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Support to the National Legal Aid Service of the Office of the Attorney General and Department of Justice

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**SUPPORT TO THE NATIONAL LEGAL AID SERVICE
OF THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF
JUSTICE
UNDER THE PROGRAMME FOR LEGAL EMPOWERMENT
AND AID DELIVERY
(PLEAD)**

Mapping of Legal Aid Providers in 12 Counties

National Legal Aid Service (NLAS)

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
AJS	Alternative Justice System
CSO	Civil Society Organization
EC	European Commission
EU	European Union
FIDA	Federation of Women Lawyers
GoK	Government of Kenya
KNCHR	Kenya National Commission on Human Rights
LRF	Legal Resources Foundation
LSK	Law Society of Kenya
NALEAP	National Legal Aid and Awareness Programme
NGEC	National Gender and Equality Commission
NGO	Non-Government Organization
NLAS	National Legal Aid Service
NULAI	Network of University Legal Aid Institutions
OAG & DoJ	Office of the Attorney General and Department of Justice
ODPP	Office of the Director of Public Prosecutions
PASUNE	Paralegal Support Network
PSK	Paralegal Society of Kenya
PE	Programme Estimate
PLEAD	Programme for Legal Empowerment and Aid Delivery
STTA	Short Term Technical Assistance
TORs	Terms of Reference

1.0 INTRODUCTION

1.1 Background information

The provision of Legal Aid to the poor and vulnerable has been reinforced as an explicit priority and a cross-cutting concern defining the Kenya's development agenda. In line with the wider international and national commitments on protection of indigent and marginalized members of the community within Kenya, the European Union laid down strategies to support Civil Society Organization (CSOs) engaged in the provision of legal aid to the community living in vast counties and high populated counties¹. Additionally, through the United Nations Development Programme (UNDP), Amkeni Wakenya initiative supports a number of CSOs to improve the provision of legal aid to the community².

In addition, to address the gap in the provision of legal aid to the community, the Government of the Republic of Kenya and the European Commission signed a Financing Agreement to implement the "Programme for Legal Empowerment and Aid Delivery (PLEAD)" in Kenya whose objective is to develop an integrated approach at the central and local levels aimed at equality for all before the law, through improved access to and the expeditious delivery of justice, particularly in high-risk counties. PLEAD targets the 5 counties with the largest urban centres and 7 counties of the most marginalized areas of North Eastern Kenya (the "12 Focal Counties"), where the rule of law is particularly challenged due to social inequalities or abject poverty.

PLEAD outcome 1 (Access to legal aid and assistance is enhanced, especially for the poor and vulnerable) includes the support to the Department of Justice (DoJ) and the National Legal Aid Service (NLAS) to ensure implementation of the Legal Aid Act, 2016 and the regulatory framework on legal aid. To this end, NLAS is mandated to establish and administer a national legal aid scheme that is affordable, accessible, sustainable, credible, appropriate and accountable.

This is because the delivery of legal aid services in Kenya continues to face systematic, technical and financial challenges, despite the many interventions that have been implemented, making the poor more vulnerable to unfair decisions or decisions contrary to their human rights³. However, NLAS faces a myriad of challenges ranging from low numbers of NLAS officials to high cost of legal representation. Additionally, the complexity of legal and administrative procedures;

geographical access, physical access barriers also impact service delivery by NLAS. This calls for elaborate collaboration, networking and creation of synergy with other actors in the legal system.

To achieve this, NLAS through the support from PLEAD, has to map existing and potential CSOs for possible inclusion in their working strategies to expand the reach and effectiveness to the whole populace, especially the poor and vulnerable. Furthermore, the mapping will act as a mechanism for enhancing planning, coordination, collaboration, networking, information sharing and synergy to avoid duplication of efforts as well as to identify the number/existing of legal aid providers. This will work towards the attainment of the purpose of the Programme Estimate (PE), i.e., to enhance access to legal aid especially for the poor and vulnerable.

The mapping of the CSOs is critical as they are important actors in the provision of legal aid as defined in the Legal Aid Act 2016. The strong link and fruitful cooperation between these organizations and NLAS is crucial for effective and sustainable provision of legal aid services. The exercise aimed to map the existing legal aid providers in the 12 focal counties and identification of the possible areas of collaboration through the assessment of the availability of complementarity spirit, principles and procedures.

1.2 Terms of Reference⁴

To effectively and efficiently carry out the mapping of the legal aid providers, the expert was guided by the purpose and objective of the assignment. The assignment worked towards contributing to the achievement of the overall objective of PLEAD project which is, “to develop an integrated approach at central and local level aimed at equality of all before the law, through improved access to and the expeditious delivery of justice, particularly in high-risk counties in Kenya”.

Therefore, the purpose of the assignment was to record legal aid providers who are not only registered but are also active, and potentially able to directly or indirectly support the provision of legal aid services to poor, vulnerable and marginalized Kenyans in the 12 focal counties (Wajir, Mandera, Lamu, Tana River, Garissa, Marsabit, Isiolo, Kisumu, Nairobi, Mombasa, Uasin Gishu, Nakuru). Additionally, the specific objective of the mapping was to acquire information on legal aid providers, within the 12 focal counties, to assist the National Legal Aid Service to effectively implement its mandate under the Legal Aid Act 2016.

1.3 The Mapping Methodology⁵

The data that is presented in this mapping exercise were gathered through desktop research and analyses of relevant materials (legislations, guidelines, policy documents, reports) and semi – structured interviews and focus group discussions. The semi structured interviews were used to discover the specific position of each legal aid provider in the system for the development of an integrated approach at central and local level, aimed at equality of all before the law, through improved access to and the expeditious delivery of justice, particularly in high-risk counties in Kenya in terms of number of staff, expertise, service delivery systems etc. Each legal aid provider /interviewee was asked to comment on the following issues/questions: awareness, sensitivity and expertise; intra-institutional collaboration (horizontal and vertical); availability of data; risks and challenges; international cooperation; good practices and experiences.

To effectively and efficiently carry out the mapping within the 12 focal counties, the expert used individual staff or small group interviews, facilitated discovery workshops, analysis of existing documentation, direct work observation, business analysis design and use of existing process documentation. All this was achieved through the use of the multi-stage methodology.

The mapping of the legal aid providers had a serious and detailed protocol and detailed the approach that was taken for all stages of the mapping process. At each stage, planned outputs (usually in the form of freely accessible databases) were written into the protocol. A detailed document review was undertaken on the mapping of the legal aid providers, to determine the setting of the delivery of services to the vulnerable and the indigent in the society. These respondents provided information on the availability of the legal aid providers; challenges, and mechanisms for enhancing planning, coordination, collaboration, networking, information sharing and synergy to avoid duplication of efforts as well as to know which areas have few legal aid providers.

With the detailed methodology and the procedures that were used in the mapping of the legal aid providers, this report is thus arranged in different parts to provide a clear flow of the information that will guide NLAS in leveraging on the mapped CSOs in the delivery of its mandate.

Section two details the challenges that the community faces in access to justice due to social inequalities or abject poverty with specific focus on largest urban centres and counties of the most

marginalized areas of North Eastern regions of Kenya. It also captures the possible solutions customized to specific counties and highlights the main legal issues affecting the community as per the respondents.

Section three highlights the application of the requirements of the Legal Aid Act 2016 in the provision of legal aid to the community. It outlines the assessment criteria for screening beneficiaries of the legal aid and strategies utilized by the various actors.

Section four details all the active, and potential organizations that are able to directly or indirectly support the provision of legal aid services to poor, vulnerable and marginalized Kenyans. The details of the organizations are highlighted with the full information about them attached to this report as annexures.

Section five captures the organizational strengths of the various organizations that are providing legal aid within the community, the effectiveness of service delivery and their technical capacities.

Section six gives an explanation on the engagement of the courts, the challenges experienced and the frequency of the interactions. It also covers the main services provided by the legal aid providers to the community and the general resources available within the organization that NLAS can leverage on.

Section seven details the challenges facing networking and collaboration and possible solutions to identify stakeholders in order to enhance planning, coordination, information sharing and synergy to avoid duplication of efforts as well as to know which areas have few legal aid providers.

Lastly section eight covers the conclusions and recommendations that NLAS can apply for sustainability of legal aid services by themselves and through the support of CSOs.

2.0 CHALLENGES

2.1 Challenges in access to justice

Access to justice is a fundamental right that all Kenyans need to enjoy irrespective of their social, economic or environmental setup. The Constitution of Kenya (2010) provides an overarching guarantee on access to justice for all. The constitution envisages that all individuals within the country should be subjected to a justice system at all times and must be accorded a fair trial. Its implementation foresees a situation where different entities and players work towards the realization of the key tenets of justice.

The key players in access to justice are many and each plays a specific and clear role in the justice system. Due to the multiplicity of the players, there is need to ensure that harmony is created at all times to boost the process. However, there are a number of factors that are hindering the full realization of this vital right especially to the indigent and marginalized. Some of the cross-cutting challenges includes the high cost of litigation in the formal justice system, the limited staff among the key actors such as the judiciary and NLAS, the wide expanse of the counties and the backlog of cases within the courts.

In addition to these general challenges, the individuals and their in-born circumstances hinder them from accessing justice. This is mainly due to perception, personal behaviors or the fear of unknown⁶. In the rural areas and areas where the population is high with limited costs of living, lack of awareness on the formal justice system, the legal rights and other justice options also plays a significant role in deterring individuals from access to justice. This is due to the limited sensitization created by those tasked with dissemination of information.

