

# FACILITATING ACCESS TO JUSTICE THROUGH PARALEGALISM IN KENYA



## Policy Brief

### A. Background

Community paralegals work to provide practical solutions to enhance access to justice through various means, including offering legal advice and education, facilitating mediation and alternative dispute resolution, advocating for rights, and conducting public awareness campaigns in the communities they serve. They are deeply attuned to local contexts and needs, often speaking local languages, possessing knowledge of local justice systems, and gaining community acceptance. Paralegals in many African settings navigate between formal and informal justice systems, ensuring adherence to the rule of law and human rights standards.

This policy brief provides a thorough analysis of the current shortcomings or lack of institutional frameworks and procedures that facilitate paralegalism in Kenya. It draws upon the extensive Study commissioned by Kituo Cha Sheria to gain valuable insights. The research undertook a comprehensive assessment of the training, formalisation, recognition, and financing of paralegals in Kenya.

This brief aims to stimulate debate and advocacy on paralegalism in Kenya by examining its complexities. This emphasises the immediate necessity to tackle the structural obstacles that impede the efficient operation of paralegals and emphasises the significance of creating strong policies and mechanisms to assist them in their crucial role of improving access to justice.

## B. Training

Training serves as a fundamental pillar in paralegalism despite the existence of varying perspectives regarding its duration and methodology. Regarding training approaches, legal empowerment organisations typically employ a comprehensive approach, including lectures, moot courts, and community outreach, culminating in examinations. Conversely, Paralegal member organisations have developed a standardised training manual and curriculum, which have been submitted to the Council of Legal Education for approval.

### Policy Weaknesses

- Weak institutional capacity of regulatory authorities to approve curriculum and supervise paralegal training.
- Lack of recognition of the experiential aspect of practice and absence of standardisation of training, overlooking the inclusion of local contexts informed by justice-related issues.
- Inadequate systemic and structural mechanisms for curriculum approval by training institutions by the Council of Legal Education [CLE].
- Absence of policy pronouncement on coordinated strategic collaborations and partnerships with stakeholder institutions in the justice sector for the delivery of legal aid and awareness services to mainstream paralegalism, involving private sector entities such as insurance companies, employers, trade unions, universities, and other educational institutions, as well as development partners in the provision of legal aid services.

### Recommendations

- Enhancing the institutional capacity of regulatory authorities, expanding their mandate to include curriculum approval and supervision of paralegal training.
- The recognition of the experiential aspect through practice and calls for standardized training that prioritises local contexts informed by justice-related issues.
- The revitalisation and decentralisation of CLE to effectively fulfil its mandate. There is a pressing need for policy pronouncements to foster coordinated strategic collaborations and partnerships with stakeholder institutions in the justice sector. This involves private sector entities, including insurance companies, employers, trade unions, universities, and other educational institutions, as well as development partners providing legal aid services.

## C. Formalisation

There is an aspiration among experts for governments to identify and accredit paralegals qualified to handle legal matters based on their education and to establish boundaries on the scope of their services. Formalisation should address the implementation of limitations, accreditation of qualified paralegals, and the definition of their scope. However, practitioners express concerns that such measures may exclude a majority from the profession.

### Policy Weaknesses

- Inconclusive national policy, coupled with the absence of a monitoring and evaluation strategy outlining the specific roles, tasks, and responsibilities of different Legal Aid Service Providers (LASPs) and other institutions regarding information gathering and transmission to the National Legal Aid Service (NLAS).
- Lack of a policy statement on systematic and continuous assessment by NLAS of the progress made in implementing the Legal Aid Policy.
- Absence of a schedule for periodic external evaluations to analyse the effectiveness, efficiency,

relevance, impact, and sustainability of the Legal Aid service, as envisioned in the 2015 Draft National Legal Aid and Awareness Policy.

- Slow pace of implementation of the Legal Aid Act 2016 by NLAS, hindering the fulfilment of all functions itemised under Section 7 of the Kenya Legal Aid Act.

