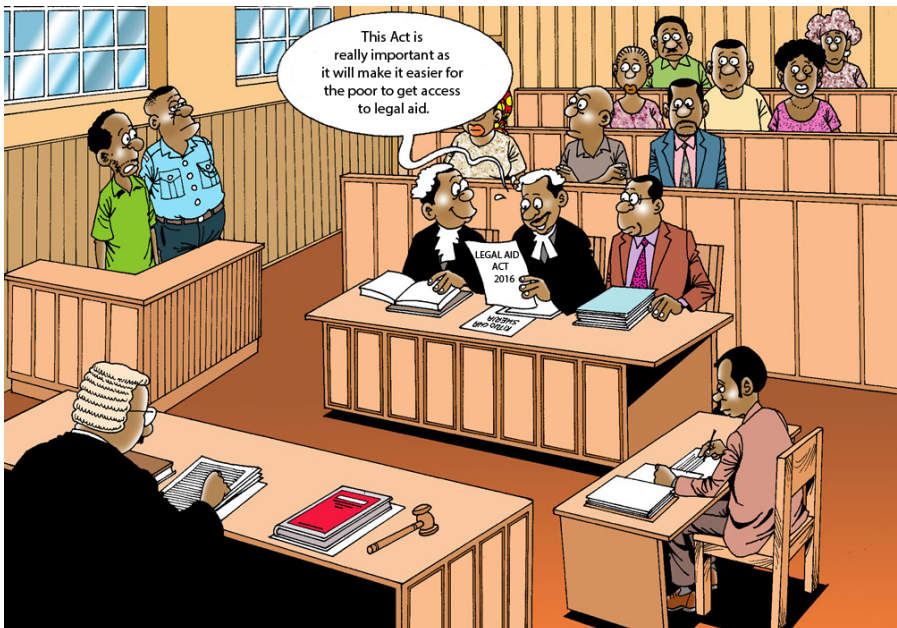


LEGAL AID ACT, 2016

Date of Assent: 22nd April, 2016
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Produced by

Kituo Cha Sheria

(Legal Advice Centre)

With support from UNDP Amkeni

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Foreword

In 1973, young lawyers established Kituo cha Sheria (KITUO) to promote access to justice for the poor and marginalised. It is on this premise that KITUO envisions a just and equitable society. As the oldest, legal aid organisation in East and Central African region, we have found a high demand for legal assistance that we still cannot adequately satisfy due to limited funding and human resources.

Access to justice is one of the United Nations Sustainable Development Goals, more specifically SDG 16. Consequently, the importance of access to justice in development cannot be understated; its presence is a key indicator of development. Legal aid and assistance is an aspect of access to justice. It is primarily the duty of the State to provide legal aid for the indigent. In this spirit, KITUO lauded the Constitution of Kenya 2010 which in article 48 enlists access to justice as a fundamental right and freedom.

In rallying for the realization of the Constitution, KITUO was actively involved in lobbying and advocacy around enactment of legislation that realizes article 48 and establishes a national legal aid scheme funded by the Government of Kenya. We hence embraced the passing of the Legal Aid Act in 2016 and later the establishment of the National Legal Aid Service (NLAS) and Legal Aid Fund. Kenyans now have a legal basis of claiming for legal aid and assistance from the Government.

It is on this basis that KITUO, with support from UNDP-Amkeni Kenya programme, has developed a simplified and popular version of the Legal Aid Act 2016 to educate Kenyans on its provisions. The booklet highlights the nature of legal assistance, the criteria for legal aid, the accreditation legal aid service providers, procedure for application for legal aid, the Legal Aid Fund and finally the role of the National Legal Aid Service. The booklet serves to enhance community awareness on the Legal Aid Act 2016 so that the indigent are empowered to assert their right to access justice. The information in the booklet is also useful for stakeholders seeking a quick read of the Legal Aid Act 2016.

