REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

DRAFT NATIONAL LEGAL AID AND AWARENESS POLICY

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Contents

ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights.
AIDS	Acquired ImmunoDeficiency Syndrome.
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
CJPC	Catholic Justice and Peace Commission
CLAN	Children's Legal Action Network.
CLEAR	Christian Legal Education Aid and Research
COVAW	Coalition on Violence against Women.
CRC	UN Convention on the Rights of the Child
CREAW	Center for Rights Education and Awareness.
CSO	Civil Society Organisation(s)
CSR	Corporate Social Responsibility
ERS	Economic Recovery Strategy for Wealth and Employment Creation
FIDA-K	Federation of Woman Lawyers - Kenya
HIV	Human ImmunoDeficiency Syndrome.
ICCPR	International Covenant on Civil and Political Rights
ICJ-K	Kenyan Section of the International Commission of Jurists
KCPA	Kenya Community of Paralegal Association
KNCHR	Kenya National Commission on Human Rights
LAS	National Legal Aid Service
LRF	Legal Resources Foundation Trust
LSK	Law Society of Kenya
MOJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
MTEF	Medium Term Expenditure Frame
NALEAP	National Legal Aid and Awareness Programme
NGO	Non-Governmental organisations
PASUNE	Paralegal Support Network
PLI	Public Law Institute
PRSP	Poverty Reduction Strategy Paper
RVLS	Rift Valley Law Society
UDHR	Universal Declaration of Human Rights
UN	United Nations

1.0 INTRODUCTION

The Government of Kenya has been engaged in the process of developing a legal aid and awareness policy framework as set out in clear and unambiguous strategies laid out in several policy initiatives such as the National Poverty Eradication Plan 1999 – 2015, Investment Programme for Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003 – 2007 and Vision 2030. These policies recognize the need for access to justice as a critical pillar for economic development and poverty reduction. The policies recommended that access to justice must be responsive, affordable, accessible and speedy in promoting sustainable economic development.

Poverty has been identified as the greatest impediment to accessing justice in Kenya. The Poverty Reduction Strategy Paper (PRSP) of 2001 - 2004 noted that communities and the poor cited lack of access to socially responsive and affordable legal and judicial services as critical issues that need to be addressed by the Government in the fight against poverty. It is the poor who suffer most from the effects of weak, unaccountable and insensitive legal and judicial systems. In 2001, a broad based consultative process was undertaken which culminated in the Report (The Legal Education and Aid Programme: A Pilot) with a proposed framework for piloting legal aid and awareness in Kenya.

In 2005 the Ministry for Justice and Constitutional Affairs commissioned a research to design a pilot project for a national legal aid scheme. In the same year, the ministry established a Ministerial Taskforce on the Development of a Policy and Legal Framework for Continuing Legal Education and Paralegalism, which recommended among other things the entrenchment of paralegalism in the justice sector.

Following the development of the Pilot design, in 2007 the Government established the National Steering Committee for the National Legal Aid (and Awareness) Programme(NALEAP) through a Gazette Notice No.11598 of 30th November 2007 with

mandate to *inter alia* oversee, coordinate and monitor the overall implementation ofthe programme. The members of the committee were drawn from key stakeholders in the justice sector, replicated at the pilot level as pilot project steering committees.

In September 2008 the Ministry of Justice National Cohesion and Constitutional Affairs (MoJNCCA) launched the National Legal Aid (and Awareness) Programme, with the Secretariat in Nairobi and later in 2009 launched six pilots on six thematic areas. The six thematic pilot projects were the Nairobi High Court Family Division; the Moi University Law Clinic in Eldoret; the Nairobi Children's Court; the Nakuru Juvenile Justice; the Paralegal Advice Office in Kisumu and the Mombasa Capital Offences.

Kenya Vision 2030, the new economic development blueprint for the country, identifies lack of access to justice as having a direct link to poverty, and acknowledged that economic growth alone is insufficient for achieving meaningful improvement in the quality of life of the poor, marginalised and vulnerable people and groups. The Vision has three pillars – economic, political and social. The political pillar, in particular, builds on various aspects of human rights and the rule of law to ensure good governance and accountability. It notes that one of the strategic areas within which the transformation of the country's political governance systems will take place is through increasing access and quality of legal services available to the public and reducing barriers to service provision and access to justice. Adherence to the rule of law is core to the culture of human rights respect which is seen as an essential component in modern market based economic development of the nation.

An efficient, accessible, timely, affordable legal and judicial service encourages a culture of law abiding citizenry and human rights protection which are cornerstones to social, political and economic development. Access to justice is therefore critical in alleviating poverty as it creates an enabling environment for investment and development as envisaged by the 1st Medium Term Plan under the Kenya Vision 2030 to promote and sustain fair, affordable and equitable access to justice. NALEAP has contributed to the implementation of the Government's first Medium Term Plan, 2008-2012 and Vision 2030 under Strategic Theme

6 that focuses on increased access to justice. The programme had provided concrete inputs towards laying a foundation for the establishment of a structured and sustainable legal aid scheme to streamline the provision of legal aid services in Kenya.

Access to justice, means the ability of people, particularly from poor and disadvantaged groups, to seek and obtain a remedy through formal and informal justice systems, in accordance with human rights principles and standards. Legal aid includes legal advice and awareness, legal representation and assistance, provision of legal information and law-related education and undertaking law-reform and advocacy work on behalf of the community.

1.1 Political Commitment

The Government is committed to develop and implement a National Legal Aid and Awareness Policy that seeks to address equality and non-discrimination issues, vulnerability due to affordability challenges, legal representation and exclusion due to technicalities in the justice processes and the lack of awareness which is an underlying cause of social and economic instability. Through this policy, the Government commits to establish an institutional framework for legal aid and awareness to enhance access to justice; facilitate the provision of legal awareness, assistance, advice and representation for the poor, marginalized and vulnerable; promote the use and establishment of a framework of Alternative and Traditional Dispute Resolution mechanisms; establish a framework for a paralegal based approach to legal aid and awareness work in the administration of justice; and ensure the development, monitoring and dissemination of information on this policy.

