *Credit Requirements* of banks and other lending institutions for small and micro loans

The **Organisational** barrier factors used were:

- To what extent that *Forming a Group or CBO* is a challenge.
- Whether enterprises suffer from *Lack of Representation* to promote their interests. This factor is hard to quantify in the context of the study but is included as an indicative factor for further discussion.

Data Analysis

An evaluation is given of the importance of the asset factors to the success of the respondent enterprises. The evaluation is presented in the range of critical, high, moderate or low importance, shown in Table 1. For each barrier an assessment of its importance is provided, also from critical to low. The likely future importance of these barriers to the medium term success of the enterprises is also shown in Table 2.

4.0 Business Regulation in Kenya

The Micro, Small and Medium Enterprise (MSME) sector is playing an important role in developing country economies. In Kenya these enterprises provided 78% of total employment and represented over 57% of new jobs created in 2005/06. They are recognised as the foundation for further strengthening of the economy (Kosgey, 2008). However, more than 80% of these enterprises are functioning outside the formal economy (Kenya Ministry of Trade and Industry, 2006)

In the World Bank's *Doing Business* report, which investigates the structural regulations that enhance or constrain business activity, Kenya is currently ranked 109 out of 181 countries for ease of starting a business, 119 for registering a property, paying taxes at 158, and trading across borders 148. On the other hand Kenya ranks much better for facilitating credit loans, at 5th (The World Bank, 2008).

In response to critique of their regulatory environment for doing business, in 2005 Kenya formed a Business Regulations Reforms Unit (BRRU) and the unit for Harmonisation of Revenue Tax Laws & Other Related Laws. They launched a 'guillotine initiative' to review the 1,325 licenses that were regulating businesses. According to the Working Committee on Regulatory Reforms for Business Activity in Kenya (WCRRBAK), a web of laws, pervasive and confusing business regulations, and administrative procedures impose risks and costs on formal businesses that impedes private sector development (WCRRBAK, 2007).

Under the reforms process a guillotine approach reverses the burden of proof. Regulators, not reformers, are the ones that must actively justify that existing regulations are legal, necessary, business friendly and cannot be simplified (WCRRBAK, 2007). By the end of 2008, 315 licenses had been eliminated, 379 simplified, 294 retained, and 26 prioritized for reform. The time needed to start a business fell from 54 days in 2006 to 34 days in 2009 (Doing Business Report 2009).

Currently there are 12 procedures that need to be undertaken in order to start a business. The process cost is equivalent to 39.7% of average Gross National Income per capita. This clearly still puts formal businesses well beyond the reach of most Kenyans (The World Bank, 2009). The final target of the reforms committee is a single licensing system with a target processing time of 14 days, by 2012. (Origa, 2009)

Business regulations at a municipal level are often implemented in a discretionary and inconsistent way – especially the Single Business Permit (SBP). Single Business Permits are a municipal operating licence for business, but they are often used as mechanism to raise municipal revenue rather than as a means to regulate business entry and activities in a positive way. The SBP system was introduced in 2000 to replace a multitude of business licences, yet it has failed to do so in practice as local authorities use bylaws to effectively reintroduce licences eliminated by the SBP (WCRRBAK, 2007).

it was impossible to get published information about the SBP fee structure in Kisumu since fees are only calculated once an application is lodged. Various respondents said that the SBP fees are calculated on an arbitrary assessment of how profitable the municipal council thinks a business will be, and is not related to actual profits. The lack of transparency and proportion in this system means that enterprises are often charged unfair fees, which leaves potential for greater corruption, and certainly discourages enterprises from moving towards even this local level of formalisation. The WCRRBAK is aware that a fundamental overhaul or elimination of SBP is required, but this has not yet materialised (WCRRBAK, 2007).

An alternative formal entity to a company is the cooperative society. Cooperatives were introduced to Kenya under colonial administration from the 1940's onwards, but they were often cooperative only in name, with the purpose of channelling farm inputs and production under the direction of the state. Oppressive regulations continued to obstruct the operation of cooperatives after independence, often perpetuating existing social inequalities. This then led to calls for liberalisation of cooperatives and a reduction of state interference (Gyllström & Rundquist, 1989; Gyllström, 1991).