Dr. Annette Mbogoh
Executive Director

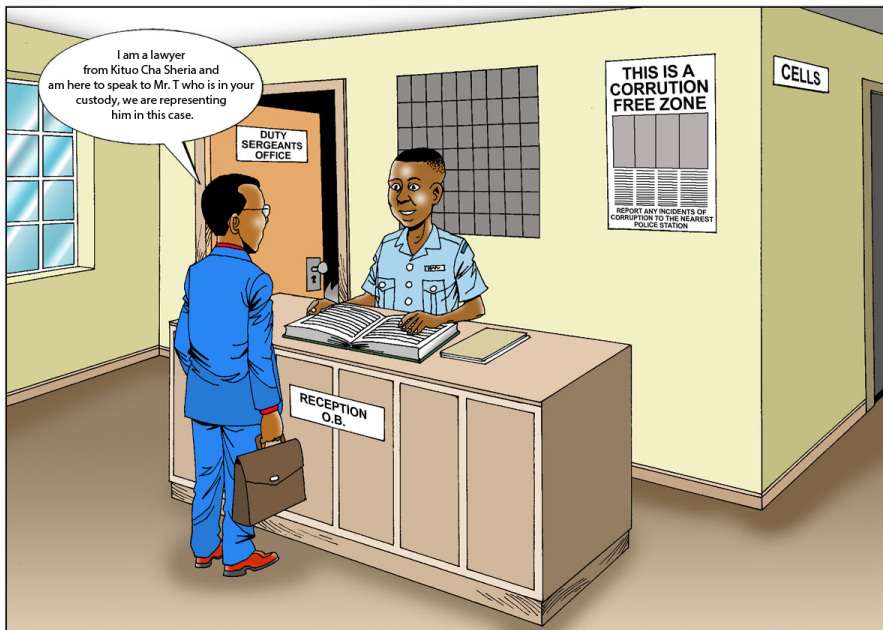
1. What is the Legal Aid Act, 2016?

It is a law enacted by the Parliament of Kenya and guaranteed by the Constitution to facilitate access to justice and social justice. It establishes the National Legal Aid Service, provides for affordable, accessible, sustainable, credible and accountable legal aid scheme and promotes alternative dispute resolution methods through awareness projects and justice advisory centers.

2. What do the services of Legal Aid include?

“Legal Aid” includes the provision of legal advice and representation. Assistance includes dispute resolution, drafting of relevant documents for legal proceedings, and facilitating out-of-court settlements.

“Legal Aid” also involves creating awareness through the provision of legal information and law-related education and recommending law reform advocacy work on behalf of the community.