These policy commitments are informed by the Constitution of Kenya, regional and international commitments ratified by the Government of Kenya. These commitments are also informed by the experiences and lessons learnt during the implementation of the National Legal Aid and Awareness Pilot (NALEAP) projects nationally and civil society in their provision of legal aid and awareness services to diverse communities and institutions in

Kenya. This Policy takes an integrated approach to enhancing access to justice by taking into account the roles of various justice sector institutions such as the Judiciary, the Director of Public Prosecutions, the Law Society of Kenya, the Prisons, the Police, the Children, Probation and Aftercare departments as well as private and non-Governmental organizations.

1.2 The Process of Policy Formulation

The following process was followed in the formulation of the national legal aid and awareness policy:

a) NALEAP commissioned the development of a policy on Legal Aid and Awareness;
b) MONJCCA sourced for a consultant and engaged the Legal Resources Foundation Trust (LRF) to formulate a national legal and awareness policy;
c) The Legal Resources Foundation (LRF) Trust prepared a draft policy;
d) Consultants were engaged to review draft policy and strengthen it from a gender perspective;
e) Several stakeholder consultations were held as indicated below:
    i. Focused group discussions with civil society organizations providing legal aid - October 2010
    ii. Consultative workshops with the LSK, Kenya School of Law and Public Universities with Law faculties - October 2010
    iii. Discussions with the Judiciary – October 2010
    iv. National Workshop on Engendering the Draft Legal Aid Policy – November 2010
    v. National Legal Aid Policy Working Retreat – February 2011
    vi. National Legal Aid Policy Working Retreat – March 2011
    vii. Baseline survey on the status of legal aid services in Kenya – June 2011
    viii. Validation Workshop for Baseline Survey – October 2011
    ix. Expert Review – December 2011 to June 2012

x. Harmonization of the draft National Legal Aid and Awareness Policy and the draft Legal Aid Bill – December 2012
xi. Review by the NSC – December 2012 and January 2013
xii. NSC sub-committee technical review - December 2012 and January 2013
xiii. Review by Department of Justice – August 2013

The formulation of this policy was also informed by lessons learnt through NALEAP pilot projects and study visits to Malawi and South Africa.

1.3 Goal, Objectives and Guiding Principles

1.3.1 Policy Vision

Access to justice for all

1.3.2 Goal

To enhance the facilitation of access to justice through a national, sustainable and quality legal aid and awareness framework in line with the Constitution, regional and international human rights standards.

1.3.3 Objectives and Priorities

The overall objective is to develop a National Legal Aid and Awareness Policy that provides a sustainable framework for quality access to justice to all in line with the Government's general development agenda. The specific objectives are;

i. To establish a framework for policies, laws and administrative processes that will ensure sustainable and quality access to justice to all.
ii. To provide quality, effective and timely legal assistance, advice and representation for the poor, marginalized and vulnerable.
iii. To enhance access to justice through continuous legal awareness.
iv. To promote and institutionalise the Paralegal approach in access to justice.

v. To promote the use of Alternative and Traditional dispute resolution mechanisms.
vi. To establish an implementation, monitoring, regulatory and support framework for legal aid and awareness services in Kenya.
vii. To ensure and promote adequate allocation of resources including fiscal, human and technical for legal aid and awareness services in Kenya.

1.3.4 Guiding Principles

The implementation of the policy is guided by the principles of:

i. Public Participation;
ii. Respect for human rights and dignity;
iii. Respect for the rule of law;
iv. Non-discrimination and Inclusion;
v. Restorative and preventive justice;
vi. Responsiveness;
vii. Equality and Equity;
viii. Accountability;
ix. Access to information;
x. Sustainability;
xi. Innovation; and
xii. Research based interventions;

2.0 POLICY CONTEXT

2.1 Historical Perspective

One of the legacies of Kenya's colonial past was the retention of the English legal and judicial systems on the attainment of independence. The 1963 Lancaster House

Constitution also known as the Independence Constitution, legitimized the institutions of justice, the laws, practices and procedures which were to a large extent still retained by the present legal system in Kenya. Due to this colonial importation, Kenya's legal system is considered to be alien and viewed as entrenching economic inequality and exploitation of the disadvantaged and illiterate majority by a privileged few. The experiences of women and girls in accessing justice have been marginal and traumatic due to high levels of illiteracy, patriarchy and systematic discrimination in their engagement with traditional dispute mechanisms, unjust legal architecture on matters of succession and family disputes, and the far distances they have to traverse from various justice points like the courts or police stations to manage their claims or disputes.

During the initial stages of Kenya's legal history, attempts were made to indigenise the legal system by restating sections of the African customary law that were deemed not to be "repugnant to justice and morality", and adopting some of the principles of African social cultural philosophy. However, by and large, the legal and judicial systems remained anglicised and inaccessible to many, especially the poor, marginalised and vulnerable. Efforts have been made to provide legal aid through voluntary legal aid schemes by civil society, individual advocates and law firms. The first recognized effort at providing systematic legal aid was in 1973 when a clinic was set up at Shauri Moyo in Nairobi under the aegis of the Faculty of Law, University of Nairobi and the Law Society of Kenya. Throughout the 1980s, the clinic operated as the Legal Advice Centre and was later renamed Kituo cha Sheria and exists to date. Later in the 1990s, a number of NGOs such as the International Federation of Women Lawyers (FIDA), Public Law Institute (PLI), among others also began to offer a range of legal aid services that were specific to women and other interest groups. The civil society and faith-based organizations have been at the forefront in the provision of legal aid services in Kenya despite the lack of a policy and institutional framework. Key among these are the Law Society of Kenya, FIDA, Kituo cha Sheria, ICJ-Kenya section, CLAN, CLEAR, LRF, COVAW, CREAW, The Cradle Foundation, , CJPC,