The limited access to the formal justice system has impacted the levels of access to justice due to the low and skewed interactions between the community and the justice system. Additionally, the formal system leans towards those with less physical challenges⁷. There is a lot of misconceptions about the community with cognitive impairment. Lastly the legal language is a strong barrier, that only requires the few and the indulgence of the advocates for provision of the legal services. During the mapping of the legal aid providers, the exercise highlighted the challenges to access to justice and are highlighted in the next subsections with specific classification.

2.1.1 Geographical factors

- **Distance and vastness of the counties:** This is the biggest obstacle especially in the poor communities in the rural areas. This is a common phenomenon in counties in the northern part of Kenya such as Mandera, Wajir, Marsabit, Isiolo, Garissa and the coastal strip including Tana River and Lamu. In Isiolo for instance, there is only one law court. Individuals have to travel either to Nanyuki (Laikipia County) or Meru to access justice. This makes it difficult for community say from Kipsing, (farthest part of Isiolo) to travel to Isiolo town more than three hundred kilometres (300 KM) to access justice.

Additionally, the distance interferes with the creation of awareness, the dissemination of information and the reporting of cases. The implementation of the mobile courts is also faced with other challenges like of physical access to courts, language barriers and higher levels of poverty, illiteracy and lower levels of education among others. This perpetuates the proliferation of criminal activities. The factor of distance is also a critical barrier to access to justice in Uasin Gishu County especially in areas of Marakwet. The areas are far from the major urban centres where the institutions that provide access to legal aid or social justice operate from.

- **High Temperatures:** Temperature extremes most directly affect health by compromising the body's ability to regulate its internal temperature. In the 7 marginalized counties of North Eastern Kenya, the rule of law is particularly challenged by issues of climate, playing a significant role in access to justice. The elevated temperatures hinder optimal productivity from all the actors.

The key stakeholders do not work all day due to high temperatures. The ability to soak up information is reduced with increase in temperature and majority of the community have a strong perception that during the afternoon hours of the day there are limited officials to provide services.

- **Bad terrain:** The geographical setup of the counties determines the availability of access routes for the delivery of services. In Uasin Gishu county for example, areas such as Marakwet are not accessible due to the relief, high vegetation density and poor climatic conditions. The edaphic factors and hydrological systems interfere with movements leading to limited access of the area for the provision of the legal services. In the Northern

Kenya counties, the settlement patterns, the communication lines and other natural and man-made subjects act as barriers to access to justice.

2.1.2 Litigation factors

- **Limited advocates:** Advocates acts as the link between the community and the courts. They, in protecting the rights of their clients and in promoting the cause of justice, uphold human rights and fundamental freedoms recognized by national and international law and at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal process. In this respect, their availability is critical in promoting access to justice by all. Due to the various technological and economic costs, most of them are concentrated in the urban areas.

The 7 counties of the most marginalized areas of North Eastern Kenya (Wajir, Mandera, Lamu, Tana River, Garissa, Marsabit, Isiolo) there are limited advocates due to “difficult working” conditions. Therefore, the services that they provide i.e., advise clients, make court appearances to represent clients or gather important case information and review legal data, laws and evidence are deficient in these counties. The formal court process in Kenya is designed in that without advocates, the legal process is devoid and cannot proceed⁸. In this respect, as compared to other counties in the urban setup (Kisumu, Nairobi, Mombasa, Uasin Gishu and Nakuru) the help in reaching a settlement in a case, in full respect of the laws in effect is limited.

This deficiency makes the society to lack access to justice through the promotion of the fair procedures. The advice to the community, the courts and others involved in the justice system is limited, the cases are conducted with limited research and analysis of the legal problem, limited interpretation of the laws, rulings and regulations for community members.

- **Limited courts:** Courts apply the law to specific controversies brought before them. They resolve disputes between people and protect against abuses by all community members⁹. In cases where there are no judiciary, the rights of the individuals might not have been conserved. People face partiality, humiliation, discrimination, violence in every field. Within the 7 counties of the most marginalized areas of North Eastern Kenya where the rule of law is particularly challenged due to social inequalities or abject poverty, there are limited courts. Combined with other factors, the limited availability of the courts hinders

access to justice, leading to backlog of cases, limited promotion of justice to individual cases, heightened wrong perceptions by the community on the judicial services.

- **Limited police station:** Police are necessary entry points for the provision of justice to the community. A police force provides citizens with a sense of safety and security. The police are there to maintain peace and order in society as well as prevent and detect crime. They are there as the law enforcers - to make sure that everyone, including the police force itself, follows the law at every step. Nevertheless, the ramifications of the duties of the police are plentiful, which result in making a large inventory of duties, functions, powers, roles and responsibilities of the police¹⁰.

Within the northern parts of Kenya, the number of police stations are less, concentrated at the urban centres, and with limited resources for operation. In Isiolo for instance, the community is forced to report to the GSU camp, which does not have the mandate of handling police related issues.

- **Skewed legal language:** Communication is key in the delivery of services and access to justice relies on communication to ensure individuals litigate well. In the litigation of cases, the use and application of the legal language hinders individuals from using the formal legal system while seeking access to justice. This is because the language is skewed towards the legal professionals only.

The legal professionals are not only expensive for the vulnerable but also deficient to the marginalized. This situation has forced many indigent and marginalized communities to use alternative forms of access to justice. Usually, the use of the plain language in the informal legal system has both tangible and intangible benefits. It allows the passage of the message across the participants within a short time. It makes individuals to understand the points and this is the thrust in utilization of the informal justice systems in the Northern Frontier of Kenya.

- **No instant justice:** In both the formal and the informal justice systems, justice is seen as the ethical, philosophical idea that individuals will be treated in an impartial, fair, and reasonable way by the law and those mandated to administer it. The formal legal system has a sequence and procedures that ought to be followed, otherwise the case will be dismissed from the legal process. In addition, case backlog, is created as the magistrates

and judges set dates based on availability of time by both themselves, the defense and the prosecution team. This alone, makes the formal legal process long (no instant justice).

In the informal legal system, the process is considered simple, no time for a mention, pre-trial etc. the day the case is set, it must be listened to and a decision made, thus justice is considered instant. For the indigent and the marginalized communities, the longer the process, the higher the expenses and it leads to subversion of justice. Justice delayed is justice denied.

- **High cost of litigation:** The court processes require funds to cover the litigation process. The registry staff usually explains the fees that ought to be paid for receiving court papers and other related costs. Though the court system is often seen as the only way to resolve personal conflicts and obtain justice in civil circumstances (80% solved by AJS), the court fees and costs of representation that come with legal action add up. For too many citizens (indigent and marginalized), that cost is prohibitive and justice sits on the backburner. As much as legal aid is available for the vulnerable and poor in our society, it often lacks for the individuals who are left out (above poverty line) and yet they do not have the household budget to accommodate the litigation costs.
- **Limited representation:** The right to legal representation is crucial to the maintenance of the balance and equality during the trial process. The availability of the advocates to represent individuals in cases is critical in case development and outcome. In Kenya, the advocates are mainly available within the urban areas, leaving the marginalized community with no or limited representation. In Mandera for instance, there is only one law firm. Others usually travel from Nairobi during the court session, thus making the process very expensive.
- **Wrong perception:** Perception is critical in believing in the process and its outcome. The community in Kenya have a wrong perception about the formal legal process spanning from cost, duration, all the way to the outcome. Firstly, a majority of individuals believe that the formal court process is for the rich. They believe that the outcome of the case does not depend on how the evidence is presented or articulation of the issues, rather the number of resources available for disposal to those handling the matter. Secondly, individuals believe that advocates in any case know one another and collude with the judges to delay the process for their own selfish interests. Additionally, individuals believe that the police,

prosecutor and judges all work towards ensuring the rich wins a case. There is also a negative perception about the issues to do with advice given by police officers handling cases, leading to a wrong judgement.

“.....a police officer will tell to say yes when asked if you committed a crime, upon saying yes, you are convicted...”

This usually, occurs when police have done shoddy investigations and wants the matter settled once and for all. The wrong perception has worked towards deterring many community members from utilizing formal legal system.

- **Misuse of alternative justice system:** Alternative Justice System (AJS) has been with the communities in Kenya from time immemorial. It was premised on the use of experienced community members in the provision of justice to the society through various mechanisms. Before the entry of the formal legal systems, old men in the community could form a sitting and articulate any matter, and address them within the community using community owned structures. With the entry of the formal legal system, the government shifted cases to formal courts and streamlined the process. Thus, it identified offences and classified them.

