



EGERTON UNIVERSITY

**FOLLAP**

Faculty of Law Legal Aid Project

# NEWS LETTER

Volume 1, Issue 1

July/ 2020

## UNDERSTANDING LEGAL AID

### INSIDE THIS ISSUE:

Legal Aid regulatory  
framework in Kenya

Use of informal justice systems to  
enhance access to justice for the  
marginalized



About Faculty of Law  
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Our Legal Aid Clinic  
Program



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to Egerton's LLB  
Program



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# LEGAL AID CLINIC

FACULTY OF LAW LEGAL AID PROJECT

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**TUESDAY  
TIME  
VENUE**

**VISION  
MISSION**



# **VISION**

Justice and equality for all

# **MISSION**

Promotion of access to  
justice for the poor and  
marginalized to claim their  
rights

# EDITORIAL

## Dear FOLLAP Partner,

Thank you for choosing to read the Egerton University Faculty of Law Legal Aid Project (FOLLAP) Newsletter. This is our maiden publication and we appreciate you for the time you will spend in reading what we are about to share with you in these few pages.

This publication comes at a time when we are celebrating 10 years since the promulgation of the Constitution of Kenya (2010). There is consensus that it is the most progressive constitution in the world for protection of human rights and fundamental freedoms as manifested in its bill of rights.

The bill of rights envisioned a Kenya where justice and equality of the law is encouraged, a Kenya where “justice is our shield and defender”, as our national anthem always reminds us. However, the realization of these rights remains a pipe dream. Many people are yet to benefit as it had been anticipated since most of these provisions are yet to be implemented.

FOLLAP aims to bridge this gap by removing barriers in access to justice and empowering the public to identify and claim their rights. We envision justice and equality for all. The full benefit by all Kenyans requires collaborative efforts of all duty bearers, both state and non-state actors. We shall continue partnering with all stakeholders to achieve this objective.

In this edition, we explain more about FOLLAP and legal aid in Kenya. This edition has also delved into common issues on legal aid to enlighten you on this important subject.

### Article 48 (CoK, 2010)

*The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.*

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*"Twafikisha Haki Mashinani"*



### Message from the Project Leader

The world is changing pretty fast. What was originally a global village, could now be a global home, or even a smaller unit. This means our interactions as humanity are changing too; we have new obligations to each other that require a change in our perspectives.

In Kenya this change was partly ushered in by the constitution in 2010 with a dictate on how we streamline strategies on access to justice to all persons especially those that have historically been pushed to the periphery.

Our project seeks to contribute to making the world a better place by helping the poor and the marginalized seek or demand for their rights. It aims to lift them to the table and give them a voice.

As compared to other projects of a similar nature, it is unique in how it contributes to the holistic training of the legal professionals of the coming days. This is because it is the only one being run by a law school in the country and thus it incorporates students in its delivery strategies imparting in them hands on skills and a heart for the less privileged.

This answers to the vision of the new Kenya in many ways; we are preparing future professionals inspired by nationhood. This is in line with Egerton University's vision of being a world class university for the advancement of humanity.

I want to thank you for being a valued stakeholder and hope to continue working with you in the coming days.

## About Faculty of Law Legal Aid Project

The Egerton University Faculty of Law Legal Aid Project (FOLLAP) was launched in October 2019. Its aim is facilitating enhanced access to justice for the marginalized and the poor in Nakuru County as well as building a sustained and structured legal aid service within the county. As its name suggests, it is domiciled at the Faculty of Law. The faculty was founded in the year 2016 with a focus on human rights and legal research.

The project is being implemented in six sub counties (Nakuru Town West, Naivasha, Subukia, Molo, Bahati and Rongai) with funding from the European Union (EU) and the United Nations Development Programme (UNDP) through Amkeni Wakenya under the Programme for Legal Aid and Delivery (PLEAD) in Kenya. It is imperative to note that legal aid projects in the country have in the past been implemented by civil society organisations (CSO's) with law schools not showing much initiative to run them. FOLLAP is thus one of its kind, being the first and only legal aid project to be run by a law school in the country and having law students being greatly involved as paralegals.