Steps to establish a national legal aid scheme in Kenya date back to the 1980s. However, it was only in the 1990s that meaningful efforts towards its realization began. The first concrete step towards establishing a national legal aid scheme in Kenya was in May 1998 when the Attorney General set up the Legal Aid Steering Committee. The committee was composed of Government departments (judiciary, state law office, probation and aftercare, children, police and prisons) and representatives of Civil Society Organizations {(International Commission of Jurists- Kenya Section (ICJ), The Federation of Women Lawyer (FIDA) Kenya, the Public Law Institute (PLI) and the Law Society of Kenya (LSK)}. The Committee reiterated the urgent need for a national legal aid scheme and proceeded to identify a possible model for Kenya.

In 2007 the Ministry of Justice and Constitutional Affairs, mandated to *inter alia* give policy direction in the area of access to justice, more specifically Legal Aid and Advisory services, commissioned a consultancy to design a pilot programme for a national legal aid scheme. The design was developed and presented to the Ministry in September of 2007. Following the development of the said Pilot design, in 2007 the Government established the National Steering Committee for the National Legal Aid (and Awareness) Programme through a Gazette Notice No.11598 of 30th November 2007 with the mandate to *inter alia* oversee, coordinate and monitor the overall implementation of a National Legal Aid (and Awareness) Programme. The Membership of the said Committee is draw from key stakeholders in the justice sector, replicated at the Pilot level as Pilot Project Steering Committees.

In September 2008, the Government through the Ministry of Justice, National Cohesion and Constitutional Affairs launched the National Legal Aid and Awareness Programme, with the Secretariat in Nairobi and later in 2009 launched 6 pilots on six thematic areas, facilitated by Civil Society organizations with experience in legal aid. One of the mandates for the said programme was to provide policy direction for the establishment of a national legal aid scheme through lessons learned from experiences of six legal aid pilot projects.

2.2 Rationale for the Policy

Legal aid and legal awareness are a critical component of enhancing access to justice. According to a Baseline survey on status of Legal aid in Kenya carried out in 2011, one of the major impediments to access to justice and legal aid services was the issue of poverty. Many respondents believed that the majority of Kenyans are poor and cannot therefore afford the lawyers' fees and court filing fees.

High illiteracy rate in Kenya was also noted as a contributing factor. Many people are ignorant of their rights and generally lack information about the service providers and were therefore unable to enforce or claim their rights when there are violations.

Among some communities the cultural system was preferred to the formal court justice system instances where it went against the principles of human rights or rules of natural justice.

The survey identified the complicated justice system as a hindrance to accessing justice. Some believe that the judicial system is rigorous, intimidating and shrouded with mystery.

In addition, institutions that offer legal aid services and those that dispense justice are located far away and concentrated in the urban centres leaving out the rural areas. Distance of courts has resulted in a lot of miscarriage of justice because witnesses and litigants travel long distances to attend court. There is no guarantee of their transport costs which makes them shun the process yet their attendance is valuable for the ends of justice.

In some areas gender roles have contributed to women's vulnerability and generally there is lack of respect for women's rights compared to men in society.

Promoting the administration of justice and the rule of law is one of the priorities of the Government of Kenya. Efforts by the Government towards comprehensive reforms has included a review of the legal sector covering the State Law Office, the Judiciary, legal education institutions, national institutions and other law enforcement agencies such as the

police, prisons, children and probation service departments. Articles 1(1) and 159(1) of the Constitution provides that *'sovereign power belongs to the people of Kenya'* which is where *'judicial authority is derived from'* and therefore the aspirations of the people are central in the administration of justice to guarantee access to justice as guaranteed by the Constitution. Articles 21(1), 35, 48 and 50 (1) (h), relates to access to justice with Article 48 providing that *"The state shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice"*. This is the fundamental foundation of this policy to particularly protect the poor, marginalized and vulnerable in society in the administration of justice.

Save for murder cases where legal representation is provided by the Government under the Pauper Brief system administered by the Judiciary, the existing legal aid initiatives are mostly run by non-Governmental organizations. These include legal, religious, women, refugee and children's rights organizations, institutions of higher learning and paralegal networks like Paralegal Support Network (PASUNE) which have initiated projects and programmes geared towards providing legal aid and awareness to sections of the general public on thematic areas. In 2008, the Government sought to provide legal aid services through NALEAP, the national pilot programme under the Ministry of Justice National Cohesion and Constitutional Affairs.

NALEAP has facilitated the provision of legal aid, advice, awareness and representation in collaboration and consultation with stakeholders in civil society and other Government departments. The six pilot projects include: the Nairobi Children's Court Pilot Project facilitated by LSK and CLAN; the Mombasa Capital Offences Pilot Project facilitated by CLEAR, LSK Coast Branch and the High Court; the Kisumu-Paralegal Services and Support Pilot Project facilitated by the Kenya Community of Paralegal Association (KCPA) and LSK West Kenya Branch; the Nakuru Children Justice Pilot Project facilitated by the LSK Rift Valley Branch; the Moi University Law Clinic (Eldoret) Pilot Project; and the Nairobi High Court Family Division Pilot Project facilitated by LSK and FIDA Kenya.