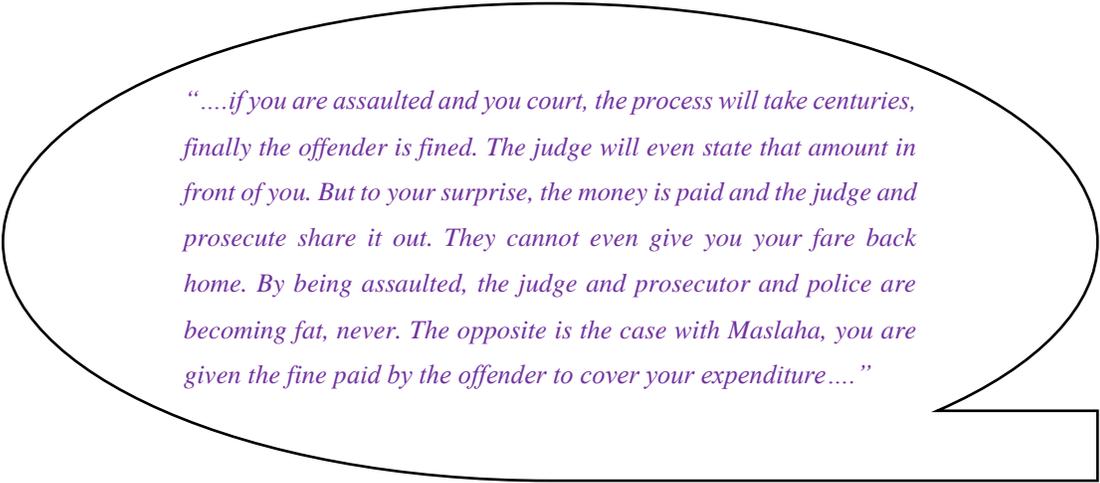
Nevertheless, the application of AJS is still on. However, it is being misused in other parts of the focal counties. In the 7 counties within northern Kenya, it acts as the main legal process. As much as it is seen as a way of handling offenses in the community, it is being misused. It is handling criminal cases like murder defilement, rape among others¹¹.

In Garissa for example where it is called *Maslaha*, it deals with all cases. When it deals with civil cases, the monetary proceed of the cases is shared amongst the arbitrators, leaving the victim with nothing. In Mandera for instance, in a murder case, individuals are fined up to Kenya Shillings 4.5 million and nothing is given to the bereaved family. To this end, it becomes a misuse of the justice system that is centered at the community level.

- **Inaccessibility of legal aid providers:** The legal aid providers are believed to have experience and expertise on matters law. Their availability is critical in the provision of their services to the community. There are many organizations that provide the legal aid to

the community in all the focal counties. Unfortunately, they are far away from the indigent and the marginalized. In Nairobi for instance, the legal aid providers are within the city centre, Kilimani, Karen, Woodley areas (the suburb) places which are expensive to access, and far away from the clients they are supposed to serve i.e. the informal settlement areas (Mathare, Eastlands, Kibera, Mukuru Kwa Njenga among others). This makes it expensive for the indigent and marginalized to access their services.

- **Unproductive court process:** analysis of the backlog of the cases at the court hinders one from utilizing the formal court process. The cases are there due to either lack of witness, lack date for hearing or other judicial challenges. The time taken by the court process is long and often unproductive. The outcome is delayed and the proceed of the process goes to the government as revenue.



“...if you are assaulted and you court, the process will take centuries, finally the offender is fined. The judge will even state that amount in front of you. But to your surprise, the money is paid and the judge and prosecute share it out. They cannot even give you your fare back home. By being assaulted, the judge and prosecutor and police are becoming fat, never. The opposite is the case with Maslaha, you are given the fine paid by the offender to cover your expenditure....”

However, the main problems facing the judicial process includes lack of adequate resource allocation, absence of a well formulated strategy and lack of leadership and direction¹².

- **Police failure and brutality:** Police brutality is an extreme form of police misconduct and is a violation of the civil rights of an individual in community. This brutality includes, but is not limited to, asphyxiation, beatings, shootings, improper takedowns, and unwarranted use of police space. Police brutality is high in the informal settlement and the marginalized areas including Isiolo, Mandera among others and it arises due to a combination of factors including inadequate implementation of the laws, racial or other forms of discrimination, insecurity or conflict, and entrenched impunity. Excessive force causes significant physical

and psychological harm to victims, entails considerable financial costs to communities, and undermines the legitimacy of the institution of policing. In Mandera for example there is a lot of police brutality facing the non-residents and other individuals due to the issues of insecurity.

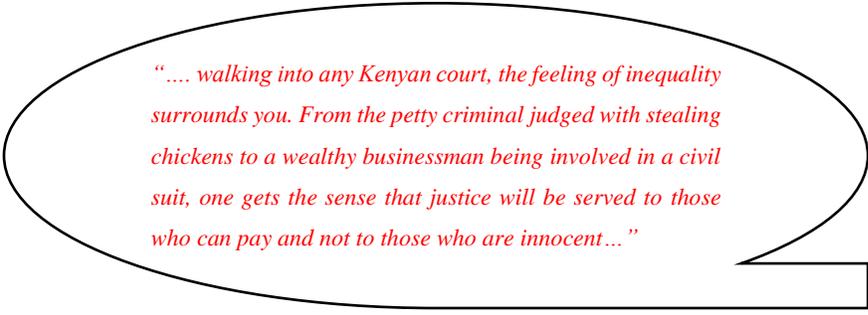
- **Limited officers:** Officers in the line of access to justice are many and very crucial in the whole process. This is because each plays a significant role in ensuring the process is smooth and just. In the urban environment (Nairobi, Kisumu, Nakuru, Mombasa and Uasin Gishu), due to the high population density and spiraling of informal settlement where petty cases occur, the number of officers is less as compared to the cases recorded. In the counties of Northern Kenya, the challenge is the same due to the vastness of the counties and skewed population.

Additionally, in the rural areas, there are no officers to report to (no police stations), and at the offices, limited staff are available vis a viz the demand. All this interferes with service delivery and access to justice.

- **Judiciary failures:** As stated above, the judiciary faces a myriad of challenges all emanating from processes and structures. These challenges hamper it in execution of its mandate, thus judicial failures. There are limited courts, skewed distribution, limited equipment, all through to lack of adequate prosecution team. In Mandera, there is only one court serving the entire county of a population of 867,457 persons. The vast counties of Isiolo and Wajir are as well served by one court. This failures in the judiciary, impacts service delivery, thus affecting access to justice.
- **Limited technology:** Technology is the future of all spheres of life and access to justice is not spared. During the Covid 19 pandemic, court processes were carried out using the online platform. A lot of inefficiency was witnessed and since then, limited adjustments have been made. The courts in the dry counties of Kenya lack resources inform of equipment and trained personnel to assist clients during the virtual court proceedings.

“... sometimes, the court process is virtual and the judge expects us to avail the clients on the virtual platform from here at the prison, you wonder, where is the source of money for the data, we have a small communication room, limited network coverage, few officers who can do the virtual connection,,,,, how do we go about it....”

- **Semi trained officers:** Officers who are providing legal aid have undergone some form of trainings. The paralegals for example, have been trained by different institutions and under different standards. Officers have differential understanding of their mandates and execute them differently. The officers have limited understanding of the various acts of parliament (e.g., the Legal Aid Act 2016) that are very critical in the execution of their mandates on daily basis.
- **Cost of litigation:** The greater proportion of the population are unable to afford the costs under the justice system, and this greater proportion face a number of barriers such as: the laws being unnecessarily complex; there being numerous unnecessary court formalities, which create barriers to access to justice for the unrepresented individuals. Apart from the costs associated with advocates in the representation process, court fees are high especially for the indigent and marginalized.
- **Limited trust of judicial officers:** Judicial officers are not fully trusted by the general public. The judges, magistrates, prosecutor, registry officers and other individuals in the line of access to justice are considered too deceitful and corrupt.
- **Police Vs Prosecutor:** The roles of the various officers in the line of access to justice is clear. The entry point in most cases is the police officer. According to the respondents, the powers to prosecute are not clear and sometimes the fight or blame game between the police and the prosecutor becomes an impediment in access to justice in different courts.
- **Fear of officers:** Police officers are generally feared. Due to police brutality witnessed in media, the officers are feared by the community and sometimes it becomes difficult for the victims to approach police stations.
- **Socio-economic factors:** It is said “it is better to be rich and guilty than poor and innocent”. The glaring discrepancies and attendant unevenness in the quality of legal services provided to rich and poor was echoed in many of the counties visited. Access to justice inevitably reflects the harsh realities of poverty and class distinction in a society that is possibly one of the most unequal in the world. Accessing justice is often a function of the ability to afford effective legal representation and an understanding of legal rights and remedies. In a reminiscent interview with one of the civil society organizations in the urban area, they narrated their experience.



".... walking into any Kenyan court, the feeling of inequality surrounds you. From the petty criminal judged with stealing chickens to a wealthy businessman being involved in a civil suit, one gets the sense that justice will be served to those who can pay and not to those who are innocent..."

The legal representatives mimic this same feeling of inequality, the rich advocates smartly dressed, ready to ensure their clients get the best possible sentence compared to the legal aid paralegal accompanying a vulnerable woman from Korogocho who look like they have already lost the case".

Even where legal representation is provided by legal aid providers like NLAS, it becomes immediately evident to an observer that the quality of the services provided is inferior to those provided by a registered firm of advocates. Some of the vulnerables stated that they do not trust the services of an advocate employed by the government entities, not because they are not qualified, but because they are seen as poor, frustrated by the state in the provision of the services, lacks resources to carry out detailed and thorough case research and they lack motivation in winning a case (no remuneration or honoraria in a successful litigation).

The role that financial means plays in the legal system was described in several other contexts and counties. The respondents in the marginalized counties of northern Kenya noted that another disadvantage of poor-quality legal representation to indigent people is that they are prejudiced by the unaffordable costs incurred in having expert witnesses such as psychologists, accountants and medical professionals.

Private advocates are deemed to be highly esteemed and viewed as being more competent than advocates provided by the CSOs or the ones working on pro bono basis. The financial pressures on the indigent and vulnerable doubles as there is a need to raise bail money and to cover money for advocates' costs. Levels of illiteracy, language barriers and the experience of estrangement in the court surroundings also contribute to a heightened sense of socio-economic and class disparities that affect access to the courts and the legal system.