It thus revolutionizes legal education in Kenya by contributing to the holistic training of future legal professionals; it shows them the need to have the community at heart by introducing them to the pro-bono scheme at an early age. The project thus answers to a special need in the training of law in the country. This is about the requirement by the Council of Legal Education (CLE) to law schools to expose students to legal aid. While students have always been willing to do it, there have been challenges in the actual execution of the plan since there has never been government funding. Students who have ended up taking this challenge on their own, have thus done it with limited means, with the results being too minimal to bring any large-scale impact.



The project is in a special way connected to the Faculty's niche areas – Human Rights and Legal Research. We believe that these two are core relevant areas in legal aid and public interest litigation. We collaborate with a number of stakeholders in the execution of this vision. Key among them is the Rift Valley Branch of the Law Society of Kenya (LSK) whose members have enrolled in working with us for a pro-bono scheme. We also have a good working relationship with all other relevant stakeholders in the justice sector in the county including the National Legal Aid Service (NLAS), the Judiciary, the Police, office of the County Commissioner and the County Government of Nakuru, among others.

But we owe it to the community as our main stakeholders. It is to them that we exist and it is to them that we account for all our work. This is why we always ask all the persons we interact with in our various forums to always be our ambassadors at the grass roots in their own ways, however small they may look.

It is because of this that we hope that the project will result in community justice systems empowered to embrace human rights-based approaches, sensitization of women to identify and assert their rights, enhanced access to justice by the poor and marginalized groups and a structured legal aid service within the target sub counties.

Through the project we shall develop a knowledge depository from which knowledge shall be shared with our stakeholders in the justice sector. This process though will be unidirectional and we hope to benefit from the justice sector's knowledge bank as they benefit from ours.

As the project enhances access to justice by the marginalized in Nakuru County, it is estimated that there will be more people seeking legal aid and reporting violations of human rights as a result of the initiatives being undertaken in the project. The project hopes to achieve sustainability as more and more legal professionals take up pro-bono work as

they get to accept the need to take up the plight of the marginalised in their communities.

In other words, through FOLLAP, we are vouching for a multiplier effect on matters of access to justice for the poor and the marginalised not just in Nakuru county but the country and humanity at large.

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**VISION**  
Justice and Equality for All

**MISSION**  
Promotion of Access to Justice for the Poor and Marginalized to claim their Rights

**OBJECTIVE**  
Enhancing Access to Justice through Legal Aid on the following:

✓ Family Disputes	✓ Unfair Police harassment
✓ Land Rights	✓ Criminal Cases
✓ Children Cases	✓ Governance and Public Administration Issues
✓ Matters of Public Interest	



**P.O Box 13357 - 20100, Nakuru - KENYA**

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# FOLLAP's ACTIVITIES

**Follap's key areas:** Although we attend to all issues and sections of the population, some of the most common cases we have handled so far include: Land Rights; Children Matters; Succession; Family Law; Police harassment; Administrative Justice and Public interest litigation.

*In achieving our objectives, we undertake a number of activities as follows:*

**Legal Aid Clinics:** this is an avenue that offers members of the public an opportunity to discuss their issues with a lawyer for legal advice. We have mobile legal aid clinics and an embedded legal aid clinic at the faculty of law. During mobile legal aid clinics we go to the people and talk to them. At the embedded clinic, members have an opportunity to visit the faculty of law for personalized legal assistance. The embedded clinic is open twice a week, on Tuesdays and Thursdays.

**Call Center:** We have a call center that is open 24/7 serviced by three Toll-Free Numbers through which clients can reach us

for help.

**Sensitization Workshops:** We hold sensitization workshops with different clusters of the community on different issues including but not limited to Constructional rights and the Legal Aid Act (2016).

**Special Trainings:** We conduct tailor made trainings with different groups on matters such as gender and women rights, administration of justice, and alternative dispute resolution among others.

**Pro-Bono Services:** Yes, we offer pro-bono services to clients once we assess and arrive at the decision that a certain case is deserving.

**Keeping the discussion alive:** To amplify this debate on access to justice we collaborate with Nakuru based radio and television stations in sharing information. These discussions have acted as referral points for clients to us. We are also active on social media (Twitter, Instagram and Facebook) as @FollapEU.