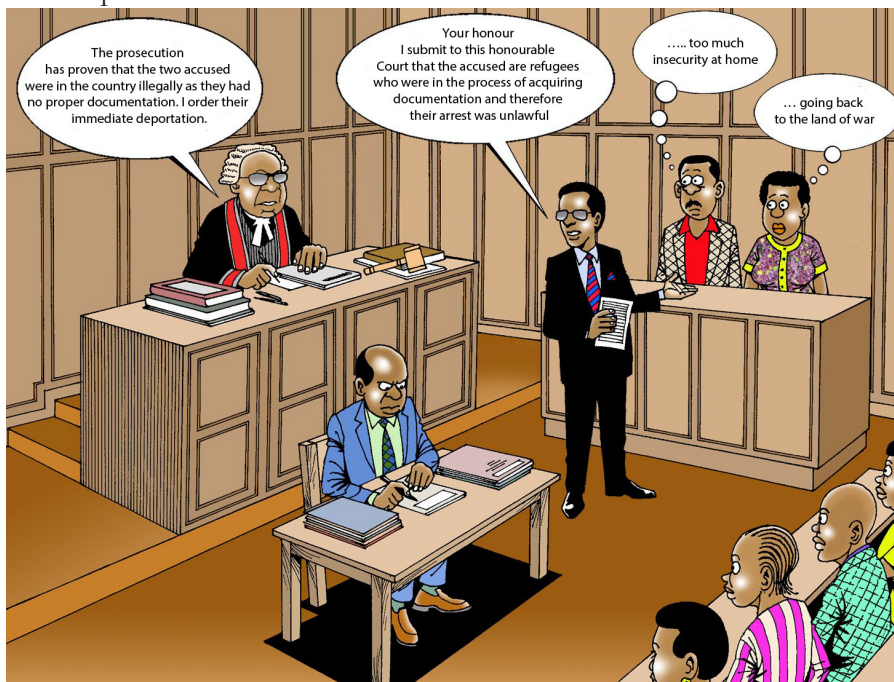


3. Who can provide Legal Aid assistance?

Legal Aid services can be offered by the following:

- a) an advocate operating under the pro bono programme of the Law Society of Kenya;
- b) an accredited paralegal;
- c) a firm of advocates;
- d) a public benefit organization or faith based organization;
- e) a university or other institution operating legal aid clinics; or
- f) a government agency, accredited under this Act to provide legal aid.

The National Legal Aid Service will provide accreditation for all legal aid service providers.



4. The National Legal Aid Service

The National Legal Aid Service is based in Nairobi but may establish branches in every County to ensure access of its services, which include:

- (a) establish and administer a national legal aid scheme;
- (b) advise the Cabinet Secretary on matters relating to legal aid in Kenya;
- (c) encourage and facilitate settlement of disputes through alternative dispute resolution;
- (d) undertake and promote research in legal aid, and access to justice with special reference to the need for legal aid services among indigent persons and marginalized groups;
- (e) promote public interest litigation of special concern to the marginalized groups;
- (f) provide grants in aid of schemes to various voluntary social service institutions;
- (g) develop and issue guidelines and standards for the establishment of legal aid schemes by Non- Governmental Agencies;
- (h) develop programs for legal aid education and training and certification of paralegals;
- (i) promote and supervise the establishment and working of legal aid services in universities, colleges and other institutions;
- (j) promote the use of alternative dispute resolution methods;
- (k) take appropriate measures to promote legal literacy and legal awareness;
- (l) facilitate the representation of persons granted legal aid under this Act;
- (m) assign legal aid providers to persons granted legal aid under this Act;

- (n) establish, coordinate, monitor and evaluate justice advisory centers;
- (o) coordinate, monitor and evaluate paralegals and other legal aid service providers and give general directions for the proper implementation of legal aid programs;
- (p) administer and manage the Legal Aid Fund; and
- (q) perform such other functions as may be assigned to it under this Act or any other written law.

5. Administration

5.1 Leadership

The Service shall be governed by a Board consisting of:

- a) a chairperson who shall be appointed by the President from among persons qualified to be appointed as judges of the High Court;
- b) a judge of the High Court nominated by the Chief Justice;
- c) the Principal Secretary in the Ministry responsible for matters relating to justice;
- d) the Principal Secretary in the Ministry responsible for matters relating to finance;
- e) the Principal Secretary in the Ministry responsible for the interior and co- ordination of National Government;
- f) the Director of Public Prosecutions or his representative;
- g) one nominee by the Law Society of Kenya;
- h) one nominee by the Kenya National Commission on Human

Rights;

- i) one nominee by the Council for Legal Education;
- j) one person elected from a joint forum of Public Benefit Organizations offering legal aid to the public, including women, youth and children;
- k) one nominee by the National Council of Persons with Disabilities; and
- l) the Director.