- **High demand for legal aid:** Throughout the focal counties there is scarcity of legal aid resources while there is a heavy burden placed on the limited number of governments supported agencies and CSOs. In addition to the high number of clients that they have to deal with on a daily basis, the staff in these organizations have to deal with clients who need thorough explanation of the processes, in access to justice.
- **Poverty:** Access to justice is not a system that can work effectively in the long run because it is linked to economic status and poverty cycle. Ultimately, finance will always be needed to attain a decent level of legal representation in addition to pro bono services. Poverty makes individuals shy from official settings and instead utilize informal systems.
- **Illiteracy:** Lack of knowledge and understanding of the basic language of expression is a challenge in access to justice. While at the Children Protection Unit within Kondele Police Station, Kisumu, a client walked in during my introduction. To my delight he started well in Kiswahili and requested the police officer to allow him to use local language (Luo) in order for him to deliver his message in a fluent and logical manner. Language plays a critical role in access to justice. Illiteracy makes individuals from fighting for their rights and consequently they are denied their rights to a fair just trial.
- **Poor infrastructure:** Road network and availability of infrastructure is a prerequisite to delivery of justice. Areas where the road network is a challenge often have to deal with informal justice system. Poor infrastructure hinders individual from attending court proceedings and the judges fail to attend legal clinics due to transport related challenges.
- **Limited awareness:** In Literature ‘you don’t know what you don’t know’ is a strong statement. Unfortunately, this is painfully true for a society or community trying to engage with the legal system without representation. Most of the community members do not know what rights they have, what services are available to the community, the nature of government organization services, which services are free and subsidized ones or how to navigate an often-cumbersome court system with complex procedures and rules. In addition, when individuals deserve legal aid, they may not know it. The unavailability of indigent and marginalized community friendly systems for creation of awareness heightens the challenges.
- **Fear of unknown:** Some community fear going to police stations due to fear of the unknown. This makes individuals not to be engaged in the process of seeking formal legal

process and seek justice within the community systems. Additionally, the fear of the court process, outcomes, implications and consequences makes individuals fail to seek justice.

- **Corruption:** The lack of trust in the formal legal process due to extortions, corruption and high costs hinders individuals from accessing justice. The court process is perceived to have corrupt officers and the process is presumed corrupt in its entirety¹³.

2.1.4 Security Factors

- **Small arms:** Arms can be deemed to be either a source of security or insecurity. Small arms cause challenges to the community especially when they are unregulated and they are in the wrong hands. Arising from their often-uncontrolled spread and widespread availability, the small arms in Kenya can undermine human security, more than any other kind of conventional weapon, by impacting a wide-range of areas including damaging fragile economies, deterring foreign investments, diverting economic resources, inhibiting the fulfilment of basic human needs and interfering with both local and international movement.

The proliferation of small arms and light weapons prolongs conflicts, facilitates violations of international humanitarian law and human rights law, and puts civilians at high risk of death or injury from weapons-related violence. Access to these arms contributes to the development of terrorism, organized crime, human trafficking, gender violence and piracy. The diversion of weapons is closely linked to corruption and poor management practices. Some of the arms are stolen from security personnel, while others are in possession of people not licensed by government¹⁴. This a common situation in the 7 focal counties.

- **Witness protection:** Witnesses protection is one of the rights enshrined in the Constitution. Witnesses are cornerstones of any successful criminal justice system. Operating since 2008, the Witness Protection Agency (WPA) promotes the rule of law by offering witness protection services in Kenya. The WPA provides special protection to threatened or intimidated witnesses to ensure their security and welfare is guaranteed when testifying in court.

As much this is the right of the witnesses as it is enshrined in the constitution, its implementation is a challenge, thus impacting on the process of access to justice in Kenya. Witnesses are

summoned to the court regardless of the fact that they may not have enough money, they cannot leave their family, they can be from remote areas and reaching the court every now and then may not be easy for them to appear before the court. This interferes with the legal process and causes the process of access to justice to be long or end prematurely.

- **Vigilant groups:** Vigilante groups engage in activities within the community and the negative ones affect the community more (such as extortions, accusations, theft etc). The enforcement of laws is designated to government employees with legal authority; however, civilians sometimes take justice into their own hands. Vigilantism is carried out in a way that is not righteous, lawful, or proficient. Although the majority of vigilantes fight to help their cause directly, unless they are extremely covert, they also indirectly affect their cause (being seen as against the law).

This is accomplished because the consequences of their actions affect the psyche of their community. Even if they are extremely covert, they will most likely affect the psyche of their community, whether they want to or they don't want to. Rampant crime in a given area will surely make the community fearful, just as a reckless vigilante who kills for his personal ideals of justice will. A people under oppression from crime or tyranny will surely feel helpless, especially if those criminals that perpetrate is not held to account for the consequences of the crime. Vigilante groups have terrorized communities and society leading to fear and non-reporting of the offenders. In Nakuru, "Confirm" a vigilante group raged havoc among the community and caused a lot of fear¹⁵.

2.1.5 Cultural factors

- **Maslaha:** The Constitution of Kenya, 2010 envisions a critical role for alternative dispute resolution mechanisms such as traditional dispute resolution mechanisms. Article 48 of the constitution guarantees the right to access to justice and Article 159(2) recognizes the use of alternative justice systems to resolve disputes.

A variety of ways exist, including arbitration, collaborative problem-solving, consensus-building, negotiation, facilitation, mediation and conciliation. Apart from it being enshrined in the constitution of Kenya 2010, further elucidation and reinforcement was made by the then Chief Justice and the leader of the Supreme court of Kenya, Hon. Dr. Willy Mutunga, during the commencement of 'the Judicial Marches Week' in 2012.

Every community in Kenya has some semblance of alternative dispute resolution mechanisms. Some of the notable communities with strong mechanisms includes the Ameru community with Njuri Njeke, the Borana with Agabadha as channels through which traditional dispute resolution is delivered.

Maslaha is a term that is foreign to a majority of Kenyans who reside away from Northern Kenya. During the mapping of the legal aid providers in the 7 marginalized counties of northern Kenya, for a short period of time, it has been quite an experience encountering the workings of this informal justice system. Like other traditional dispute resolution institutions *Maslaha* is a traditional resolution mechanism practiced within the Somali community in the larger North-Eastern region to settle disputes¹⁶. Male elders led by the King (Ugasi) act as mediators and use traditional means to solve the problems set before them.

Within this regime, compensation is a large aspect of problem solving, whereby 'payment' is done by way of money or livestock (mainly camels). *Maslaha* is preferred to formal justice system in the northern Kenya because it is part of the Muslim (especially Somali) culture. Secondly, it applies a concept of justice that is easily understood. Additionally, it also advocates for justice that is geared towards reconciliation and community cohesion as opposed to formal justice systems that lay emphasis on retributive justice and punishment. Furthermore, it involves components of monetary compensation which directly benefits the aggrieved parties and offers a form of consolation as opposed to courts of law whereby the incarceration/punishment of the perpetrator of a crime against the aggrieved is deemed sufficient action to resolve the matter.

Assuming that is not enough, the formal Kenyan justice system is perceived as complicated, lengthy and often inconclusive. From the reasons stated above, it is undeniable that *Maslaha* is instrumental in maintaining peace and cohesiveness through its reconciliatory dispute resolution approach.

Nevertheless, *Maslaha*, has a fair share of the shortcomings attributed to it and community members feel that it a bad cultural practice. *Maslaha* is applied even to murder and sexual offences. This is casually applied on defilement cases which have a lot of psychosocial implications to the victims. This is problematic as there are legal instruments that prescribe what penalties should be attached to such offences. The penal code already sets murder as a capital offence that is punishable

by life imprisonment or death while the Sexual Offences Act sets out sexual offences and punishment that accompanies them.

Maslaha as a practice is heavily male dominated. There is almost complete non-existence of women in the councils of elders that serve as the decision makers in this institution. This means skewed outcomes and lack of realization of justice when it comes to matters that are gender sensitive such as Sexual and Gender Based Violence (SGBV).

Furthermore, the gender segregation practiced is discriminatory as female victims' compensation is half that of a male victim. For instance, 50 heads of livestock are given as a form of compensation for the death of a female victim while 100 heads of livestock are paid for the death of a male victim. To this end, some community members feel that it is a bad culture.

Table 1: Challenges of Maslaha

Challenges of Maslaha	
Limited or lack of documentation	Proceeds of cases not uniform
Proceeds misused by elders	Outcome non-binding
Gender inequality or disparity	Indirectly supports early marriages
Misuse of religion e.g., teaching of Holy Koran on issues of Puberty and marriage	Mostly based on culture and religion rather than human rights
Condemns late marriage (Ngumes – Owl)	No women attendance and participation

- **Patriarch and discrimination:** Patriarchy encourages male leadership, male domination, and male power. It is a system in which women are subject to economic dependence, violence, domestication, and the peripherals of decision-making. Patriarch discriminates based on economic, political, social and religious regulations that enforces the domination of women by men throughout the ages¹⁷. In the county within the Northern parts of Kenya, patriarchal system of addressing community challenges is still prevalent and the oppressed women have limited legal space to negotiate for their freedom.
- **Bad culture:** This comprises of acts like Female Genital Mutilation (FGM), sexual and gender Based Violence (SGBV) and Incest. For instance, FGM has no health benefits for girls and women. On issues of SGBV, women and girls may experience severe physical

injuries, unwanted pregnancies and exposure to HIV or other sexually transmitted infections.