## FOLLAP's contribution to Egerton's LLB Program

**By M. C. Getanda**

As a faculty we firmly believe that legal education has to take students out of the classroom to the society. This is what enables them to be fully prepared to successfully undertake their professional duties as lawyers; it makes them gain a deeper understanding of the societal issues they are meant to tackle in their career lives. One of these issues is the challenge of lack of access to justice due to factors such as poverty, disability, unequal power



relations among men and women, age among other factors, otherwise clustered as barriers to justice. Legal aid aims at ensuring equality for all before the law – where equality is not just limited to the right to legal representation and right to a fair trial.

FOLLAP has given our students a firsthand experience on how the law interplays and responds to real life situations. We believe that a student

undergoing training as a lawyer is expected to work for the interest of all the people, paying special interest to the poor, the marginalized and vulnerable groups. Through FOLLAP, we have been sensitizing our students on the need to be pro-poor and pro-marginalized by encouraging them to do pro-bono work for the interest of aforesaid groups.

*Getanda is an Advocate of the High Court. He teaches law at Egerton University where he is the Chair, Department of Public Law.*



# Frequently asked questions about Legal

## Q1: What is Legal Aid?

Legal Aid refers to the means by which needy persons receive legal assistance for free or at a reduced service fee. This means, legal aid is free or inexpensive legal services provided to those who cannot afford to pay full price. It is thus a critical component of access to justice and rule of law.

## Q2: What are the different forms of Legal Aid?

There are different ways of offering Legal Aid. These include: Legal advice; Legal representation; Assistance in resolving disputes by alternative dispute resolution (ADR); drafting of relevant documents and effecting service incidental to any legal proceedings; reaching or giving effect to any out-of-court settlement; creating awareness through the provision of legal information and law-related education; recommending law reform and undertaking advocacy work on behalf of the community.

## Q3: Who are the persons eligible for Legal Aid?

To expressly qualify for legal aid, a person has to be an indigent and a resident in Kenya, as well as be: a citizen of Kenya; a child; a refugee under the Refugees Act; a victim of human trafficking; or an internally displaced person; or a stateless person.

## Q4: What are the civil matters in which Legal Aid does not apply?

Legal Aid is not provided in certain civil matters. These include civil proceedings in respect to: a company, corporation, trust, public institution, civil society, Non-Governmental Organization or other artificial person; in matters relating to tax; in matters relating to the recovery of debts; in bankruptcy and insolvency proceedings and in defamation proceedings.

## Q5: Can anyone provide legal aid services?

Not everyone can provide legal aid services. The Legal Aid Act (2016) provides that for a person or organisation to be eligible to provide legal aid services, that person or organisation should be accredited to do so.

## Q6: What are the common barriers to Justice?

A number of issues act as barriers to justice in our communities. These are usually reinforced by poverty and social exclusion. It's partly due to these barriers that Legal Aid becomes a necessity. They include: family breakdown; credit and housing issues; discrimination due to disability; gender-based violence and discrimination; ignorance (partly due to low literacy rates; and age.



*“Legal Aid refers to the means by which needy persons receive legal assistance for free or at a reduced service fee.”*

# The Shape and Future of Legal Aid in Kenya: Prospects and Challenges.

**By Muriuki Muriungi**

Legal aid is central to the realization of human rights including citizens' rights enshrined under the Constitution 2010. This is especially the case in a country with high levels of poverty and a relatively low ratio of lawyers to citizens.

According to the Kenya census 2019, up to 39 percent of youths remain unemployed and half of Kenyans lack basic essential services such as clean water, medicine and food. This means that affording lawyers, who are usually deemed expensive, even among the less vulnerable is considered a luxury by this not insignificant demographic.

Yet, this group of Kenyans grapple with many legal issues requiring attention. For instance, a significant part of these low-income people finds themselves on the wrong side of the law and being arrested and prosecuted for various criminal offences, thereby running the risk of being slapped with especially punitive sanctions.

What is more, nearly all Kenyans need a lawyer to handle succession issues upon death of their loved ones, as is the case when seeking to transact including buying or selling land, as well as to defend employment claims when fired from work unprocedurally.

All these concerns put paid to the claim that legal services are increasingly being viewed as being akin to an essential and basic service. This is especially because a lack of access to these services can potentially lead to an emasculation of one's rights and dehumanize an individual.

It is precisely for this reason that Kenyans enacted unto themselves laws to ensure that those among them unable to afford a lawyer were afforded the same by the State.

