



EGERTON UNIVERSITY  
**FOLLAP**  
Faculty of Law Legal Aid Project

# NEWS LETTER

Volume 1, Issue 2

September/2020

## ONE YEAR OF FOLLAP

### IN THIS ISSUE:

An advocate's  
experience and  
reflections

Legal Aid in Kenya: Overview of  
Legal and Policy Framework



How mediation  
skills are impacting  
communities



Over 2,000  
beneficiaries reached  
through FOLLAP



FOLLAP empowers  
Bahati youth on  
gender-based violence



**FOL**  
FACULTY OF LAW



**amkeni**  
WIKENYA







# LEGAL AID CLINIC

FACULTY OF LAW LEGAL AID PROGRAM

**Toll Free Helplines**



0800720448



<https://follap.egerton.ac.ke>



[follap@egerton.ac.ke](mailto:follap@egerton.ac.ke)



**TUESDAY & THURSDAY**  
**TIME: 9:00 am - 4:00 pm**  
**VENUE: Faculty of Law**

**VISION:** Justice and Equality for All

**MISSION:** Promotion of Access to Justice

Access to Justice

Disputes

# **VISION**

Justice and equality for all

# **MISSION**

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

# OBJECTIVES

Enhancing Access to Justice  
through Legal Aid on the  
following:

Family Disputes

Children Cases

Land Rights

Criminal Cases

Matters of Public Interest,

Governance and Public

Administration Issues

# EDITORIAL

## Dear FOLLAP Partner,

Thank you for choosing to read our newsletter.

It has been one year of offering legal aid services to communities in Nakuru county. We have achieved a lot through your valuable support and we are truly grateful.

In this issue, we thus share with you our one-year story; the road travelled so far. In doing so, we hope to signpost where we are headed as we get ready to launch the activities for the second year.

Yet our success story is also your story. It is with you that we have achieved all that we see as milestones in the project. We however bear the mis-steps as a sole responsibility and promise to correct all that we can, in due course.

In a special way we wish to thank the European Union and the United Nations Development Programme (UNDP) for the support they have continued to offer us through Amkeni Wakenya. We are also grateful to the office of the Nakuru County Commissioner and the Nakuru County Government, the Rift Valley Law Society, the Judiciary and the National Legal Aid Services (NLAS) for their partnership which has enabled the project to succeed.

We hope to continue doing more together.

### Article 50-1 (CoK, 2010)

*Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.*

# TABLE OF CONTENT

## Editorial

Message from the Project Leader.....	1
Message from the President, Rift Valley Law Society.....	1
I will forever be indebted to FOLLAP .....	2
FOLLAP empowers Bahati youth on sexual and gender-based violence .....	3
Legal Aid in Kenya: Overview of Legal and Policy Framework.....	4
Legal Aid in Kenya: An advocate’s experience and reflections .....	5
How mediation skills are impacting communities: .....	6
Over 2,000 beneficiaries reached through FOLLAP activities.....	7
Legal Aid in Kenya: Overview of Legal and Policy Framework.....	8
The right to remain silent and other rights of an arrested person.....	9



## PROJECT TEAM



Dr. Ruth Aura (Ph.D)  
**Project Leader**



Robert Mutembei  
**Project Manager**



Gabriel Ndung'u  
**Project Finance Officer**



Valerie Kutima  
**Project Advocate**



Samuel Kamau  
**Project Monitoring  
and Evaluation  
Officer**



Kioko Kivandi  
**Project Media &  
Communications  
Advisor**



**Layout and Design:**  
Peter I. Kiganda

## Message from the Project Leader

I wish to thank you sincerely for the support you have given us so far.

In the first year of FOLLAP's implementation, we have seen a lot of impact in the lives of the people we have reached through legal aid and our activities in general.

I wish to acknowledge the impact we saw during the Covid-19 period. It is a period during which many of our systems, including those that promote access to justice, have continued to face a disruption.

However, this is the period when our legal aid project became handy, filling in the gaps created by the pandemic's new-normal along the corridors of justice.

Our project staff and students were able to devise new ways of reaching out to residents despite the prevailing situation. We managed to give the information that was necessary for residents to sail through proving that old adage that "information is power".

As we move to the next phase of the project's implementation, we are confident that we have many entry points with the community and we hope to make ourselves much more relevant and accessible to residents.

We thus hope to continue **Taking Law to the People**, this time, in large scale.