Within the structural adjustment programme reforms, cooperatives were heavily impacted by an almost complete cut of state support and regulation in 1998. Without oversight, auditing and capacity building; corruption, mismanagement and neglect became commonplace (Barrett, 2007). The result was widespread failure of even the strongest cooperatives, and loss of faith in them as an enterprise entity. A new Act of

Parliament in 2003 started the process of restoring confidence in cooperatives as an entity, but this will take time and the Ministry of Cooperative Development is short of resources for this task (Onanda, 2009).

The simplest form of formal organisation in Kenya is a group registered through the Ministry of Gender, Children and Social Development. Most NGOs and government offices prefer to work with these registered groups in their enterprise development projects. The process of forming a group is relatively simple, but new groups still require assistance to form a stable organisation. The same applies for community based organisations (CBOs).

5.0 Research Findings – Key Examples

Keyo Women's Group

Keyo Women's Group is renowned for producing high quality improved cooking stove liners. The group was established and registered in 1984 as a local initiative for tree planting. In 1985, with NGO training, they started to produce clay stove liners. The group has partnered with different NGOs over time. Their work benefits their community as an employment opportunity, and their improved cooking stove products contribute to reduced fuel-wood consumption. Their expertise in clay and liner production means that members of the group are regularly paid to assist with training other groups, improving their social standing and experiencing opportunities to travel.

Group members collaborate to meet large orders and to operate the kilns, but each individual is responsible for their own production and income. Many members employ helpers, usually young men with limited employment opportunities. They market their liners by linking to stove producers and installers through trainings and various NGOs. The high quality of their products is well recognised countrywide.

Keyo has long been a registered group, but they have not considered forming a legal entity, as they are not aware of any potential benefits. The group has obtained and paid back a number of micro-loans, but are struggling to pay back a current loan for woodstove liner production. There are few young members of the group, and they acknowledged that they sometimes struggle to tackle new ideas and initiatives.

The group was previously sending liners all the way to Mombasa through a middle-man. The Keyo group secretary has taken over distribution, as the group was suffering large delays in being paid. Despite some initial challenges they are becoming more successful, and are capitalising on growing trust in their enterprise relationships.

Ruke Farmers Development Initiative

Ruke Farmers development Initiative comprises a group of farmers around Ruke Village. They are supported by the Swedish NGO Vi Agroforestry. The young group is collaborating on production of dairy goats, horticulture, a tree nursery, and beekeeping. They were technically trained by Vi Agroforestry in these new production methods, and were assisted to develop a group savings and loan scheme to fund the group's work.

The enterprise is diversifying the economic position of the community, and developing more ecologically sound agriculture. Since the villagers organised as a group their agriculture has changed from being a means of survival to a revenue generating activity, and they have been able to consider further projects for the benefit of the group and community.

According to the members of the group, they have benefited from working together. They have been able to open many new opportunities and the influence of Vi Agroforestry has been significant in helping them along this path. They are still working on registering their group, and noted that they had needed quite a lot of advice on how to develop their goals and rules as a group, though it had been a very valuable process that strengthened the group's thinking and cooperation. The group noted the importance of their leaders who are educated and work as school teachers and as a pastor.

The group has a proactive plan to complete the registration of the group, to expand different production enterprises that they have successfully started, and to develop an agroforestry system that will help to reduce local and global climate change.

Kakamega Environmental Education Program (KEEP)

KEEP (Kakamega Environmental Education Program) is a community based organization (CBO) formed in 1995 by a local initiative to preserve the last area of rainforest left in Kenya - Kakamega Forest, and the livelihoods of the community there. With encouragement from international scientists working in the area and local recognition of the importance of the forest for their livelihood and wellbeing, the action was triggered to educate people about the value of the forest.

Today KEEP has many ongoing projects and enterprises: environmental education about forest services for school children and other visitors, a carbon offset forest replanting project, tree nurseries, eco-tourism, briquette fuel production, bee keeping, butterfly farming, herbal medicine production, a local clinic, and construction of a snake park centre. KEEP is run by local people, with over 200 members and five branches. The enterprises have grown out of the realisation that education about the forest is not enough, and enterprises that use the forest sustainably can provide the community with alternative lifestyles.