Depression, anxiety, post-traumatic stress disorder, the limited ability to complete daily tasks, and suicidal thoughts are also common. This negative acts against women are prevalent among the community in the northern Kenya. Child incest is a notoriously underreported crime and sometimes with the unlucky victims remaining trapped in a pattern of sexual assault by people they trusted as protectors. To my surprise, this is a common case in Lamu especially Mpeketoni area.

2.1.6 Other cross-cutting issues

During the mapping of the legal aid providers exercise, there are numerous cross-cutting challenges that need attention. These issues, as much as they are not strongly independent, should therefore be integrated and mainstreamed throughout all stages in the process of provision of legal aid from policy design, to implementation, evaluation and learning.

Table 2: Other general cross-cutting issues on access to justice

Services confined to towns	Understaffing of organizations (NLAS and PBOs)
Wrong people attending meetings	Different training periods of the officers, paralegals
Fines paid to the government	Creation of cohorts among stakeholders
Having debriefing sessions for officers (stress management)	Defining the Roles of stakeholders (PSK, LRF, KITUO, etc)
Limited standard operating procedures	Accreditation or certification of training materials
Duplication of activities by CSOs	Overdependence on donors
Establishment of Social enterprises for sustainability	How to make legal aid important to the government for allocation of funds
Streamlining referral mechanisms	Legal aid clubs in schools
Disintegration (lack of unity of purpose)	Undercutting and suspicion by other organizations
Competition (clients, donors, recognition, space within the space)	Systemic, structural, ethical failures by stakeholders especially judiciary
Political influences	Not learning community approach to problems

3.0 APPLICATION OF LEGAL AID ACT 2016

3.1 Application of Legal Aid Act 2016 in provision of legal aid to community

Legal aid is the provision of legal advice; legal representation; assistance in (resolving disputes by alternative dispute resolution; drafting of relevant documents and effecting service incidental to any legal proceedings; and reaching or giving effect to any out-of-court settlement) creating awareness through the provision of legal information and law-related education; and recommending law reform and undertaking advocacy work on behalf of the community¹⁸.

Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to litigants like advocates and the right to a fair trial. The Constitution of Kenya recognizes and protects the right to state funded legal representation by all persons in Kenya. The Legal Aid Act 2016 and the Legal Aid Regulations 2016 espouses on this right by setting out the procedures, terms and institutions to offer legal aid services to persons who cannot afford them.

The concept of legal aid and education is based on the assistance of the socially and economically disadvantaged persons in the society to enable them understand and protect their rights. The justice and legal system in Kenya are not equally accessible to everybody.

The objective of legal aid lies in bridging the gap and making legal services accessible to all segments of our society. Its core aim is to protect the rights and interests of people. Legal aid is a step by which weaker sections of our country can become strong and enable themselves to live with confidence. This encompasses the indigent, the vulnerable and the marginalized. For one to be eligible for grant or services of legal aid, he /she shall make an application to the Service by filling a form as prescribed under the Legal Aid Regulations. This also applies to legal aid providers who wish to be accredited to offer the services.

Under Section 36 (1) A person is eligible to receive legal aid services if that person is indigent, resident in Kenya and is - (a) a citizen of Kenya (b) a child; (c) a refugee under the Refugees Act; (d) a victim of human trafficking; or (e) an internally displaced person; or (f) a stateless person.

Most organizations do not apply these regulations as any individual who walks into the legal aid centre, is entitled to the services. Although most organization believe that there is need for the screening of the clients before providing legal aid, they lack a clear guideline on the factors that

should be considered in order to make a decision. The most common system applied by most organization is the assessment of the socio-economic status of the client through assessment of the income sources and living standards.

In some organization, a background check to understand the financial capability form part of the screening procedures. To this effect anyone earning less than 10,000/- monthly is considered poor and thus eligible for the provision of legal aid. However, for government entities and other non-governmental organization dealing with children matters, the provision does not apply. In addition to this, organization provide legal aid without discrimination to individuals with special needs such as the mentally challenged, physical impairment, and the elderly.

4.0 MAPPED ORGANIZATIONS

4.1 Active and potential organizations

The role of legal aid providers is key in the provision of legal aid. The legal aid providers are tasked with a responsibility to advise clients on their legal rights and obligations, and advise on availability of the legal system in so far as it is relevant to those rights and obligations. To assist clients in every appropriate way, taking legal action to protect their interests. Seek to uphold human rights and fundamental freedoms.

One of the significant characteristics of legal aid in the context of criminal justice systems is that access to legal aid is often mediated by state agencies, such as the police and other law enforcement agencies, prosecutors, the court, and agencies responsible for detention (prisons). In Nakuru for instance, through the support of the Legal Resources Foundation (LRF), they have a vibrant legal aid centre that supports the inmates in terms of legal aid. Such persons are normally reliant on officials from such agencies both for (meaningful) information about their right of access to legal aid, and for arranging access promptly and effectively. However, this situation is nonexistent in counties in the northern parts of Kenya.

The Kenya Constitution 2010, through the Legal Aid Act 2016 place responsibility on NLAS and other organization that NLAS maps and accredits to provide legal aid to ensure that persons are informed of their right to legal aid and other procedural safeguards prior to any questioning and at the time of deprivation of liberty. Additionally, the act places some responsibility on the officers along the line of access to justices such as the police officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained to inform them about legal aid.

The Legal Aid Regulations also provides that officers along the line of access to justice should take measures to ensure that the police and judicial authorities inform suspects and detainees, in accessible language, of their procedural rights, do not arbitrarily restrict the right of access to legal aid, and facilitate access to legal aid for persons in police stations and other places of detention. Lastly, the Constitution and the Legal Aid Act 2016, recognizes the role of other stakeholders such at the CSOs, NGO etc., in the provision of the legal aid. To this end the active and potential organizations mapped in all the 12 focal counties for provision of legal aid are in the table below.

Table 3: Organizations mapped in Nairobi County

Kituo Cha Sheria (Legal Resource Centre)	Physicians For Human Rights Inc
The Cradle Children Foundation	Human Rights Watch
Fida-Kenya	Aids Law Project
Coalition On Violence Against Women (COVAW)	Centre For Community Law and Rural Development
Haki Africa	Justice Defenders Kenya
Paralegal Society of Kenya (PSK)	NAMATI - Kenya
Ecumenical Centre for Justice and Peace (ECJP)	Kenya Alliance Of Resident Associations (Kara)
Legal Resources Foundation (LRF)	Catholic Justice and Peace Department - CDN
Kariobangi Paralegal Network	Korogocho Community Justice Centre
Langata Legal Aid Centre	Crime Si Poa
Refugee Consortium of Kenya (RCK)	Women's Link Worldwide
Centre For Rights Education and Awareness (CREAW)	Ripples International
Samaritan People's Vision	Groots Kenya
Daraja Civic Initiatives Forum	Supkem
Siasa Place	Constitution And Reform Education Consortium (CRECO)
Peace Brigades International-Kenya Project	International Justice Mission
Justice Africa-Kenya	Inuka Kenya
Justice For Wildlife	Rodi Kenya
Fanole Human Rights and Development Organization	Katiba Institute
Awad Lemi Foundation	Women Empowerment Link
Centre For Advocacy and Gender Equity	Clear Kenya
Forum Civ	Humanity Beyond Border
Haki Na Ukweli	Global Centre for Civic Education
Kenya Legal and Ethics Issues Network on Hiv/Aids (Kelin)	The African Youth with Disabilities Network
Key Affected Population Health and Legal Rights Alliance	Humanity Rescue Foundation
Foundation For Human Rights and Resources Monitoring	
GOVERNMENT SUPPORT AGENCIES	
International Commission for Jurists (ICJ)	County Commissioners Office Nairobi

Kenya National Commission on Human Rights (KNCHR)	Law Society of Kenya - Nairobi
Independent Medico-legal Unit (IMLU)	Office of the Director of Public Prosecutions (ODPP)
National Gender Equality Commission (NGEC)	

Table 4: Organizations mapped in Kisumu County

Kenya Legal and Ethics Issues Network on HIV/AIDS (KELIN)	Action in Community Environment (ACE)
Nyando Social Justice Centre	Support for Tropical Initiatives on Poverty Alleviation (STIPA)
Keeping Alive Society Hope (KASH)	Transparency International Kenya
CLEAR - Kenya	Civil Society Organization Network
Angaza Jamii	Nyando Human Rights Advocacy and Development Network (NYAHURIADEN)
Mission of Love and Justice	TINADA Youth Organization (TiYO)
Nyando Human Rights Network	Legal Resources Foundation
Kisumu Mediation Centre	Kisumu Arts Ensemble
Ecumenical Centre for Justice and Peace (ECJP)	Support for Tropical Projects in Africa
Hinam Grassroots	
GOVERNMENT SUPPORT AGENCIES	
Law Society of Kenya - Kisumu	National Gender Equality Commission (NGEC)
Probation Office - Nyanza Region	Office of the Director of Public Prosecutions
Child Protection Unit, Kondele Police Station	Kisumu Women Prison (Kodiaga)
G. K. Prison - Kisumu	Kenya National Commission on Human Rights (KNCHR)