The Legal Aid Act 2016, which was enacted following intense lobbying, provides an avenue for provision of legal aid to those unable to afford. In particular, section 36 of the Act specifically provides that only the indigent and residents of Kenya are eligible to the legal aid scheme.

This provision is useful as it avoids instances of free riders that is a constant feature of nearly all public goods, and ensures that the limited public resources are employed to the greatest effect.

The National Legal Aid Service (NLAS) established under the Act is the body charged with determining whether one is indigent as to be eligible for legal aid. Importantly, the Act also offers a rather expansive meaning of legal aid "as legal advice, representation, knowledge, legal awareness through education and recommendation of law reform and advocacy work." This means that legal aid is not limited to its understanding in the traditional sense as one that includes simply offering legal advice or representing one in court but also includes creating awareness, advocacy and making recommendations for law reforms.

However, the main challenge in attaining this lies in the fact that the Legal Aid Act (2016) is yet to be fully operationalised. There is need to ensure that the legal aid scheme and the attendant institutions established under the Act are well funded by the government to ensure that the persons in need of legal aid are able to secure it.

*Muriungi is an Advocate of the High Court of Kenya and teaches Law at the University of Nairobi*

# Use of informal justice systems to enhance access to justice for the marginalized

**By Alvin Kosgei**

Legal informal justice systems are part of the broader category of alternative dispute resolution (ADR) mechanisms.

Article 159 (2)(c) of the constitution allows courts to apply forms of ADR including reconciliation and traditional dispute resolution mechanisms (TDRM). On the other hand, the National Legal Aid Act (2016) allows for the provision of support to community legal services by funding justice advisory centres, education and research. It also allows for the provision of ADR mechanisms that enhance access to justice among communities. Other relevant legislations include the Community Land Act (2016) and the Protections of Traditional Knowledge and Cultural Expressions Act (2016).

Under the Community Land Act, a community's by-laws can be used or a mediator can be appointed to resolve a dispute. Community under the law includes communities of interest. In this case informal justice systems can be modified to apply to people living in the same area but not of the same tribe.

Therefore, the marginalized can, with the assistance of Civil Society Organisations (CSO's), and the government, establish structures and systems among themselves for dispute resolution. These can be based on customary laws or the formal law. In any event, a recognizable individual or group of individuals who are knowledgeable in the affairs of the relevant people can be the "court."

Tribunals can be created in the communities of tribe or interest to facilitate the hearing and determination of all types of cases. Research has shown that community-based approaches to criminal justice can engender better results in punishment and reformation. The CSOs engaged

in legal aid can, therefore, focus on building the capacity of the communities to handle their disputes by facilitating institutionalization of informal justice systems.

One of the best ways to do this is to form hybrid ad hoc tribunals. Since there is funding, the CSOs can engage members of the legal fraternity to sit in these ad hoc tribunals. This can help by bringing expertise while at the same time align the law applied with both customs and the formal law as may be necessary. The other members can be trained through apprenticeship and seminars to enable them discharge their duties better. Where necessary, the provincial administration can also be roped in to assist in enforcement. Of course, some challenges may arise in this including gender balance, constitutionality of some of the clauses, weak accountability mechanisms and conflict with some of the human rights such as the equality clause under Article 27 of the constitution.

However, these can be resolved through deliberate steps by the members and the facilitating CSOs, to minimize the impact of the challenges. For instance, the election of the members of the panels or tribunal must include at least a third of each gender. Moreover, the linkage with the local administration can engender accountability. To further enhance accountability, the tribunal can be given the mandate to screen cases and determine which ones should find their way to a formal courts in the event that parties fail to agree, as appeals.

From the above, it is clear that informal justice systems can be utilized to enhance access to justice, where access to justice must not be restricted, under this typology, to the access by the marginalized to formal courts only.