The vision, skilled communication, and enthusiastic engagement of KEEP's leaders are building local and international networks, attracting a range of external donors and technical advice. KEEP builds on a system of participation, regular communication and building of consensus among members and local people. Women play an important role in all activities.

The enterprise activities of KEEP are not profit driven. The organisation directs most of their budget to designing, implementing and up-scaling projects. All of the members are volunteers, meaning they make a contribution to the environment and wider community, while receiving only a "small token" for their work. Nevertheless this still makes working for KEEP an attractive option for many people. Members hope that as the different enterprises solidify their time invested will pay off. In the short term members benefit from new skills, knowledge, opportunities to travel and network, and consequentially more self-confidence.

KEEP is a well established and outstanding example of a diverse sustainable enterprise. It is unlikely that the organisation would benefit from becoming either a company or a cooperative, but it would benefit from being recognised as a formal sustainable enterprise. There is a constant need for capacity building and access to funding and credit. The organisation would benefit from having enough funds for more full time staff employed to overcome the administrative hurdles that their different enterprises face.

Western Technologies

Godfrey operates a small shop in Kakamega town called Western Technologies, which is a reference to his Kenyan province and not a geopolitical origin of his products. Here he produces and sells improved stoves, fireless cookers, and solar cookers, all of which reduce fuel-wood consumption, improve indoor air quality and save time spent on fuel gathering.

Godfrey comes from a rural village, but has moved to town where it is easier for him to source materials, and where there is a more consistent market for his products. His interest was first caught by someone selling the fireless cooker, and through his uncle he was able to get connected to an NGO for training in making them. He invested his own money in materials, made two, brought them to town on his bike, sold them, making enough to buy materials for three. From this start he made contacts in Kakamega that led him to be trained by the German organisation GTZ in entrepreneurial skills, and the manufacture of improved cooking stoves using liners from Keyo Women's Group and other suppliers.

Now Godfrey is one of the core producers of improved cooking technologies in Kakamega, and continues a fruitful relationship with GTZ's project. It is clear that their support is still highly valuable to him, for example helping him to display his products at the Kisumu Agricultural Show, which would otherwise be completely unaffordable. Godfrey is not a member of a formal group, but he works with an informal network of other stove installers and they buy liners together in bulk and assist each other with meeting orders.

His business is not solely run by him, but rather is a joint venture with his wife. She belongs to a women's group, and through this link they have been able to obtain an initial loan for their business.

Godfrey has not applied for a single business permit. It would probably work out cheaper than the 20 Kenyan Shillings per day that he pays the municipal council to operate from his shop. He does not believe that getting a SBP would be a great challenge, but for the moment he is happy with a less formal arrangement and to avoid the bureaucracy. In the future he would like to register a company and obtain an export license for his stoves, but both are currently too expensive and complex for him to consider.

Wandiege Watsan Company

Wandiege Watsan Company Ltd provides water to a community living in the peri-urban area of Kisumu. Wandiege operates a water supply system with a pumped well, elevated storage tanks, and a metered distribution and kiosk retail system. Water is sold at a discounted rate about 1 third of the Kisumu Water and Sewerage Company price. The sustainability of this enterprise is primarily in the social service of affordable clean water and sanitation that they provide to the community.

The Wandiege Watsan Company started as a grassroots community initiative to supply Wandiege School with a secure water supply. Community leaders were able to engage the technical support of Sustainable Aid in Africa (SANA). SANA required the community to form a Community Based Organisation, which was established in 2002. The process of forming a CBO helped extend the organisation's goals to providing clean water for the wider community. SANA was able to link the CBO with funding from the French Embassy for the project infrastructure.

The move to turn the CBO into a company came after a number of kiosk operators had not paid for the water they had sold, and the CBO had no legal power to pursue defaults on payment. So they were suffering from a lack of organisational legal rights. The company registration process required the Wandiege CBO to engage a lawyer, took about 6 months and "was a bit costly", but did not represent an insurmountable barrier with the ongoing support of SANA. Moving from a CBO to the legal entity of a company also presents opportunities for Wandiege. It is easier for them to become certified as a water provider, they are not restricted in the size of their assets, they will have to operate by higher standards, and people perceive a company as being a more credible organisation.