Table 5: Organizations mapped in Mandera County

Adams Welfare Association (AWA)	Habiba International
Nomadic Assistance for Peace and Development (NAPAD)	Focus Approach to Development Concern (FADC)
Mandera County Paralegal and Social Justice Centre	
GOVERNMENT SUPPORT AGENCIES	
Office of the Director of Public Prosecutions (ODPP)	Directorate of Children Services - Mandera
County Probation Officer - Mandera	County Commissioner - Mandera

Table 6: Organizations mapped in Garissa County

Supkem Garissa	Refugee Consortium of Kenya (RCK)
Woman Kind	PWD
Muhuri Garissa	Haki na Sheria
GOVERNMENT SUPPORT AGENCIES	
Garissa Children's Office	Ombudsman
Probation Office - Northern Region	Kenya National Commission on Human Rights (KNCHR)
Independent Policing Authority (IPOA)	National Gender Equality Commission (NGEC)
Office of the Director of Public Prosecutions (ODPP)	

Table 7: Organizations mapped in Tana River County

Chana Chena CBO	Groots Kenya
Kenya Community Support Centre (KECOSCE)	
GOVERNMENT SUPPORT AGENCIES	
Bura Children Office	County Commissioner

Office of the Director of Public Prosecutions (ODPP)	County Probation Officer - Tana River
Probation Office - Northern Region	

Table 8: Organizations mapped in Mombasa County

Haki Yetu	Catholic Justice and Peace Department - CDM
HAKI AFRICA	FIDA-Kenya
CLEAR - Kenya	Human Rights Agenda (HURIA)
Muhuri Mombasa	PEMA
Paralegal Society of Kenya (PSK)	University of Nairobi (School of Law Mombasa)
Kituo Cha Sheria (Legal Resource Centre)	
GOVERNMENT SUPPORT AGENCIES	
Deputy County Commissioners	Magistrate / Judiciary - Shanzu
Independent Policing Oversight Authority (IPOA)	Kenya National Commission on Human Rights (KNCHR)
County Commissioner - Mombasa	Children Protection Unit
Office of the Director of Public Prosecutions (ODPP)	Department of Children Services - Mombasa
Shimo la Tewa Prisons	Office of Ombudsman (CAJ)
County Probation Office - Mombasa	Law Society of Kenya - Mombasa

Table 9: Organizations mapped in Lamu County

Kiunga Youth Bunge Initiative	Muslim Women Advancement of Rights and Protection (MWARP)
Muhuri Lamu	Save Lamu
Lamu Youth Alliance	Lamu Social Justice

Lamu Women Alliance	Lamu Arts and Theatre Alliance
Faza Youth Action Group	
GOVERNMENT SUPPORT AGENCIES	
County Probation Office - Lamu	Office of the Director of Public Prosecutions (ODPP)

Table 10: Organizations mapped in Isiolo County

Samburu Women Trust	Guyasa CBO
Legal Resource Foundation (LRF)	Waso Paralegal Network
Friends of Nomads International (FONI)	ARDHA JABESA Foundation
Isiolo Gender Watch	
GOVERNMENT SUPPORT AGENCIES	
Directorate of Children Services - Isiolo	National Gender Equality Commission (NGEC)
County Probation Officer - Isiolo	Office of the Director of Public Prosecutions (ODPP)
Kenya National Commission on Human Rights (KNCHR)	GK Prisons Isiolo

Table 11: Organizations mapped in Marsabit County

Marsabit Women Advocacy and Development Organization (MWADO)	Pastoralist Community Development Organization (PACODEO)
Centre for Research Rights and Development	Strategies for Northern Development (SND)
Saku Accountability Forum (SAF)	HODI
Alliance of Local Communities in Hardship Areas (ALCHA)	
GOVERNMENT SUPPORT AGENCIES	

County Probation Office - Marsabit	Kenya National Commission on Human Rights (KNCHR)
Directorate Of Children's Services	Office of the Director of Public Prosecutions (ODPP)
Marsabit Central Police Station	GK Prisons - Marsabit

Table 12: Organizations mapped in Wajir County

Arid Lands Development Focus (ALDEF)	Raia Development Initiative (RDI)
Wajir Human Rights Network	Wajir District Human Rights Watch
Women Right Advocacy Organization (WRAI)	Organization of People Affected with HIV/AIDS
Development Concern Initiative (DCI)	Wajir Women for Peace
Arid Areas Paralegal Network (ARPANET)	
GOVERNMENT SUPPORT AGENCIES	
County Probation Office - Wajir	Office of the Director of Public Prosecutions (ODPP)
Kenya National Commission on Human Rights (KNCHR)	Wajir Law Courts
Depart of Children Services	

Table 13: Organizations mapped in Nakuru County

Leona Foundation	Legal Resources Foundation
Nakuru Legal Aid Centre - CEDGG	Love and Hope Centre
Hope in Life	Mid-rift Human Rights Network
Reconcile	HOCAN
Catholic Justice and Peace Department - CDN	Wakili Mashinani
Law School - Kabarak University	Faculty of Law Legal Aid Project of Egerton University

GOVERNMENT SUPPORT AGENCIES	
Nakuru Children's Remand	The Judiciary - Nakuru
Nakuru Main Prison	Directorate Of Children's Services
Chief's office Bondeni Location	Legal Aid Working Groups
Sub-County Probation Office - Nakuru	Law Society of Kenya - Nakuru
County Probation Office - Nakuru	Central Police Station Nakuru
National Gender Equality Commission (NGEC)	Ministry of Public Service Gender and Affirmative Action
Office of the Director of Public Prosecutions (ODPP)	Independent Policing Oversight Authority (IPOA)
County Government of Nakuru	County Commissioners
Public Trustee	

Table 14: Organizations mapped in Uasin Gishu County

Organization	Organization
Centre for Human Rights and Mediation (CHRM)	Joining Hands for Better Tomorrow (JOHABETO)
Legal Aid and Resource Centre Trust	CHICLAC Organization
Solwodi Ladies Sports Association (SOLASA)	Human Rights and Mediation Centre
Moi University School of Law	Centre Against Torture Kenya Foundation LTD.
GOVERNMENT SUPPORT AGENCIES	
Central Police Station - Eldoret	Commission on Administrative Justice
Independent Policing Authority (IPOA)	Office of the Director of Public Prosecutions (ODPP)
Eldoret Children's Remand	County Probation Office - Uasin Gishu
Department of Children Services	Assistant County Commissioner - Turbo

5.0 ORGANIZATIONAL STRENGTHS

5.1 Effectiveness of organizations

Organizational effectiveness is very critical in the delivery of services to the clients. In the delivery of the legal aid services, the exercise sought to assess the capacity of organizations within the 12 focal counties based on the staff and availability of data. Comparing the actual *visa viz* the projected achievements in service delivery is critical. Having organizations that understands their areas of operation and service delivery goals is paramount. The mapping of legal aid providers sought to assess different parameters in the organizations capacity including the technical knowledge in the sector they work in, advocacy skills, logistical support, availability of resources, governance and management structures, legitimacy within the community, community mobilization skills, convening power, availability/within reach, mediation skills, collaboration skills and networking skills.

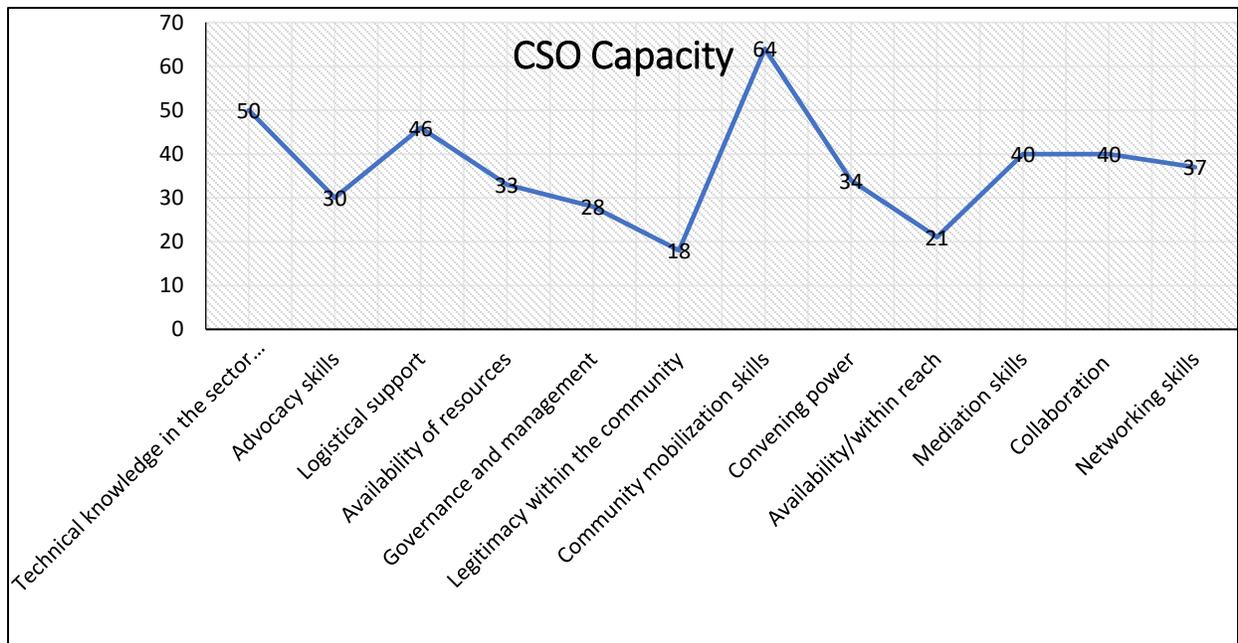


Figure 1: Average organizational strengths of all the interviewed organization

The performance of an organization is mainly dependent on the effectiveness and the efficiency¹⁹. The relevance and sustainability of the various projects aimed at delivery of services to the clients is key. In terms of performance, record keeping and availability of data was the worst. Organizations state that they serve clients well, they explain about the availability of the records

of the indigent and the marginalized that they have served; but on requests of data, bureaucracy sets in. Throughout the entire mapping exercise, there is no organization that managed to give data immediately. However, the exercise managed to get data from a few organizations including Langata Legal Aid Centre, Centre for Democracy and Good Governance (CEDGG), Wajir Women for Peace, Muhuri Mombasa and Haki Africa Mombasa later. It is worth noting here that all the NLAS offices had data within their reach and readily available.