*Kosgei is an Advocate of the High Court of Kenya*



## Summary of Key National Legal and Policy Framework on Legal Aid

	Statute	Summary
1.	Constitution	As the supreme law of the country, the Constitution has several provisions that recognize the need to offer legal aid for in order to achieve access to justice to all including the poor and the marginalized. Of key importance is Article 48 which makes access to justice a fundamental right. Article 159 introduces Alternative Dispute Resolution (ADR) and Traditional Justice Systems to strengthen access to justice.
2.	Kenya Gazette Notice No. 370 of 20th January, 2016	It operationalizes Article 50, 50(2) and 50(2) (h) of the Constitution of Kenya, 2010 as well as Orders 33 and 44 of the Civil Procedure Act related to the application of pauper briefs and pro bono services.
3.	Practice Directions relating to Pauper Briefs Scheme and Pro Bono Services	These are directions that were given by the Chief Justice relating to Pro Bono services, among them the courts in which the services can be given. The courts are: Supreme Court, Court of Appeal, High Court and Magistrates Court. The directions are also about the circumstances under which the services can be given, for instance, that the legal fee cannot go past Ksh. 30, 000.
4.	Legal Aid Act 2016	The Act makes provisions for legal aid and its funding mechanism. It establishes the National Legal Aid Service (NLAS) as a body corporate to provide legal services to the indigent in line with the Constitutional provisions and obligation. The Act also stipulates that NLAS should work with Universities, colleges and other institutions in a collaborative manner to promote and supervise the establishment of legal aid services among others.
5.	Persons Deprived of Liberty Act, 2014	Section 6 (b) of the Act makes provisions for rights available to an accused person upon arrest and include notification of legal aid where it is available and its use. Section 11 (2) entitles aliens to legal aid and assistance where consular service is not available.
6.	Civil Procedure Act, Cap 21	Section 1A (1) of this law makes a provision to the effect that the overriding object of the Act is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. Order 33 provides for a suit by paupers -persons unable to pay legal fees to be heard before the civil courts. Order 44 makes provision for appeals by paupers while Section 59 is on mediation.
7.	Children's Act	Section 186 of the Act guarantees that every child accused of an offence who cannot afford counsel should be provided with legal representation by legal counsel at the expense of the state in preparation and presentation of his or her defence.

	Continued...	
8.	Small Claims Court Act	Section 3 of the Act makes provides for the disposal of small claims using the least expensive method; equal opportunity to access judicial services; fairness of process; and simplicity of procedure. Section 8 allows use of trained paralegals to serve as registrar and Sec. 20(2) expressly excludes appearance of legal practitioner in the courts as counsels of either party making the process simpler and faster for parties, good tenets of access to justice which legal aid is a component.
9.	Victims Protection Act	Section 3 of this Act stipulates that, the objects of the Act among others, is to recognize and give effect to the rights of victims of crime and to protect the dignity of victims through provision of better information, support services, reparations and compensation; establishment of programmes to assist vulnerable victims and to prevent victimization at all levels of government. These services are part of what legal aid is required to provide.
10.	Prevention Against Torture Act	The Act operationalizes Articles 25(a) and 29(d) of the Constitution of Kenya and bolsters rights of the accused person in the justice system or process and enhances access to justice.
11.	County Governments Act	The Act gives effect to Article 176 of the Constitution and provides for the responsibilities of County Governments. Among these is a mandate to provide civic education in the counties including creating awareness on the bill of rights. One of the objects of the Act that is closely related to legal aid is protection of the minority or vulnerable group, a component covered by legal aid services (Section 3(g)).



A Legal Aid Clinic in session at Witeithie Farm, Kiboronjo, Rongai Sub-County.





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### Photo Captions:

1. A youth sensitization forum at St Andrews ACK Church, Bahati, Bahati Sub-County.
2. A women's sensitization forum at Shabab Social Hall, Nakuru Town West Sub-County.
3. A Legal Aid Clinic at Hell's Gate Chief's Camp, Naivasha, Naivasha Sub-County.
4. A section of Advocates at one of our forums on pro bono scheme services
5. An Advocate of the High Court listens to clients at a legal aid clinic in Kiamaina Ward, Bahati.
6. A Legal Aid Clinic at Kampi ya Moto Chief's Camp, Rongai, Rongai Sub-County.
7. Prof. Michael Wabwile, a Law Lecturer at Egerton University facilitates at a public forum.





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# FOLLAP

Faculty of Law Legal Aid Project

## *Taking Law to the People*

### Enhanced Access to justice for the poor and **marginalized**

*We envision Justice and Equality for all. Key strategies for this vision are removal of barriers for access to justice among the target groups, empowerment of the community to refer cases of human rights violations as well as to build capacity of community justice systems to operate effectively and efficiently.*



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