In 2010, the Ministry of Justice carried out a statistical analysis of its partners. The analysis showed that in 2009, over 30,000 cases were recorded by these NGOs. In 2010, CLAN had handled 528 cases: 46% of the cases were not resolved, 21% were referred to other actors, and only 14% were fully addressed. In the same year, the LRF handled a total of 3,442 cases: of these cases, 0.05 people were provided with legal aid, 0.03 were referred to other organizations, while 0.01 cases were taken up for further follow up. The RVLS handled 3,082 cases of which P&C cases (court) accounted for 41%, while civil cases on maintenance and custody related cases were 36%, and crimes against minors accounted for 0.02%. FIDA handled 15,831 cases between 2008 and 2010. CLEAR handled 11,306 cases between 2009 -2010, while Kisumu Paralegal Advice Office Pilot Project handled 69 cases. Of this amount, 0.24% of the remaining cases were referred to other institutions.

Statistics indicate that advocates are overly concentrated in the major urban areas to the neglect of rural areas and smaller urban centres. For instance, out of 9,253 advocates operating in Kenya, 5826 practice in Nairobi, while just over a thousand practice in the other large towns, such Kisumu, Eldoret and Mombasa combined, leaving the rest of the country severely underserved. At the same time, the reach of legal aid NGOs is limited, and large sections of the country are completely devoid of any legal aid initiatives.

The statistical analysis established that there are serious information management challenges among the various NGOs working on legal aid. Their data is inadequately processed and analyzed, and is not easily retrievable, resulting in gaps in the information available for consideration by decision makers. The analysis also showed that the NGOs actually handle more cases than were reflected by the available statistics. The demand for legal aid and awareness services is overwhelming and has stretched the capacities of these NGOs to their limits. Although these legal aid initiatives have achieved a measure of success, the efforts of these organizations are largely uncoordinated and their quantitative reach is insignificant in terms of addressing the problem at the macro policy level. Coupled with lack of standardisation, supervision, regulation and spatial limitation, the quality and frequency of legal aid and legal awareness provided by these players has been compromised.

From the foregoing, it is clear that the existing legal aid and awareness avenues are insufficient and the need for a national legal aid and awareness scheme in Kenya is long overdue. This Policy takes an integrated approach to enhancing access to justice and takes into account the roles of various justice sector institutions such as the Judiciary, the Director of Public Prosecutions, the Law Society of Kenya, the Prisons, the Police, the Children, Probation and Aftercare departments as well as private and non-Governmental organizations.

This policy is essential to achieve the Government's development agenda under Vision 2030, legal aid, promote good governance, social justice, human rights and Constitutional guarantees, regional and international obligations. Access to justice is one of the benchmarks which denotes the ability to enable individuals or groups to access the court of law, guarantee representation and ensure that judicial and administrative outcomes are just, equitable, appropriate, effective and timely.

3.0 LEGAL AND POLICY FRAMEWORK

3.1 International Commitments on Access to Justice

The Government of Kenya has made commitments under various regional and international human rights declarations, standards, guidelines and instruments to enhance access to justice and provide a state funded legal aid and awareness programme. These include:

- The International Covenant on Civil and Political Rights (ICCPR), 1966
- The UN Convention on the Rights of the Child (CRC),1989
- The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- The UN Convention on the Rights of Persons living with Disabilities, 2007.

- The UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.
- The Universal Declaration of Human Rights (UDHR), 1948
- UN Basic Principles on Role of Lawyers,1990
- UN Guidelines on the Role of Prosecutors, 1990
- UN Standard minimum rules for treatment of Prisoners,1955
- The Beijing Platform for Action on Women, 1995
- UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990
- The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985
- The UN Rules for the Protection of Juveniles Deprived of their Liberty(Havana Rules), 1990
- The UN Guidelines for the Prevention of Juvenile Deliquency (Riyadh Guidelines),1985

3.2 Regional Commitments on Access to Justice

At the regional level, the African Commission has passed a series of resolutions that place legal aid in context in Africa. They include:

- The African Charter on Human and People's Rights (ACHPR), 1981
- The African Charter on Rights and Welfare of the Child,1990
- The ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003.
- The Kampala Declaration on Prison Conditions in Africa and Plan of Action; 1997
- The Kadoma Declaration on Community Service and Plan of Action; 1998
- The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa and Plan of Action, 2002
- The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and Plan of Action, 2004

- Guidelines and Measures for the prohibition and Prevention of Torture, Cruel, Inhuman and Degrading Treatment in Africa (Robben Island Guidelines) 2002.
- The Resolution on the Right to a Fair Trial and Legal Assistance in Africa (the Dakar Declaration and Recommendations); 1999

To give effect to all these commitments, Articles 21, 48, (4) 50 and 261 of the Constitution of Kenya require the state to ensure access to justice for all and enact legislation to fulfill its international obligations, respect of human rights and fundamental freedoms respectively. This is the basis for the establishment of the legal aid and awareness programmes for the state to fulfill its national, regional and international obligations.

3.3. National Policy Framework

The Government of Kenya has put in place various policy frameworks that pertain to human rights and access to justice. These include the following, among others:

i. National Human Rights Policy, -2012
ii. National Gender and Development Policy, 2000
iii. Sessional Paper No. 2 of 2006 on Gender Equality and Development
iv. Kenya Vision 2030.

Further, the Government has carried out an inquiry into the justice system with a view to enhancing administration of justice and reform of the judiciary through the Taskforce on Judicial Reforms which produced a report in 2010.

3.3 National Legal Framework

There is a legal basis under Kenyan law for the development of a National Legal Aid and Awareness Policy. This basis is captured in various pieces of legislation which include:

- The Constitution of Kenya, 2010

- The Civil Procedure Act (CPA) Chapter 21, Laws of Kenya
- The Children Act 2001, Laws of Kenya
- The Criminal Procedure Code, Chapter 75, Laws of Kenya
- Persons with Disabilities Act, 2009
- The Refugee Act, 2006
- The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012

4.0 TARGET GROUPS

This policy is geared towards access to justice for all and takes into account the differences in context, characteristics and profile of different special interest groups. The Constitution defines some of these groups and provides a basis for their identification. Special interests and protection from non – discrimination is enforced by Article 21(3) that requires all state organs to *''address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities"*.. These categories of persons are central to ensuring that the legal aid and awareness scheme is both accessible and responsive to their needs and special contexts.