The story of Wandiege Water Company represents the business development process encouraged by the CLEP. Legal empowerment through improved business legislation would make it even easier for them to start a company. But by forming a company, the sustainability of this enterprise is now potentially at risk. A standard constitution was used for registration, leaving out the social goal of providing cheap water to the community. There is a risk that the shareholders in the company could now force the company to raise the price of water to seek greater profits, as they would legally be entitled to do.

The company faces maintenance and quality assurance challenges. Finding the balance between providing cheap water and meeting long-term costs requires a strategic business planning approach. The company has little capacity in people's time and expertise for this, seen in the difficulties they have already in meeting administrative requirements. The formalisation of the enterprise is helping to highlight this issue, but it also increases the need for capacity building and further support.

6.0 Results Summary

The importance of asset in the success of each enterprise is evaluated on a scale of critical, high, moderate and low importance. The same evaluation is applied to evaluate the significance of barriers in hindering an enterprise's progress. The summary also uses the term 'varied' when a clear trend cannot be distinguished from this research, though this generally is due to the varied nature of the enterprises being examined.

Table 1 – Enterprise Assets

	Keyo	Ruke	KEEP	Godfrey	Wandiege	Summary
Human Capital						
Vision	Moderate	High	Critical	Critical	High	High
Leadership	High	Critical	Critical	High	Critical	Critical
Education	Moderate	High	Critical	High	Critical	High
Entrepreneurial skills	Moderate	High	High	Critical	High	High
Technical Skills	Critical	Critical	Critical	Critical	Critical	Critical
Natural Capital						
Land	High	Critical	High	Low	Moderate	High
Water	High	Critical	Critical	Low	Critical	High
Biological resources	Low	High	Critical	Low	Low	Varied
Financial Capital						
Savings	Moderate	Critical	Low	Critical	Low	Critical
Grants	Low	Low	Critical	Low	Critical	
Credit	Critical	High	Low	High	Low	
Social Capital						
Informal Networks	Critical	Critical	Critical	Critical	Critical	Critical
Formal Networks	Low	Low	Moderate	Moderate	Critical	Varied
Physical Capital						
Transport	Critical	High	High	Critical	Low	High
Electricity	Low	Low	Moderate	High	Critical	Varied
Buildings	High	High	High	High	High	High
Technologies	Moderate	High	High	Low	Critical	Varied

Table 2 - Barriers to Innovation

Importance of Barriers to Date						
	Keyo	Ruke	KEEP	Godfrey	Wandiego	Summary
Institutional						
No Legal Identity	Low	Low	Moderate	Moderate	High	Varied
Legal Procedures	Low	Low	Low	Low	Moderate	Low
Taxes	Low	Low	Low	Low	Moderate	Low
Getting Information	Critical	Critical	High	Critical	Critical	Critical
Credit Requirements	High	High	High	High	High	High
Organizational						
Forming group or CBO	Moderate	Moderate	Low	Low	Moderate	Low
Lack of representation	High	Moderate	Moderate	Moderate	High	Moderate
Likely Importance of Barriers in the Future						
	Keyo	Ruke	KEEP	Godfrey	Wandiego	Summary
Institutional						
No Legal Identity	Moderate	Moderate	High	High	High	High
Legal Procedures	Low	Low	Moderate	Moderate	Moderate	Moderate
Taxes	Low	Low	Low	Low	Moderate	Low
Getting Information	Critical	Critical	High	Critical	Critical	Critical
Credit Requirements	Critical	Critical	High	High	High	High
Organizational						
Forming group or CBO	n/a	n/a	n/a	n/a	n/a	
Lack of representation	High	Moderate	Moderate	Moderate	High	Moderate

7.0 Discussion

The stories from Kenya differ in many ways. The individuals and groups are building different sustainable enterprises; they have different asset advantages and disadvantages; they have a variety of organisational structures and ways of working; and they have different visions of future opportunities and challenges. Despite these differences, there are consistent trends that emerge from the research results as shown in the above tables, and that form the basis of the following analysis.

Legal Empowerment of Business Rights in Kenya

The case made by the Commission for Legal Empowerment of the Poor is that removing legal barriers to business will facilitate income generating activities - enterprises, thus reducing poverty (CLEP, 2008).