*"Our project staff and students were able to devise new ways of reaching out to residents despite the prevailing situation."*



*Rift Valley Law Society President, Ochang' Ajigo at a FOLLAP function.*

## Message from the President, Rift Valley Law Society

The Rift Valley Law Society (RVLS) has been collaborating with FOLLAP since the project was initiated last year. During this period, we have witnessed mutual benefit and the collaborative efforts have been very beneficial as we came together in delivering justice and equality for all within Nakuru County and beyond.

We recognize the need to mobilize our members to give back to the community and therefore this strategic partnership with FOLLAP was timely. Our members have been happy to participate and mentor Egerton University's law students during mobile legal aid clinics.

During our interactions with students, we have been able to achieve more than just giving legal aid as the students get hands-on skills under the supervision of our members. We view this as a key contribution to the betterment of the profession. This has also been a precedent for us as this is the first time that we were being engaged in such a project.

We look forward to working with FOLLAP in the long-term as we establish a structured and sustainable legal aid provision in Nakuru County.



# I will forever be indebted to FOLLAP

By *Ronald Kihali*

The Faculty of Law Legal Aid Programme (FOLLAP) has been nothing short of a learning point for us law students at Egerton University.

The program has given us an opportunity to transform theoretical learning into practical application. During legal aid, we were able to advise many individuals on various legal issues. Most of these issues were human rights violations.

As a student of Egerton University – whose law programme is premised on human rights – this was an opportunity to showcase what we have learnt in class and use that knowledge to help the community.

Personally, I got a grasp of the kind of legal problems people go through in the society and how they can be solved. Most of the issues revolved around employment, land ownership, gender-based violence, children issues and many others. While handling them we always contextualized them in a human rights' perspective giving me an opportunity to understand certain legal issues and the fundamental legal principles behind them.

FOLLAP also provided an opportunity for us to educate the community on their human rights and obligations. I realized that not many people know their rights, or even if they do, they do not understand how to enforce them. This becomes problematic for them when their rights have been infringed upon and they do not know what steps to take. For example, someone who has been unjustifiably dismissed from employment may not understand his or her labour rights and may end up suffering in the hands of his employer.

Access to justice is the central focus in legal aid. Most of the people seeking legal advice were not able to afford legal services and yet they had serious legal issues that needed

attention. It was important as law students that we facilitate their access to legal advice by providing free legal advice and nothing beat the feeling of seeing clients leave our desks satisfied during the various legal aid clinics we held, after the help we offered them.

All in all, participating in legal aid has been an important step in my legal career, and my fellow students too. It was an opportunity to advise clients in the first instance even before qualifying to be a lawyer. It was a good platform to transfer the skills learnt in the classroom into practice; a forum to engage with people on a personal level and acquire useful interpersonal skills; an arena to learn about the society in general and the legal issues that need to be addressed. I will forever be indebted to FOLLAP and all the relevant stakeholders for the privilege they offered me to participate in this program.

*Kihali is due to graduate with a Bachelor of Laws (LLB) degree at Egerton University.*



*Faculty of Law students attending to clients at a Legal Aid Clinic in Ruiyobei, Rongai sub-county. The students have contributed immensely to the success of FOLLAP.*

# FOLLAP empowers Bahati youth on sexual and gender-based violence

By FOLLAP Team

Covid 19 pandemic has brought special challenges owing to closure of schools. Many school going young people are idle at their homes. Parents have a new challenge of containing energetic young people and many are lamenting the government's action to postpone the reopening of schools. True to the old adage, an idle mind is a devil's workshop, many atrocities have been blamed on idle youths. There is a rise in sexual and gender-based violence; many girls have been sexually abused leading to teenage pregnancies.

It is on the foregoing backdrop, that FOLLAP, organized a public sensitization forum on 10th August 2020 targeting young people from Bahati, Nakuru County. The project saw the need to empower young people to identify and report sexual and gender-based violations. The forum, which was attended by slightly over 100 young people, was timely in addressing unique challenges of Covid 19 pandemic.

Pascal Mbeche, a long-time law practitioner in children law and sexual offences, took the eager youth through the Sexual Offences Act in a manner they could relate with ease. He also took time to point out the various harsh punishments against sexual offences and the procedure of reporting in case of a violation.

With such empowerment, many young people will be able to assert their rights and protect their friends and family. Participants thanked the organizers of the event for helping them know their rights. They were surprised to know that law is not just for defending politicians and 'big' people in society but also young people like them.