4.1 Children

Section 77 of the Children Act grants discretionary powers to a court, where a child appearing before it in proceedings under the Act or any other written law is unrepresented, to order that the child be granted legal representation and the expenses defrayed out of monies provided by Parliament. The section contemplates situations where a child is in conflict with the law, as in the case of a child offender.

4.2 Persons with Disabilities

Article 54 of the Constitution of Kenya provides for rights distinct to persons with disabilities and includes the right;

a) To be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
b) To access educational institutions and facilities for persons with disabilities that are intergrated into society to the extent compatible with the interests of the person.
c) To reasonable access to all places, public transport and information;
d) To use Sign language, Braille or other appropriate means of communication; and
e) To access materials and devices to overcome constraints arising from the persons disability.

Section 38(1) of the Persons with Disabilities Act requires the Attorney-General, in consultation with the National Council for persons living with disabilities and the Law Society of Kenya, to make regulations providing for free legal services for persons with disabilities in;-

a) matters affecting the violation of the rights of persons with disabilities or the deprivation of their property;
b) cases involving capital punishment of persons with disabilities; and
c) such matters and cases as maybe prescribed in the regulations made by the Attorney-General.

In addition the Chief Justice is also required under section 38(2) to make rules providing for-

a) the exemption, for persons with disabilities, from the payment of fees in relation to matters or cases described in subsection (1); and
b) the provision, to persons with disabilities who attend court, of free sign language interpretation, Braille services and physical guide assistance.

Further under Section 38(3), accused persons who are denied bail shall be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister; and Section 38(4) endeavours to ensure that all suits involving persons with disabilities are

disposed of expeditiously having due regard to the particular disability and suffering of such persons.

Article 13 of the Convention on the Rights of Persons with Disabilities contains additional guide for ensuring access to justice for persons with disabilities as follows:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

4.3 Minority and Marginalized Groups

The Constitution defines marginalized groups to mean a group of people who are disadvantaged by discrimination on the grounds set out -in Article 27(4) of the Constitution. Marginalization can result from population size, geographic location or cultural economic activities leading to non-integration in the socio-economic - life of the country. Such communities have very low general literacy levels and therefore inadequate legal literacy and awareness of their rights.

4.4 Older members of Society.

Mechanisms that specifically target the needs of the older members of society should be put in place so as to safeguard their rights as set out in Article 57 of the Constitution. In this regard, training and use of community paralegals to assist the older members of society, particularly in rural communities who are in danger of abuse and violation of their rights is essential. Meeting some of their needs will require networking with other players, particularly in the social services sector, so that care givers and health workers can assist in

securing the needs of the older members of society, which cannot be met through provision of legal aid alone.

4.5 Persons Living with HIV/Aids

Persons living with HIV and AIDs are vulnerable and have been subjected to discrimination because of their health status. Provision of legal aid for this category of persons requires not only that mechanisms are put in place to protect them from discrimination, but also that adequate health care services, anti-retroviral drugs and psycho social support are available and accessible. Mechanisms for collaboration with other sectors, particularly the health sector should be developed and incorporated into the service.

4.6 Accused Persons /Convicts/arrested persons.

Provision of legal aid is often viewed from the perspective of those who face the criminal justice system. The poor, illiterate or persons with limited legal knowledge are confronted by a legal system that is essentially complex in its rules and procedures. Legal aid provided by civil society organizations has tended to focus on this group. Consideration should be given to the needs of the indigent in the criminal justice system, either as accused persons or as prisoners upon conviction.

4.7 Women

Attention should be paid to the concept of "access to justice" for women by creating new avenues of access. There is considerable overlap in the personal, social and legal aspects of the legal problems that women face. Legal aid programmers should assess the legal needs of women who are more vulnerable to poverty related legal problems such as landlord and tenant matters, family law domestic violence cases, spousal or child support, protect the safety of a spouse or child, custody cases, and maintenance.

The national legal aid scheme should take cognizance of the fact that their experiences would necessitate a holistic approach to the delivery of legal aid services.

4.8 Refugees/ Internally displaced persons

Provision of legal aid services should also target persons who are declared refugees within the meaning of the Refugee Act, 2006 and internally displaced persons under the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012. Article 3 of the UN Convention relating to the status of Refugees provides for non-discrimination in the provision of services to refugees.

4.9 Indigent

Legal aid services have always targets persons who cannot afford to pay for legal services. Article 48 of the Constitution provides that "the state shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice". The national legal aid scheme should therefore make provision for legal aid services to the indigent.

5.0 POLICY APPROACH AND KEY ISSUES

5.1 Policy Approach

This Policy adopts a human rights based approach and recognises access to justice as a right guaranteed to all citizens as part of the basic framework for development and poverty reduction. The delivery of adequate and quality legal services is an important component of access to justice. It is the responsibility of the State to provide legal aid to those who cannot afford legal services in order to ensure access to justice for all, particularly for the poor, vulnerable and marginalised, including women and other special interest groups recognised in the Constitution. Before the promulgation of the Constitution of Kenya in

2010, the Government facilitated the provision of access to justice through the pauper brief system under the judiciary, the six pilot projects under the National legal aid and awareness programme and the legal aid mechanisms at the prisons department.

Legal aid goes beyond traditional legal representation in court and covers a wide array of services which include legal advice and awareness creation, provision of legal information, legal representation, assistance with resolving disputes other than by legal proceedings, assistance with taking steps preliminary or incidental to any proceedings; and assistance in arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings. Creation of legal awareness results in an informed populace who can more effectively articulate their legal issues and enforce legal rights. Legal aid should cover both civil and criminal matters.