As described in Section 4.0, Kenya is now making progress in the legal empowerment of business rights. There still much to be improved, but things have moved ahead from the situation described in *Making the Law Work for Everyone* (CLEP, 2008). Legal and administrative barriers remain a frustration to enterprises but they are not insurmountable and the situation is expected to slowly improve. So Kenya is now well on the way to being a positive example of the legal empowerment of business that is called for by the Commission on Legal Empowerment of the Poor.

Having seen that legal empowerment of business is ongoing in Kenya; the next phase of the research was to investigate whether the emergence of sustainable enterprises is likely to accelerate as a result of this legal empowerment of the poor. As the following analysis will show, the empowerment of business rights is an important tool in the development of sustainable enterprises but it is certainly no panacea.

The emerging sustainable enterprises studied are still a relatively long way from forming a legal entity. This can be seen in Table 2 where legal barriers have been of little significance to date. More critical are the problems of getting good information and sufficient access to credit. While legal barriers are likely to emerge as a frustration in the future, they do not really hinder the poor in starting informal micro-enterprises.

The Wangiege Water Company is an example where the lack of legal powers was a real barrier, but this example also shows that the process of formalising a legal business entity, with the options currently available, may actually undermine the goals of a sustainable enterprise. Companies are a poor choice of legal entity for a sustainable enterprise, as their economic obligations to their shareholders trump any social objectives they may have (Vogel, 2006). Cooperatives are often used by social enterprises in Europe (Borzaga & Defourny, 2001), but as discussed in Section 4.0, the history of colonialism and structural adjustment reforms has undermined faith in cooperatives in Kenya.

To empower formal sustainable enterprises, Kenya would need to create a new legal entity for them. For example, the Community Interest Company model established in the United Kingdom provides for an organisation to operate with the benefits of a company but to trade with a primary social purpose for the benefit of the community (UK Government, 2009).

Building Assets

It is people's assets that enable successful enterprising activities. The most critical areas for enterprise observed in this study are leadership, technical skills, financial capital and informal networks. Financial capital can be viewed as being consistently critical, even though each respondent used different financial approaches - savings, grants or micro-loans. Assets are not fixed. They can be reinforced both through operating an enterprise and external supportive policies - see Figure 1.

Human capital is of consistently high or critical importance. While vision and leadership may need to be found in individuals; the importance of education and skills training clearly requires an active role of state and development organisations.

The research identified how most people who receive entrepreneurial and technical trainings from various NGOs never continue with an enterprise. The success stories discussed here tend to be the exceptions. Some people surely lack the vision and leadership to push forward but the most common reason raised was a lack of financial capital. This issue was overcome in the successful enterprises by establishing robust group savings schemes, obtaining grants, or having access to low interest credit.

NGOs also financially support enterprises by paying for time spent on marketing new innovations to 'unsensitised' communities – for example GTZ's support of Godfrey to market improved cooking stoves. This recognises the risk inherent in trying to introduce a new innovation even if it seems to be clearly beneficial from an outsider's perspective. Where the sustainable development objective is to support remote rural communities, it is likely that enterprises will require ongoing subsidies to ensure that they focus on supplying these less economic markets.

Across the board the informal social networks are a critical asset. It is the relationships of individuals, and the strength of group support and cooperation that create the security and resources for the start of new enterprises. Both government and NGO initiatives in Kenya were doing a good job of recognising and nurturing this strength, making the formation of a registered group an essential asset in the majority of cases.

A lack of physical capital assets and access to new technologies certainly pose some barrier to all the different enterprises studied. Some barriers like the need for small buildings could potentially be overcome within an enterprise's operating budget with low-interest credit. Still, there is no doubt that electricity, water and transport infrastructure is essential to the long-term success of sustainable enterprises, and these depend on effective state investment. Access to technologies often requires some degree of grant or subsidy where they represent a substantial hurdle to getting started.

From this analysis it is clear that developing people's assets is an absolutely essential part of supporting the growth of sustainable enterprises. Most important is capacity building of human capital, access to finance, and supporting group endeavours.