The participants were happy to hear the provisions of the Constitution and especially

Article 53(1)d which provides that every child has the right to be protected from abuse, neglect, harmful cultural practices and all forms of violence. The emphasis on various statutes that protect the rights of young people empowered them all including girls to know that they don't have to agree to the demands of ill-intentioned people around them. It was also noted that boys are also at risk owing to rising cases of sodomy and they were also empowered on how to be alert.

Valerie Kutima, an Advocate and a Law Lecturer at Egerton University further emphasized the need for young people to refrain from consensual adolescent sex to avoid being on the wrong side of the law. She encouraged them to know that upon the age of majority, they would have a chance to exercise their free will to marry a person of the opposite sex as provided under the law.

FOLLAP will be engaging the youth the more in order to be more assertive and speak against sexual offences. Such empowered groups we hope will turn out to be key advocates of human rights in their communities.



*Pascal Mbeche, a Nakuru-based advocate speaks to participants during the youth forum.*



## Legal Aid in Kenya: Overview of Legal and Policy Framework

By Anne Opola

Civil Society Organizations (CSO's) had been offering legal aid in Kenya even before a legal framework was put in place. The legislation therefore did not initiate legal aid but came in to provide a framework for what was already taking place.

In 2007, the government established the National Legal Aid and Awareness Programme (NALEAP) with the main aim of creating awareness about legal aid, providing legal advice and representation to the poor, marginalised and vulnerable in the Kenyan society.

This programme was the precursor to the Legal Aid Act (2016), and laid a foundation for the establishment of a structured and sustainable national legal aid scheme in Kenya. This scheme became the predecessor to the National Legal Aid Service (NLAS) established under the Legal Aid of 2016.

The preamble of the Constitution of Kenya (2010) underpins the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. It provides that every person is equal before the law with the right to equal protection and equal benefit of the law and further provides for the right to access to information, access to justice and rights of arrested persons.

Perhaps one of the most significant provisions as regards legal aid is Article 50 (2)(h) which provides that every accused person has the right to have an advocate assigned to them by the State and at the State expense if substantial injustice would otherwise result, and to be informed of this right. This is partly the right to a fair hearing.

Art. 50 (2)(h) Every accused person has the right to a fair trial, which includes the right to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result,

and to be informed of this right promptly).

The National Legal Aid and Awareness Policy (2015) provided the policy framework, setting the tone for the Legal Aid Act (2016). The enactment of this Act followed a long campaign by the civil society and other players in the justice sector beginning long before the promulgation of the 2010 Constitution.

The Act creates a Legal Aid Fund that pays for remuneration of legal aid providers and related expenses for indigent persons. The Act covers legal aid services for criminal as well as civil cases. Persons eligible for legal aid under the Act may however be unable to access services in case of inadequate resources, unconscionable conduct or any other reasonable ground.

The Act excludes legal aid services for artificial persons (such as companies) matters of tax, debt recovery, bankruptcy and defamation. This has seen some deserving cases being left out and there could be further need to create clear guidelines to determine who is "indigent." Moreover, since the Constitution recognizes the right of every accused person, what happens to persons who can only partly afford or access legal services?

The National Action Plan on Legal Aid for 2017-2022, launched in December 2017, outlines a broad policy, legal and institutional framework to ensure sustainable and quality legal aid, and operationalizes the National Legal Aid and Awareness Policy 2015 and the Legal Aid Act 2016.

The Action Plan underpins awareness creation and the facilitation of legal rights education at community level through community-based initiatives, including law students. If implemented fully, Kenya will have a knowledgeable citizenry, well able to seek justice and legal remedies.

*Opola is an Advocate of the High Court of Kenya.*

# Legal Aid in Kenya: An advocate's experience and reflections

By Muinde Njoroge

One day, a client walked into my office for a legal opinion which I earnestly offered for free. I saw it as part of my obligation to humanity partly because the case was deserving of legal. So, I gave it my best shot. But upon telling the client to pay Ksh. 70,000 – the court filing fees – the client, having 'picked' my opinion walked away only to resurface after two years. By this time, the limitation period in their suit had lapsed and the court would hear none of our prayers.

This is just one of the many situations that lawyers in the country offering legal aid services go through on a daily basis; clients walk in hoping that lawyers will do everything for them; that they will be their Messiahs. In some instances, some clients present situations that are so needy that lawyers have been forced to offer food and other basic amenities to the clients before they can even attend to them.

This is one of the greatest challenges of offering legal aid in the country; some cases are so needy that offering legal aid is not enough. Who can listen to you deliver a legal opinion when they have not had food for days? Or even, when they have a sick child strapped on their back?