5.2 National Legal Aid Service

In 2007, the Government of Kenya, through the defunct Ministry of Justice, National Cohesion and Constitutional Affairs, now the Department of Justice in the Office of the Attorney General established the National Legal Aid and Awareness Programme (NALEAP). The main aim of setting up NALEAP was to create awareness with the Kenyan public on legal aid; and provide legal advice and representation mainly to the poor, marginalized and vulnerable in the Kenyan society.

Legal aid is a human rights issue, and the goal of NALEAP was to create a practical, affordable and effective legal awareness and legal aid service delivery scheme that would enhance access to justice for all. The NALEAP programme facilitated the development of the draft Legal Aid Bill, which was later enacted into law as the Legal Aid Act, 2016 thereby laying the foundation for the establishment of a structured and sustainable National Legal Aid Service in Kenya with the mandate of mainstreaming the provision of legal aid services in Kenya. Section 5 of the Legal Aid Act 2016 established the National Legal Aid Service with the mandate to provide legal aid services to indigent, marginalized, and vulnerable persons, establish a legal aid scheme to assist the indigent to access legal aid, promote legal literacy and legal awareness, support community legal services by funding justice advisory centers, education, and research; and promote the use of alternative dispute resolution methods that enhance access to justice.

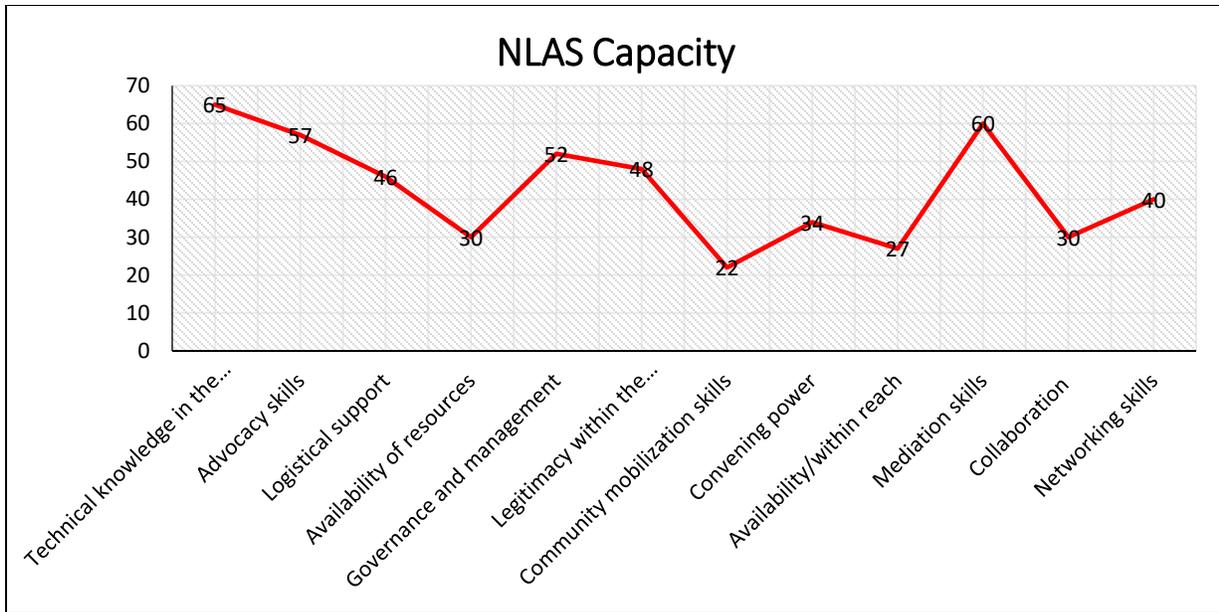


Figure 2: Average organizational strengths of all the NLAS offices to the community

The service (NLAS) has a presence in five counties within Kenya i.e., Nairobi, Mombasa, Kisumu, Eldoret (Uasin Gishu) and Nakuru with intention to establish offices in all the 47 counties. Within the counties where NLAS has offices, its visibility is clear. However, in the counties where their physical presence is not available, other actors have limited knowledge about NLAS and its core mandate. The National Legal Aid Service provides legal aid (to eligible clients) in criminal matters, civil matters and matters of public interest. Its services are also extended to stateless persons and internally displaced persons. The service recognizes that it cannot act alone while discharging its functions and therefore it collaborates and coordinates service provision among legal aid providers in Kenya through networking.

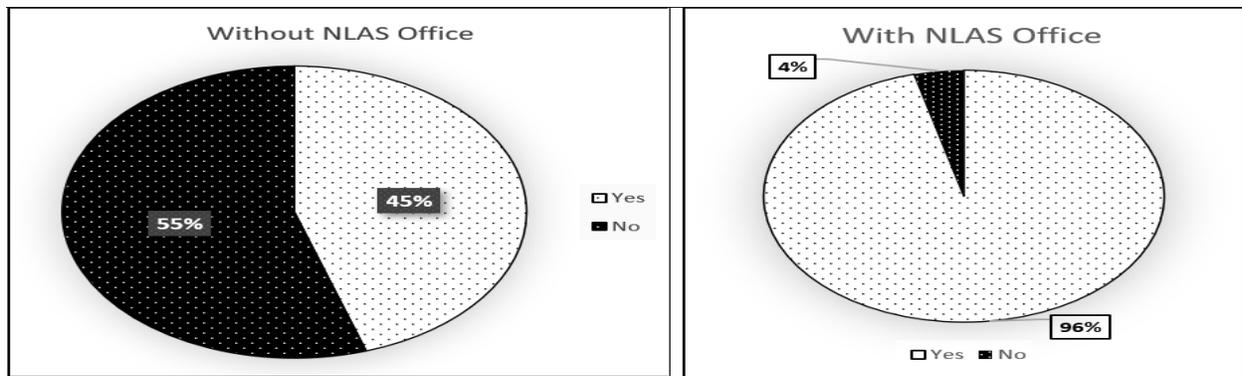


Figure 3: Awareness of NLAS in Counties

6.0 ENGAGEMENT OF THE COURTS

6.1 Courts and service delivery

The consequences of ineffective service delivery today will place a greater and more complex demands on the courts and service delivery systems in the future. Creating bridges to services directly from the court now will result in long-term benefits for all individuals who work in or are affected by the court system²⁰. All efforts need to be geared towards looking for areas of agreement on service coordination issues at the local and community engagement levels. This is essentially the approach taken by the NLAS in addressing the problem-solving strategies in improving access to justice by all.

By bringing together a variety of stakeholders to discuss common problems, alternative approaches for addressing the problems are conceived. The leadership of each county in terms of provision of the legal aid can determine what aspects of the access to justice approach they agree on and what principles and methods they can adapt to make their current service coordination efforts more effective.

Within the 12 focal counties, all the Legal Aid Providers have engaged the courts on matters access to justice. Through the formation of the Court Users Committees (CUCs), the leadership of the organizations and other stakeholder have had an opportunity of engaging the courts on matters access to justice²¹. Through their meetings the CUCs deliberate on the court processes and mechanisms of ensuring fast tracking of the cases and delivery of justice.

Among other means that the various stakeholders suggested to support the engagement of the courts includes having a help center that works 24 hours daily. Additionally, the judiciary should work towards ensuring that the advocates are available, there is full engagement of the community in addressing community related matters and creation of court-based community reporters or navigators. Within the courts there should be a help desk, having an individual with good public relations and gender sensitive skills. The legal language sometimes impedes communities from using the courts in articulation of the issues. This calls for the use of the plain language in the courts to facilitate efficient process and making the outcome effective. The court forms and materials also ought to be written in plain language, with streamlined and convenient procedures.

Further the judiciary should implement a state-of-the-art technology, which is user friendly, secure and well supported technology to make the process fast and applicable during virtual court periods. Lastly, there is need for the implementation of the monitoring and evaluation plan that is aimed at learning and correction of the procedures and outcomes. To this end, in access to justice, community centered strategies include engaging the courts via committees, departments, and people, proposing solutions and identify unintended consequences, sharing problem solving strategies between actors and creating an explicit understanding of the capacities and role constraints of each actor.

6.2 Resources available within organization for leveraging

Resources within an organization are very critical in daily running of the activities. Organizational resources consist of the concrete materials and tangible assets that support programs, practice improvements, and service delivery. They encompass adequate and stable funding, staffing, facilities and equipment, technology, informational resources, and program materials. Resources are essential to reach the organizational goals. During the mapping of the legal aid providers in the focal counties, different organizations have different resources that they leverage on for the provision of legal aid.