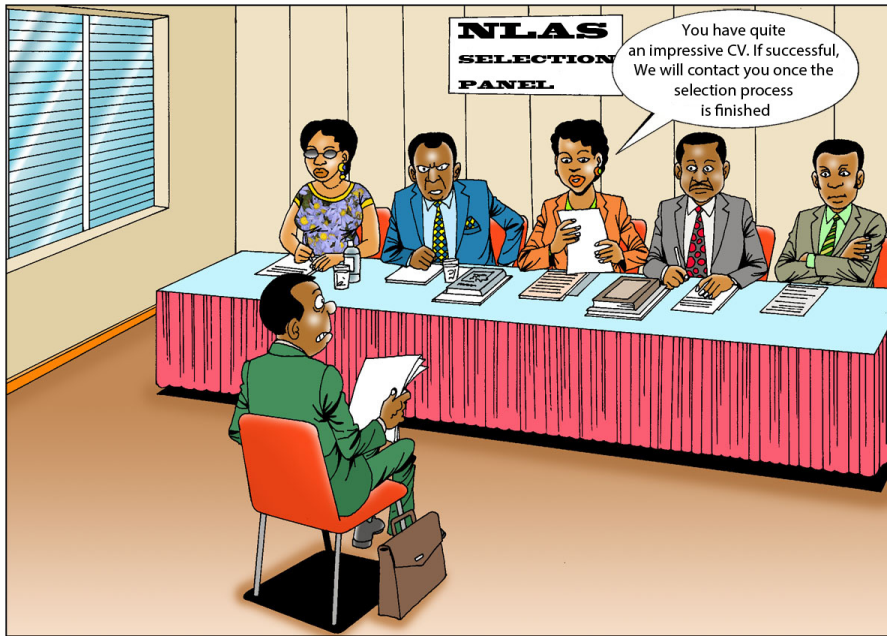
5.2 Responsibilities

The Board will have the following powers in relation to the Service:

- (a) control, supervise and administer assets;
- (b) determine provisions for capital recurrent expenditure and reserves;
- (c) receive grants, gifts, donations or endowments and make legitimate disbursements;
- (d) enter into association with such other bodies or organizations within or outside Kenya
- (e) open a banking account or banking accounts for the funds of the Service; and
- (f) invest any of its funds not immediately required for its purposes.

5.3 Management and Staff of the Service

The Director of the Service is appointed by the Board and will be the Chief Executive Officer. The Director can hold office for 3 years with eligibility for re-appointment for one more term. Responsibilities of the



Director are:

- (a) implementing the decisions of the Board;
- (b) day-to-day administration and management and control of the other staff; and
- (c) arrangement of business, recording and keeping of the minutes of the Board.

There shall be a Secretariat of the Service which shall provide administrative, secretarial and other assistance to the Service. It will comprise of:

- (a) such professional, technical and administrative officers and support staff as may be appointed by the Board in the discharge of its functions; and
- (b) such public officers as may be seconded by the Public Service Commission upon the request of the Service.

6. The Legal Aid Fund

6.1 What is in the Legal Aid Fund?

The Legal Aid Fund, managed by the Service, will consist of:

- (a) moneys allocated by Parliament;
- (b) grants, gifts, donations, loans or other endowments;
- (c) such funds as may accrue to the Service in the course of the exercise of its powers; and
- (d) moneys from any other lawful source accruing to the Fund.

6.2 Use of the Fund

The annual expenditure of the Service for the financial year (from the first of July and ending on the thirtieth June of the subsequent year) shall provide for:

- (a) defray expenses incurred in the representation of persons granted legal aid;
- (b) pay the remuneration of legal aid providers for services provided;
- (c) meet the expenses incurred by legal aid providers in providing services; and
- (d) meet the expenses of the operations of the Service as approved by the Board;
- (e) payment of salaries, allowances and other charges in respect to the Board and service;
- (f) payment of pensions, gratuities and other charges in respect of benefits;
- (g) proper maintenance of the buildings and grounds of the Service;

- (h) maintenance, repair and replacement of equipment;
- (i) funding of training, research and development activities of the Service;
- (j) liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Service may think fit; and
- (k) any other expenditure necessary for the purposes of this Act.