The Policy envisages the establishment of a legal aid and awareness scheme which is national in scope and that extends to the whole territory of Kenya in all the counties. Decentralisation of services is vital to ensure effective reach to all citizens, including those in the remotest parts of the country.

This policy is therefore aimed at formulating a framework that shall:

a) Coordinate and govern legal aid and awareness initiatives;
b) Enhance access to justice through the reduction of the systemic and procedural complexities especially for the poor, vulnerable and marginalized like women, children, elderly, persons living with disability;.
c) Strengthen the roles of the various actors in the administration of justice including the Judiciary, National Police Service, the Kenya Prisons Services and the Law Society of Kenya;.
d) Establish a regulatory framework for the training of paralegal workers, make provision for their role, accreditation and recognition;
e) Ensure that information on legal aid and awareness is documented and analyzed;

f) Strengthen the existing legal aid initiatives with complementary legislation like the establishment of the Small Claims Courts, Courts of Petty Session, ADR in Civil Procedure Act, and;
g) Provide such other services as may be required to effectively exercise and access legal aid and awareness for women, children, persons living with disability, HIV and AIDS, older members of the society, the poor vulnerable and marginalised groups.
h) Enhance public participation through court users committees.

5.2 Key Issues in Access to Justice

5.2.1 Cost of Legal Services

At present the cost of legal services, in terms of advocates' fees, court fees and incidental costs is prohibitive to most Kenyans and constitutes a real barrier to access to justice. The Government shall establish mechanisms to ensure that the cost of legal services is affordable. This will include reduction, waiver or removal of filing and administrative court fees, and the provision of legal assistance or representation at State expense or at subsidized cost for those who cannot afford legal services.

5.2.2 Geographical Access to Courts

The Government shall take measures to increase the number of courts and ensure more equitable distribution of courts around the country in order that all people, including those in remote areas are reached. This will include establishment of mobile and virtual courts.

5.2.3 Physical Access to Courts

Accessibility of courts to persons with disabilities shall be ensured by, among others, equipping court buildings with ramps.

5.2.4 Legal Procedures and Language

The Government will take measures to streamline and simplify court procedure and court documentation, and institute client- friendly procedures and environment; Simplified court manuals or handbooks will be published in English, Kiswahili and other local languages. The Government shall also ensure that Braille and sign language are incorporated into the court processes.

5.2.5 Legal Awareness

Lack of Legal awareness is an impediment to access to justice in Kenya. Creation of legal awareness results in an informed populace who can more effectively articulate their legal issues and enforce legal rights. The Government shall spearhead a legal awareness programme aimed at promoting continuing dissemination of law in order to enhance legal knowledge among the citizenry. This shall be done using a variety of media including radio, TV, print media, mobile phones, handbooks and manuals, plain language statutes, school curricula and others. Targeted provision of legal information will be done with a view to enabling self-representation in appropriate cases.

5.2.6 Alternative Dispute Resolution

ADR as a process and technique for settling disputes between parties has gained wide acceptance in recent years. This is mainly attributed to the perception that ADR is not as expensive as litigation, is confidential, accessible and offers speedy justice.

ADR is classified into two historic types;

(i) Methods for resolving disputes outside of the official judicial mechanisms.
(ii) Informal methods attached to or pendant to official judicial mechanisms. It includesinformal tribunals, informal mediative processes, informal courts, formal tribunals and formal mediative processes.

The major differences between formal and informal processes are (a) pendency to a court procedure and (b) the possession or lack of a formal structure for the application of the procedure. The informal process is based on traditional/communal, religious or administrative structures.

Informal methods play an important role in Kenya and includes social processes before community elders like the Njuri Njecke among the Meru community, the Luo Council of elders among the Luos, the, Kaya elders for the Digo, Duruma and Matadetha for the Orma , the Ligurus in Western Kenya and before religious structures like the Maslah Courts in Isiolo and Garissa. The enactment of the Small claims court and the Court of Petty Sessions Bills that propose to do away with formal and technical procedures before formal courts in cases involving small claims and petty offences should be fast-tracked. This will create a formal bridging mechanism between the statutory and informal systems and provide an effective oversight of informal justice mechanisms.

The formal forms of ADR include arbitration (both binding and advisory or non-binding) and formal meditative process through a court mediation before a court appointed mediator or mediation panel. The Statute Law (Miscellaneous Amendments) Act, 2012 defines mediation as *an informal and non-adversarial process where an impartial mediator encourages and facilitates the resolution of a dispute between two or more parties, but does not include attempts made by a judge to settle a dispute within the course of judicial proceedings related thereto.*

In order to ensure broad access to justice for all citizens, the Government shall encourage and promote the use of ADR mechanisms including reconciliation, mediation, arbitration and traditional justice systems in line with the Article 159 of the Constitution. This will contribute to reduction of the heavy case load and backlog in the courts and enhance efficiency in service delivery.

5.2.7 Informal and Traditional Justice Systems

Informal justice systems often constitute the most affordable and accessible form of dispute resolution for the majority of Kenyans. The Government shall promote use of alternative these justice systems provided that they are in conformity with the Constitution and the Bill of Rights. Training of actors in the IJS will be undertaken to ensure that they comply with human rights and due process standards and that they allow for equitable participation of men and women.

5.2.8 Paralegals

Due to the limited number of lawyers relative to the population, paralegals play an important role in helping citizens to navigate the legal system. The Government shall encourage the participation of paralegals in the dissemination of legal knowledge and in the provision of legal assistance to members of the public. There is need to delimit the role of paralegals vis-à-vis lawyers and clarify the linkages with the legal profession. The Government shall undertake measures to streamline the training, certification, accreditation, remuneration and establish a code of conduct for paralegals.

5.2.9 Standards of Service Delivery

In order to ensure quality and consistency of delivery of legal services the Government shall establish quality assurance and control measures for providers of legal aid services. This will include training, certification and accreditation of legal aid and awareness providers, setting of ethical standards and monitoring of service delivery.