That's not all. Most advocates willing to offer legal aid, work in very demanding environments. They work in firms that have too much work that they hardly have any time to offer free services. Those working in the corporate sector may not get the time unless during their leave days.

The problem is also as a result of poor orientation to pro-bono work at law schools. As it stands, pro-bono is not a concept that is well conceptualised in our schools – at least in the curriculum that I went through

to become an advocate. It would thus be irregular to expect a lawyer to assist a client on pro-bono basis when the lawyer has not been fully exposed to what their role is in this exercise, however noble it seems.

Players in the legal aid sector beginning with law schools, law firms, legal aid providers should come thus up with strategies to instill in lawyers as a foundation the primacy of pro-bono work.

For lawyers who are in practice already we need to create more awareness in order to increase uptake of pro-bono work. For a start lawyers interested in doing pro-bono work could consider picking up non-intensive briefs hoping that as time goes by, they will be inspired to do more



*"Players in the legal aid sector beginning with law schools, law firms, legal aid providers should come thus up with strategies to instill in lawyers as a foundation the primacy of pro-bono work."*



## How mediation skills are impacting communities: the case of Chief Florence Wambui



*Florence Wambui (in pink dress) receives her certificate from the FOLLAP Project Lead Dr. Ruth Aura (center) and Mary Mwangi, an official in the office of the County Commissioner, Nakuru. Wambui applied the skills she learnt in the training in solving a community dispute involving encroachment of a road reserve in her sub-location*

When Florence Wambui, an Assistant Chief of Bahati Sub-Location, Bahati Location in Nakuru North Sub County completed a mediation course we hosted for administrators she knew she had to put the skills she had acquired to use.

The training that was conducted towards the end of July in partnership with the Mediation Training Institute (MTI) saw the administrators engaged on how to solve community disputes at their disposal without having to go to the courts.

It lasted for three days and by the time it was done Wambui remembered about a case that had once been presented to her by residents within her area of jurisdiction. The case was a complaint against someone who had encroached on a road reserve making it narrow.

The encroachment, in Satelight village within Bahati, thus made it difficult for residents to access the village via the road, especially while using vehicles. Attempts to request the person in the midst of the problem to take

responsibility had earlier on fell on deaf ears. At some point Wambui finally decided to take the issue to the courts.

However, after the mediation training, she felt that she had been equipped with the right skills to handle the issue. So, she called a meeting at the village involving all stakeholders and to her surprise it ended up being a great success. At least 26 village members appeared for the meeting which she chaired and after deliberations the person who had encroached on the road, even initially refusing to listen to land surveyors about the issue, finally relented.

With this turn of events the community agreed to contribute and hire a grader that worked on the road bringing to end the issue that had previously been difficult even for the political class in the region.

FOLLAP is proud of Chief Wambui and believe that with more capacity building on alternative dispute resolution, administrators such as her will do much more.

## Over 2,000 beneficiaries reached through FOLLAP activities

In its first year of implementation, FOLLAP has managed to reach over 2,000 beneficiaries through its different activities.

Over 800 among them were reached through mobile legal clinics while another over 500 people were reached through public sensitization forums.

One of our key target populations in the project is women and we managed to engage close to 200 women in different women sensitization fora. This we managed to do through our close partnership with the Institute for Women, Gender and Development Studies at Egerton University.

The project also incorporated an imbedded legal aid clinic at the Faculty of Law that handled more than 100 cases. The clinic is usually open every Tuesday and Thursday from 9 am to 4 pm.

Our partnership with the Rift Valley Law Society saw us engage 52 Advocates in different forums where 23 among them registered to be engaged in our pro-bono scheme. Most of the pro-bono scheme cases we received were handled at the advisory level. However, 5 cases have so far been referred to Advocates since they have exhibited the need for legal representation.

Another of our key successes is our engagement with the office of the Nakuru County Commissioner. This saw us engage more than 80 Chiefs and Sub Chiefs in different fora enabling us to penetrate to the communities especially after the Covid-19 pandemic struck. Through this partnership we also managed to conduct a Mediation Training that attracted at least 15 participants who were picked from different regions of Nakuru county. We are happy that the skills that these participants gained from this training is helping impact in the lives of the

people they serve on a daily basis.