## Recommendations

- The finalisation of the national policy, along with the development of a monitoring and evaluation strategy, delineates the specific roles, tasks, and responsibilities of different Legal Aid Service Providers (LASPs) and other institutions in terms of information gathering and transmission to NLAS.
- A policy statement on systematic and continuous assessment by NLAS of the progress made in implementing the Legal Aid Policy, supplemented by periodic external evaluations to analyse the effectiveness, efficiency, relevance, impact, and sustainability of the Legal Aid service, as outlined in the Draft National Legal Aid and Awareness Policy.
- The full implementation of the Legal Aid Act 2016 by NLAS ensuring all functions outlined under Section 7 of the Kenya Legal Aid Act are carried out. Amendments should be considered, if necessary, following consultations with stakeholders.
- Expediting the incorporation of legal needs into the household survey by the Kenyan government's statistical division and enacting the Access to Justice Act.
- The Judiciary develops guidelines to operationalise the Alternative Justice Systems Facilitation Programme (AJSFP), which also serves as a platform for paralegalism.

## D. Recognition

It is widely acknowledged that the recognition of paralegals is marked by various legal instruments, including legislation, regulations, policies, court judgments, and Memoranda of Understanding.

## Policy Weaknesses

- Limited visibility of the National Legal Aid Service (NLAS) in community outreach programmes.
- Deliberate omission of the Paralegal Society of Kenya (PSK) from the NLAS Board.
- Inclusion of subsection [43(6)] in the Legal Aid Act 2016 which appears to contradict the purpose of the Act.
- Existence of the Criminal Procedure Code and other related laws that violate Article 50 (2) (h) of the Kenya Constitution 2010.

## Recommendations

- NLAS should enhance its visibility through community outreach programmes, collaborating with strategic partners such as constitutional commissions, non-state actors, and paralegal networks to facilitate recognition of paralegals by stakeholders.
- The NLAS Board should include a representative from the Paralegal Society of Kenya as a primary stakeholder.
- The repeal of subsection 43(6) of the Legal Aid Act 2016 as it undermines the necessity of legal representation for an accused person or an applicant in cases of public interest, thereby jeopardising access to justice.
- The amendment of the Criminal Procedure Code and other related laws to ensure that all suspects facing charges where substantial injustice is likely to occur are provided with mandatory legal aid within the criminal justice system, in line with Article 50 (2) (h) of the Kenya Constitution 2010.

## E. Financing

Community paralegals in Kenya typically operate without financial remuneration and are regarded as “volunteers”. However, a fortunate few receive training, logistical support, and direct funding from their parent NGOs, often in the form of allowances to cover daily expenses. Nevertheless, the issue of paralegal salaries in Kenya sparks vigorous debate within the movement. Some argue that paralegalism is rooted in the principles of volunteerism, altruism, and community service, and providing financial compensation could distort their motivations and commercialise their services. Conversely, others view remuneration as a solution to the common problem of paralegals abandoning their roles due to livelihood concerns. An important advantage of community paralegals is their ability to operate independently from government influence, thereby ensuring accountability of authorities. However, the introduction of state funding may potentially compromise this independence.

### Policy Weaknesses

- Lack of policy pronouncement on stipends for paralegals upon assuming their responsibilities.
- Absence of a clear budget allocation for legal aid, neither in the national budget nor in the State Law Office and Department of Justice.
- Need for an amendment to the Act in parliament to establish how paralegals should be remunerated in facilitating access to justice, as stipulated in Article 48 of the Kenya Constitution 2010.

### Recommendations

- The State should provide a clear policy stipends for paralegals to recognise their valuable contributions and ensure their financial stability.
- Allocation of a clear budget for legal aid in the national budget, particularly emphasising the importance of funding within the State Law Office and Department of Justice.
- The brief recommends operationalising Section 29 of the Legal Aid Act 2016 to ensure that resources are effectively utilised for legal aid provision.
- The brief suggests that the State should establish guidelines by presenting an amendment to the Act in parliament. It clarifies how paralegals should be compensated for their role in facilitating access to justice, as mandated in Article 48 of the Kenya Constitution.

## F. Conclusion

In spite of paralegals’ significant services, various legislative flaws and obstacles remain, ranging from insufficient training frameworks to financial concerns and gaps in recognition. However, the proposals presented in this brief provide a road map for correcting these weaknesses and strengthening the foundations of paralegalism.

By lobbying for increased institutional capacity, standardised training, and strategic collaborations with stakeholders, we may foster an atmosphere conducive to paralegals’ effective operation. Furthermore, the call for clear policy statements and changes to legal frameworks demonstrates our commitment to aligning legislative and regulatory frameworks with the principles of access to justice and human rights.

Implementing these recommendations will improve paralegals’ position and effectiveness while also contributing to a more equal and inclusive legal system for all. As we move forward, it is critical that policymakers, legal institutions, civil society organisations, and other stakeholders work together to achieve these objectives and advance justice and rights.

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