Policy Implications

The enterprises studied have generally been trained by NGOs, but the district offices of many government ministries also work hard to disseminate training and information, within their mandate and resources. NGOs very rarely provide access to finance, and here the soft government loan systems have played a crucial role for groups fortunate enough to get access to them.

The range of enterprise supporting initiatives from both governments and NGOs are all beneficial, but the current situation in Kenya is a complex system of insufficient and relatively disconnected initiatives. The

result is that rural communities are inconsistently engaged by enterprise initiatives, and enterprises are not meeting their potential as a means of achieving meaningful sustainable development.

The real potential for legal empowerment of sustainable enterprises in Kenya exists in addressing the failures in policies that aim to support small and micro enterprises. A good example is that the government Department for Micro and Small Enterprises Development sits under the Ministry of Labour of Human Resources Development, while it is the Ministry of Trade and Industry that has partnered with UNDP Kenya on a District Business Solutions Centres project for micro and small enterprise development. This sort of duplication and confusion over roles and responsibilities adds to the lack of coordination.

A range of extremely committed government staff are working at a district level, but they also suffer challenges of poor communication and transport infrastructure, being under-resourced, and not being able to access and deliver information effectively – plus a certain confusion about what their role should be. Where proactive government teams had partnered with effective NGO projects to provide capacity building and financial resources, we saw outstanding examples of sustainable micro-enterprises being created.

The assets of a sustainable enterprise may be greatly influenced by institutions, but enterprises themselves can also have an effect on the institutions (Sen, 2001). Sustainable enterprises in Kenya need state investment in their physical assets for example, but since they function outside of the formal sector they contribute no tax revenue to the state. The poor state of existing infrastructure and distrust towards state institutions, due to corruption, reduces the incentive for people to formalise their business activities. To overcome the resulting vicious circle will require a genuine and strategic set of long-term policies.

The Commission for Legal Empowerment of the Poor notes the need for poor-targeted business development policies that consider the role of the informal sector, and appreciate its potential (CLEP, 2008). This paper demonstrates the need for policies that develop not just poor-driven businesses, but sustainable enterprises. New policies to achieve this goal will need to be trans-ministerial in development and implementation – with the coordinated goal of nurturing sustainable enterprises, and providing a pathway for their careful integration into the formal sector.

Such a policy shift would certainly be a challenge for Kenya, and the broad support of Kenya's development partners will be needed to bring it about.

8.0 Conclusions

These findings, while focussed on a Kenyan case study, should be of value to NGO's and governments pursuing sustainable enterprise development anywhere. These findings apply not only to developing countries. Governments in developed countries can also move to empower sustainable enterprises and encourage the economically sound growth of social and ecological capital instead of purely economic growth.

This research shows that sustainable enterprise has great potential as a means of generating sustainable development. Yet because the objectives of a sustainable enterprise are to generate tangible social and environmental benefits as well as economic, they must be approached in a different way from conventional business models.

The following recommendations provide a basis for the legal empowerment of sustainable enterprises in Kenya and elsewhere:

- Improving business rights in line with the recommendations of the Commission on Legal Empowerment of the Poor is a good start, but the understanding of *business* needs to be expanded to one of *sustainable enterprises* if sustainable development is the goal.
- Sustainable enterprises need the creation of new legal entities that have full legal rights as well as the entrenched objective of operating sustainably for the benefit of society rather than for profit alone.
- The policy aspect of legal empowerment is critical, and needs to be elaborated as part of any legal empowerment strategy. Policies that aim to support sustainable enterprises should focus on broad asset building through: technical and entrepreneurial skills training; providing access to financial capital – especially low-interest credit; supporting group endeavours; infrastructure investment; and improved flows of information needed by sustainable entrepreneurs.
- Governments should be encouraged to take on these initiatives by developing a coherent and trans-ministerial strategy for supporting sustainable enterprise development.
- Sustainable development focussed NGOs and development organisations need to support governments in undertaking legal empowerment reforms and strategic policy development that supports the development of sustainable enterprises, alongside their own strategies that support the development of sustainable enterprises directly.

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Appendix I – Map of Key Respondents



- 1 – Keyo Women's Group
- 2 – Ruke Farmers Development Initiative
- 3 – Kakamega Environmental Education Programme
- 4 – Western Technologies
- 5 – Wangiege Watsan Comapany