Our call center, which runs on 24-hour basis was also a great success attracting at least 62 cases that were either handled on the spot or referred to the legal aid clinic for follow up. Some of these were from clients residing outside Nakuru but who heard about the project through our media and publicity campaign; mainly newspaper, TV and radio. For the media engagements we had 10 sessions mainly with Nakuru based media houses (radios and TV). Through them we held discussions with listeners on a wide number of topics around the projects key target areas. We also publicized our activities through digital platforms reaching a broad population.

In concluding our first year we also held two road shows in Nakuru Town and its environs, as well as Subukia, Bahati and environs. The road shows were a big success especially in the low-income areas of Kaptembwa, Rhonda, and Bondeni where residents immediately responded with cases that were reported at our embedded legal aid clinic at the Faculty. With this we can only hope that the second phase of the project will be full of activities as we plan to reach more target groups.



*FOLLAP caravan at Subukia, where we sensitized residents on different aspects of Legal Aid. We held similar events in Nakuru West and Nakuru East Sub-counties.*



## The right to be presumed innocent and other rights to a fair hearing



*Fatma Razik, a Law student at Egerton University facilitates at a public forum in Subukia on access to justice. The law states that every accused person is presumed innocent until proven otherwise*

The law requires that every accused person be presumed innocent until proven otherwise. The burden of proof always lies with the prosecution (or complainant). Article 50 of the Constitution states as follows:

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

Thus, every accused person has the right to a fair trial, which includes the right to:

- Be presumed innocent until the contrary is proved
- Be informed of the charge, with sufficient detail to answer it
- Have adequate time and facilities to prepare a defence
- A public trial before a court established under the Constitution of Kenya
- To have the trial begin and conclude without unreasonable delay
- To be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed
- To choose, and be represented by, an advocate, and to be informed of this right promptly
- To have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly
- To remain silent, and not to testify during the proceedings
- To be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence
- To adduce and challenge the evidence
- To refuse to give self-incriminating evidence

## The right to remain silent and other rights of an arrested person



*FOLLAP's Project Manager Robert Mutembei speaks at an Advocates forum on pro-bono scheme. Among the rights of an arrested person is the right to remain silent and the right to communicate to an Advocate or any other person whose assistance is necessary.*

Did you know you have the right to remain silent when you are arrested? Well, if you didn't, now you know. Below are the rights of an arrested person as stipulated in Article 49 of the Constitution.

An arrested person has the right:

- To be informed promptly, in a language that the person understands, of the reason of the arrest; the right to remain silent; and the consequences of remaining silent.
- To remain silent.
- To communicate with an advocate, and other persons whose assistance is necessary.
- Not to be compelled to make any confession or admission that could be used in evidence against the person.
- To be held separately from persons who are serving a sentence.
- To be brought before a court as soon as reasonably possible, but not later than 24 hours after being arrested; or if the 24 hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day.
- At the first court appearance, to be charged or informed of the reason for the detention continuing, or be released; and
- To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
- Note that a person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.





Participants follows proceedings at a girls' sensitization forum in Naivasha on sexuality and sexual offences act.



Egerton University Law Lecturer Prof. Michael Wabwile facilitates at a public forum in Kapkures, Nakuru West Sub-County. During the forum, residents were sensitized on human rights among other issues.



Trizah Ombewa, a Law student at Egerton University attends to a client during one of our Legal Aid Clinics at Arimi in Elburgon, Molo Sub-County.



"Put on your mask." Bahati Assistant Chief Florence Wambui helps a youth to put on his mask at a forum we held in Bahati, Nakuru North Sub County on sexual offences.



Our road show caravan at Bondeni in Nakuru East Sub-County.



Nakuru High Court Judge, Hon. Justice Teresa Matheka facilitates a FOLLAP advocates forum on pro-bono scheme. More than 20 Advocates have signed up for the scheme so far.



UN Senior Human Rights Advisor, Li Fung, hands over books on human rights to Egerton University Vice Chancellor Prof. Rose Mwonya (centre) and Nakuru Town Campus College Principal Prof. Lenah Nakhone.



#TakingLawtothePeople: FOLLAP team being ferried to a farm in Rongai Sub County where residents alleged a private investor had grabbed community land. FOLLAP has since taken up the case as a public interest litigation case.





Congratulations to Egerton University  
you for your efforts in making the





LLB 2020 Finalists. FOLLAP thanks project a success in its first year





# 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.*



Toll Free Helplines: 0800720448 | Office Line: +254759275007



@FollapEU

WEBSITE: <https://follap.egerton.ac.ke>

E-MAIL: [follap@egerton.ac.ke](mailto:follap@egerton.ac.ke)