5.2.10 Sustainability of Legal Aid

The Government shall ensure adequate and sustainable funding of legal aid and awareness programmes. While the bulk of the funding will come from the State, there is need to

diversify the source of funds and services, by drawing from the legal profession, the private sector and development partners.

5.3 Priority Areas

Traditionally legal aid programmes have tended to focus on criminal cases at the expense of civil cases. This has had an adverse impact on those whose legal needs are predominantly in civil law matters, particularly in family and succession matters. The Government shall ensure that legal the legal aid scheme covers both criminal and civil cases. Legal aid in criminal cases will be available on priority where substantial injustice is likely to occur, while in civil cases where the outcome will affect livelihood.

5.4 Eligibility Criteria

The Government shall develop objective criteria to determine the eligibility of persons for legal aid. Such criteria should include a combination of considerations such as the means of the person concerned, the merits of the case, the gravity of the matter and other relevant factors. The criteria should not unduly prejudice any category of persons and should take into account the special circumstances of special interest groups, including women, children, persons with disability, persons living with HIV/AIDS and marginalised communities.

5.5 Delivery Models

There are a number of models used for delivering legal aid and awareness around the world. Each model has its particular strengths and weaknesses, and its usefulness depends on the particular context. They include the following:

5.5.1 Judicare Model

In this model individual lawyers are engaged to offer their legal services to indigent clients and receive payment from the State. One of the strengths of the judicare model is that it offers clients maximum freedom to choose their counsel, and ensures that the principal loyalty of the lawyer is to his or her client, whose interest would be defended or advanced as vigorously as would that of a private fee-paying client. It also ensures maximum independence from state interference or influence, particularly in cases where the state is directly implicated as a party (e.g., criminal prosecutions, child protection cases, immigration cases, and state benefit or entitlement claims). However, the model has limitations as it is most– most appropriate for individual cases and is not suitable for addressing community concerns, e.g. in cases of systemic disadvantage or discrimination. Further, in the Kenyan context where there is a dire shortage of lawyers, the model cannot operate effectively on its own.

5.5.2 Staff Lawyers

This is a model whereby lawyers and support staff are hired directly by the Government body in charge of legal aid. It is said to be less costly than its judicare counterpart because of economies of scale and specialization, particularly in processing high-volume, more routine cases. It is likely to yield more consistent quality of service; and can be made more accessible to clients through location of staff offices in the client communities. However, one weakness of this system is the possible lack of commitment or loyalty by the staff lawyers to their clients. Further, case loads can be prohibitive and lead to routine handling of cases without due attention to detail.

5.5.3 Community Legal Clinics

In this model, staff members are hired by each clinic and are accountable to a community-elected board responsible for the clinic's governance. This is a less individualistic and more

communitarian approach to the delivery of legal aid services and is more responsive to the priorities and concerns of the community in which these offices were located and, by which, to a greater or lesser extent, the offices were governed. They are also more proactive in undertaking community outreach and sensitizing disadvantaged and vulnerable citizens of their legal rights, and assisting them to take active steps to enforce them. In addition, they are able promote and advance law-reform initiatives and test-case litigation designed to address systemic deficiencies in the law which the judicare model may be unable to do.

5.5.4 Paralegals

Paralegals can be based in different kinds of organizations depending on the nature and scope of the work they undertake. They may be placed in "advice offices" service organizations run by paralegals exclusively for the purpose of offering basic counsel, community education, and referrals. Paralegals can also work in community-based or multi-service organizations where paralegal services are one of a series of services available to clients. They can also be based in law firms and legal resource centers. Paralegals ease the workload from lawyers by doing preparatory work such as interviewing clients, taking statements, and evidence gathering. Community-based paralegals have a deep knowledge of the people they serve and can provide solutions not just to individuals, but to whole groups. A legislative framework for the recognition of paralegals, and establishment of an oversight mechanism and standards for paralegals is crucial.

5.5.5 University Law Clinics

Universities play a crucial role in the training and development of legal professionals. Legal aid clinics, whether community or law faculty based, provide a wide range of services in severely under-serviced areas and the students provide support to lawyers by pre-screening for legal aid staff lawyers. These clinics help foster volunteerism amongst the students. They are therefore an integral part of legal aid services, rather than an extraneous add-on. Measures should be put in place to ensure adequate supervision of students and the Law

Society of Kenya Act reviewed to factor in the services that students can offer in a supervised setting.

5.5.6 Public Defender

The public defender would be an office of Government-paid lawyers, with the specific purpose of providing legal assistance and representation to the indigent. The Bomas draft of the constitution provided for the establishment of such an office under the Constitution but was subsequently removed in the draft that was promulgated. In other jurisdictions this office is equivalent to the office of the Ombudsman. The Government should therefore strengthen the office of the ombudsman under the Constitution to effectively discharge these functions.

5.5.7 Community Justice Centers

Community Justice Centres provide a "one-stop" service for legal aid clients especially in rural areas. They employ a variety of legal and paralegal professional staff depending on the geographical location, population they serve and the nature of cases prevalent in the area. Justice centres would be manned by paralegals with advocates playing a supervisory role.

5.5.8 Pro bono lawyers

Probono lawyers play a crucial role in any legal aid scheme especially where the service cannot handle a case because of a conflict of interest or the case requires technical capacity that is not available amongst the staff lawyers. Pro bono legal aid work may be used as a supplement to state-funded legal aid services, but it should not be regarded as a substitute. It is however important that the competence of the lawyer matches the complexity of the case. LSK should make it mandatory for its members to perform pro bono work on an annual basis and make it conditional for the renewal of practicing certificate.