7. Legal Aid Services

7.1 Cases that qualify for Legal Aid

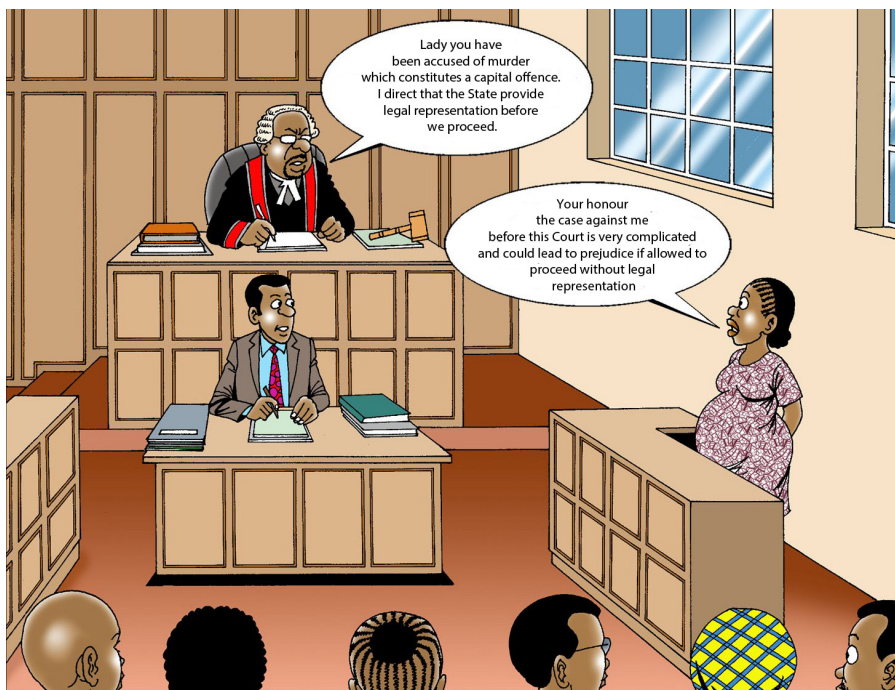
The Service shall provide legal aid services at the expense of the State to persons who qualify for legal aid in these matters:

- (a) civil matters;
- (b) criminal matters;
- (c) children matters;
- (d) constitutional matters;
- (e) matters of public interest; or
- (f) any other type of case or type of law that the Service may approve.

7.2 Persons eligible to receive Legal Aid Services

A person is eligible to receive legal aid services if that person is:

- (a) a citizen of Kenya;
- (b) a child;



- (c) a refugee under the Refugees Act, No.13 of 2006;
- (d) a victim of human trafficking;
- (e) an internally displaced person; or
- (f) a stateless person.

The Service shall not provide legal aid services to a person unless the following conditions are satisfied:

- (a) the cost of the proceedings is justifiable in light of the expected benefits;
- (b) resources are available to meet the cost of the legal aid services sought;
- (c) it is appropriate to offer the services having regard to the present and future demands;

- (d) the nature, seriousness and importance of the proceedings to the individual justify such expense;
- (e) the claim in respect of which legal aid is sought has a probability of success;
- (f) the conduct of the person warrants such assistance;
- (g) the proceedings relate to a matter that is of public interest;
- (h) the proceedings are likely to occasion the loss of any right or the person may suffer damages;
- (i) the proceedings may involve expert cross-examination of witnesses or other complexity;
- (j) it is in the interest of a third party that the person be represented;
- (k) denial of legal aid would result in substantial injustice to the applicant; or
- (l) there exists any other reasonable ground to justify the grant of legal aid.

7.3 Cases ineligible for Legal Aid Services

The Service shall not provide legal aid services in respect of civil proceedings—

- (a) to a company, corporation, trust, public institution, civil society, Non-Governmental Organization or other artificial person;
- (b) in matters relating to tax;
- (c) in matters relating to the recovery of debts;
- (d) in bankruptcy and insolvency proceedings; or
- (e) in defamation proceedings.