Table 15: Resources within stakeholders

Resources available in different organizations that NLAS can leverage on	
Conference facilities	Community entry points (Connections)
Human resources (Paralegals, Educators etc.)	Open spaces (for barazas)
Research capacities and support	Field officers (Data collectors)
Trainings and catering facilities	Office equipment (Computers, Copiers etc.)
Resourceful websites and Apps (Pata Haki)	Four-wheel drive vehicles
Resourceful publications	Boardrooms and meeting rooms
Funds and funding opportunities	Tents, Chairs and PA Systems
Training halls	Moot courts and legal clinics

7.0 NETWORKING AND COLLABORATION

7.1 Challenges facing networking and collaboration

Networking usually involves meeting new people, who share a profession, industry, or interests. It involves exchanging ideas and information between these individuals. Networking is the single most powerful creation of awareness tactic to accelerate and sustain success for any individual or organization that are providing legal aid²². It is building connectivity so as to share and benefit from relationship. It helps individuals, organizations and communities to reach greater goals. It seems clear, then, that the ability to network effectively is an important skill for organizations to possess. Networking provides the most proficient, most enduring and most productive ploy in building relationships.

In access to justice, it is a matter of forging connections with other CSOs who face similar issues and want to work together toward solutions. These social connections allow individuals, groups, and organizations to find allies, share ideas and formed common goal strategies. Networking thus helps those working for social change to share resources and information, devise an agenda, and engage in collective action.

Table 16: Networking challenges and proposed solutions

Challenges	Proposed Solution
Limited visibility of NLAS on the ground	Devolve NLAS
Limited capacity amongst CSOs	Capacity strengthening of CSOs
Lack of resources in the CSOs	Funding CSOs
Poor Communication amongst stakeholders	Enhance communication
Unprofessional officers	Regulate government officers
Limited awareness by CSOs	Sensitization of the CSOs
Skewed working culture	Harness working culture
Unavailability of government officers	Officers to be Involved

Networking helps organization to build contacts with other agencies, groups, and individuals that might support their work in direct or indirect ways. It also seeks new career opportunities,

facilitating win-win relationship, creating referral network, accelerate professional development, and develop knowledge resources and networking resources to enhance effectiveness. Collaboration on the other hand is a working practice whereby individuals work together for a common purpose to achieve organizational benefit. Collaboration improves the way teams work together and problem solves. This leads to more innovation, efficient processes, increased success, and improved communication. Through listening to and learning from team members, collaboration is enhanced.

Table 17: Collaboration challenges and proposed solutions

Challenges	Proposed Solution
Supremacy battles	Address supremacy battles
Wide and shallow organizations	Address wide mandate issues
Working in Silos	Communication and show casing
Poor data and reporting systems	Trainings on good governance and management
Limited communication and association	Create Working Groups
Limited engagement amongst the stakeholders	Stakeholders Engagement
Limited resources for projects	Joint fund raising
Generalized services from CSOs	Customize services
Wide donor network and uncoordinated	Coordinate donors
Duplication of activities	Teamwork
Competing for donor visibility	Reduce competition for donors
Rising and endless individual interests	Address individual interests
Variations in understanding by officials	Having joint trainings
Intertwined activities	Streamlining the Intertwined activities
Limited support by NLAS	Operationalize Legal Aid Act and resources mobilization
Lack of a national coordinator	NLAS to coordinate CSOs
Unknown active and potential organizations	Mapping organizations
Wrong individuals in meetings (secretary, driver etc.	Unsure good representation in meetings
Poor accountability and evaluation	Evaluation of Projects by government
Lack of security	Enhanced security in all the regions

7.2 Paralegalism

Paralegals play a critical role in trying to close the gap in access to justice in Kenya. These are individuals trained at different levels to provide legal aid to the community. Within the jurisdiction of the Kenya law, the paralegals play a significant role in ensuring that the community understands the law in the community language. However, the paralegals are aligned to the prevailing local powers and customs as much as they are aware of the formal legal process. Because paralegals are often trained by, and connected to, pro bono lawyers and other referral services, they can pursue cases further than clients may be able to on their own. Paralegals' training and connections also enable them to more readily challenge adverse local practices or powerful elites. During the mapping of the legal aid providers, all the organizations mapped and especially those that were supported by the UNDP through the Amkeni Wakenya had a pool of paralegals that they utilize in the process of enhancing access to justice in Kenya. The data and information about the pool of paralegal within all the organizations need to be put together, and an assessment done on the knowledge and skills level for harmonization and inclusion on the database of all the legal aid providers.

8.0 CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusion

Despite the existence of a framework and an act of parliament for the provision of legal aid in Kenya and mechanisms for enhancing access to justice for those who cannot afford private legal services, the realities in the courts, as observed during the mapping of legal aid providers, are such, that substantive access to justice remains outside of the purview of poorest citizens. The main goal of this mapping of the legal aid providers was to identify active and potential Non-Governmental Organization, Community Based Organizations, government agencies and other Civil Society Organization that provide legal aid for the indigent and vulnerable within the 12 “focal counties”. It aimed at mapping how the system of delivery of services operates for the indigent and the marginalized in terms of efficiency and coherency and whether there are clear roles for all involved actors.

The exercise sought to understand if the challenge that was created by the lack of integrated policy on the issue of legal aid is causing for a creation of an inert system with several important impediments, has been addressed by the implementation of the Legal Aid Act 2016. The existence of multiple organizations, strategies and protocols causes confusion, duplication of efforts and hinder institutional cooperation for the provision of legal aid. The relevant organizations coordinating paralegalism, legal aid delivery and the judiciary officers starting from the entry points of cases are ‘lost’ in the sea of mandates, documents and operate and cooperate without reference to them.

Thus, the provisions of the Legal Aid Act 2016 and the Legal Aid Regulations 2022 are not clear to many legal aid service providers. Data collection, maintenance of data bases on clients attended to, human capacities and registry of trainings remains a serious problem. For example, the process of assessment of capacities and specialization of organization staff, the number of paralegals trained, their locations etc., is a challenging one since there is no coherent data base except for NLAS and few CBOs.

Organization information is lost with increase in number of officers and development of capacities and modernization of operational procedures is unfeasible without precise situation analyses. This

requires data. Unfortunately, to many organizations, this is a big challenge. Ownership of results achieved with implementation of donor funded projects such as the United Nations Development Programme through Amkeni Wakenya is problematic. This can also be ascribed to the multitude of strategic programmes and project components which set multiple tasks for the institutions without considering their core mandate and their capacities to take on more responsibilities. The role of CSOs is important and their efforts are highly welcomed in times when the government system cannot respond to the needs of the community.

Furthermore, proactive behavior of CSOs and establishing good cooperation with governmental departments and government supported entities such as NLAS can spur reform, modernization and continuous raise of standards in the provision of Legal Aid to the indigent and marginalized. However, CSOs should not replace or create a parallel system to the government recognized entity, rather complement each other. Continuity and sustainability cannot be demanded from CSOs, as they usually depend on donors and have a project cycle type of operation.

The utilization of the law school students in the provision of legal aid is key. However, in most instances, the students complete studies before a matter they were supporting is concluded. To this end, cases remain unresolved and the community loses focus. Additionally, by nature of the design of the legal representation, students lack a mandate to represent clients in the courts, thus limiting their services delivery.

Barriers to accessing the legal system, both socio-economic and physical, can be addressed in the form of increased funding for legal aid provision (operationalization of the legal aid fund). Although the threshold for the individuals supposed to benefit from the legal aid service is wide, the process still excludes all but the truly indigent from receiving legal advice and representation. The conclusion must be drawn that at present, access to legal aid services and thus access to justice remain an unfulfilled expectation rather than a reality for most citizens, other than an affluent minority, who can afford the exorbitant costs of legal representation charged by advocates.

8.2 Recommendations

- ❖ National Legal Aid Service (NLAS) should be delinked from the Office of the Attorney General and Department of Justice. This will facilitate NLAS to make and implement its own decisions.
- ❖ National Legal Aid Service (NLAS) should operationalize the research wing for continued research, database development, publications and guidance on shifts in cases and issues around access to justice.
- ❖ Increased publicity to communities regarding the availability of legal aid services and assistance from CSOs university law clinics and other government agencies through social media, posters, pamphlets, radio and television could serve to expand the work done in clinics. Organizations need to develop one-stop apps like NLAS and KASH for the clients to download and learn more about legal aid.
- ❖ The availability of many trained paralegals should be seen as an asset in the delivery of legal aid. They would be adequately prepared to appear on behalf of indigent or marginalized clients or provide legal advice in community law clinics, NGOs and university clinics.
- ❖ It is clear that resource constraints hamper the provision of legal aid by NLAS. The study recommended that NLAS budget be increased. In my view, given the polycentric nature of decision-making regarding National Treasury allocations, it is possible that NLAS may have to engage in fund-raising from public corporations, international funders and other ad hoc sources to address its budgetary deficit.
- ❖ To enhance referrals and clear understanding of the recipient of the legal aid services, there is need to have a standard or customized screening form or procedures in all the organization.
- ❖ Lastly, in accordance with the Constitution of Kenya, 2010, that envisions the significant role played by the AJS especially Article 159(2) recognizes the use of alternative justice systems to resolve disputes, there is need to streamline ADR and AJS mechanisms on issued they can handle in access to justice.

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