8. Application for Legal Aid

A person wishing to receive legal aid shall apply to the Service in writing.

8.1 Persons in custody

The officer-in-charge of a prison, police station, remand home for children or other place of lawful custody shall—

- (a) ensure that every person held in custody, is informed, in language that the person understands, of the availability of legal aid on being admitted to custody and is asked whether he or she desires to seek legal aid;
- (b) maintain a register in which the name of every person held there and the response of such person when asked if he or she desires to seek legal aid shall be entered; and
- (c) ensure that a legal aid application form is filled by a person in their custody wishing to apply for legal aid and shall inform the Service of the application within twenty-four hours of the making of the application.

8.2 Children

Where a child is brought before a court in proceedings under the Children Act or any other written law, the court may where the child is unrepresented, order the Service to provide legal representation for the child.

8.3 Persons Sentenced to Death

Where an accused person is brought before the court and is charged with an offence punishable by death, the court may, where the accused is

unrepresented, order the Service to provide legal representation for the accused.

8.4 Decisions of the Service

The decision of the Service shall be in writing and shall specify—

- (a) the conditions, if any, attaching to the grant of legal aid;
- (b) the matter for which the legal aid is granted or not granted;
- (c) the date on which the grant of legal aid takes effect;
- (d) the benefits included in the grant of legal aid;
- (e) the possible deductible amount from the grant to the aided person; and
- (f) the name of the legal aid provider assigned to the aided person.

Where the Service decides to withdraw legal aid provided to an aided person the Service shall, as soon as is practicable, send a written notice to the aided person and the legal aid services provider of—

- (a) the intention to withdraw legal aid;
- (b) the reasons for the decision to withdraw legal aid; and
- (c) the right of the aided person to seek a review of the decision.

9. Accreditation of Legal Aid Services Providers

A person or organization wishing to provide legal aid services shall apply to the Service for accreditation in the prescribed manner. The Service is mandated to draft rules for accreditation of legal aid services providers in consultation with stakeholders.

9.1 Code of Conduct

The Service shall develop a code of conduct to apply to accredited legal aid services providers providing for—

- (a) the protection of the rights and interests of an aided person;
- (b) duties to the aided person, the Service, court or tribunal;
- (c) conflict of interest;
- (d) observance of confidentiality;
- (e) in the case of professionals, the duty to observe prescribed ethical standards of their respective professional bodies; and
- (f) probity and ethical conduct.

9.2 Conditions for suspension

The Service may temporarily suspend any approved services in the accreditation of a registered legal aid services provider for a specified period if the accredited legal aid services provider —

- (a) is in breach of the code of conduct;
- (b) is convicted of an offence;
- (c) is subject to disciplinary procedures before the relevant professional body of which he or she is a member; or
- (d) fails to keep proper records of activities undertaken on behalf of an aided person or to provide legal services.

9.3 Cancellation of accreditation

The Service may cancel the accreditation of a legal aid services provider on any of the following grounds—

- (a) the Service is satisfied that the accreditation was obtained by mistake, fraud, undue influence or misrepresentation;
- (b) the legal aid services provider-
 - (i) does not meet the accreditation criteria, whether or not that criteria was adopted before or after the accreditation was given;
 - (ii) is not providing, or has not provided, the service for which they are accredited to the prescribed standard;
 - (iii) has been adjudged bankrupt, is insolvent or has entered into an arrangement with his or her creditors;
 - (iv) has failed to comply with one or more of the conditions of the accreditation; or
 - (v) is convicted of an integrity related offence which touches on his or her integrity, accountability, or is subject to an order made under the relevant body.

10. Payment for Legal Aid Services

The Service shall pay a legal aid services provider in respect of every claim or part of a claim that the Service approved for payment.

An aided person shall not be required to make any payment in connection with the provision of services. An aided person may be required to pay for—

- (a) the cost of services;
- (b) a contribution in respect of the services;

(c) administration costs; and

(d) any other service provided to the aided person.