5.5.9 Mixed Model

Due to the diversity of legal needs and the current socio-economic realities, a mixed model of service delivery can be employed to ensure that a complementary and enabling environment for legal aid and awareness services is established. This mixed system will take cognizance of the legal, social, cultural and economic realities in Kenya and ensure that the provision of legal aid and awareness services is sustainable and responsive particularly to the poor, vulnerable and marginalized. The specific configurations of service delivery models will be dependent on the local needs, culture and circumstances in such a way as to provide the most appropriate means of delivering services according to the context. Such a model would incorporate different means of service delivery including, but not limited to, judicare model, Public Defender, university legal aid clinics, mobile legal aid clinics, community justice centres and pro bono lawyers. Lessons and best practices from the existing pilot programmes as well as international best practices will be adopted.

5.6 Collaborations and Partnerships

While the responsibility of legal aid rests with the State, this Policy recognises the role of non-state actors in the provision of legal services. There is therefore need for strategic collaborations and partnerships with stakeholder institutions for delivery of legal aid and awareness services. These include, but are not limited to, the following:

a) NGOs, CSOs and CBOs, universities and other institutions already involved in provision of legal aid services stakeholders
b) Government agencies relevant to the administration of justice, such as police, prisons, local administration, probation services and children services, among others
c) Other Government agencies involved in provision of services
d) Private sector institutions including and not limited to insurance companies, employers, trade union, lawyers.

e) Universities and other institutions of learning
f) Development partners.
g) Council for legal education.

The Policy advocates an integrated and multi-sectoral approach to legal aid in which legal services are provided as part of community initiatives and Government services such as health, social services and children's services. Appropriate referral mechanisms need to be instituted. Court users committees play an important role in linking the various stakeholders in the justice sector and facilitating dialogue and common understanding of issues.
The Government should put in place mechanisms to monitor and evaluate institutions providing legal aid services to ensure efficiency and effectiveness.

6.0 FUNDING

The primary duty to fund legal aid rests with the Government. The provision of effective legal aid services depends on sustainable financing. This requires innovative sources of funding and creative solutions to finance legal aid initiatives. There is need to mobilize resources not only from Government allocations but also from the private sector, development partners, endowments and civil society to support legal aid and awareness. The Policy supports the establishment of a dedicated Legal Aid Fund funded by the Government among other sources of funding. Measures should be taken to promote volunteerism among members of the bar and provide incentives for pro bono services. Other measures such as tax rebates or tax breaks could be used to encourage corporations to contribute as part of their corporate social responsibility.

7.0 IMPLEMENTATION FRAMEWORK OF THE POLICY

7.1 Scope of Legal Aid and Awareness Services

The Government will provide legal aid and awareness services through the establishment of a national legal aid and awareness scheme. The provision of legal aid and awareness will broadly encompass advice, assistance, self-representation and representation, which includes:

a. Providing legal information, awareness and advice on legal rights, responsibilities, procedures and available remedies before, during and after legal proceedings;
b. Representation and litigation in court, tribunals or administrative bodies for the parties in dispute;
c. Providing assistance in drafting of court pleadings or legal documents;
d. Providing training and capacity building to clients on self-representation skills for court engagement;
e. Providing a framework and facilities like tax or fee waiver or rebates, awards or recognition, among others to augment the delivery of legal aid and awareness services;
f. Provide education on legal issues.
g. Providing research based information to support policy and law reform advocacy; and
h. Such other support services as may be required to effectively promote the right to legal aid, rights and remedies.

7.2 Institutional Framework

7.2.1 The National Legal Aid Service.

The National Legal Aid Service will be the lead agency for the provision of legal aid and awareness services in Kenya. The Service shall have the attributes of independence and accountability, and shall the powers and functions necessary to achieve its mandate. The

Service shall adopt a multi-sectoral approach and shall be comprise representatives from Government, judiciary, legal professionals, private sector, organised paralegal representatives and civil society legal aid providers, among others. The composition of the Service will adhere to the principle of equitable gender representation.

7.2.2 Functions of the Service

The Service shall, inter alia:

a) Establish a well-resourced secretariat which shall be headed by a Director;
b) Manage and administer legal aid and awareness programmes;
c) Mainstream diversity in all its programmes including gender, minorities, persons living with disability, HIV and AIDS;
d) Determine the eligibility criteria.
e) Establish and develop policy guidelines, direction and oversee the management of the national secretariat, decentralisation and coordination of legal aid and awareness countrywide;
f) Develop partnership, regulate, supervise and coordinate legal aid and awareness initiatives with both state and non-state actors;
g) Mobilize resources and create a national Legal Aid Fund;
h) Undertake or commission research, surveys to establish legal aid and awareness trends, impact and best practices nationally;
i) Submit periodic reports and recommendations concerning the implementation, management and impact of legal aid and awareness programmes to the National Assembly and circulate to all stakeholders in the justice sector;
j) Promote legal awareness and public education; and
k) Perform any other functions in furtherance to legal aid and awareness services.

7.3 Legal Aid Fund

a) The Government commits to establish a Legal Aid Fund which shall be administered by the National Legal Aid Service for the purposes of achieving appropriate legal aid and awareness services in Kenya.
b) Both levels of Government shall allocate a substantial portion of their respective budget to legal aid and awareness services in Kenya
c) The Government shall give incentives to the private sector and other entities which shall include rebates, tax waivers or limited tariffs on communication products like telephony, internet and postage to encourage their contributions and support to the Legal Aid Fund and Service.
d) The Legal Aid Fund shall receive funds from development partners and private sector from Corporate Social Responsibility (CSR) to complement state funding.
e) The Law Society of Kenya shall establish a Legal Aid levy which shall be an annual contribution made by its members.

7.4 The Coordinating Ministry

The Cabinet Secretary for the time being responsible for matters relating to legal aid shall oversee the implementation of the National Legal Aid and Awareness Policy. The Cabinet Secretary shall be responsible for the drafting, submission and implementation of the National Legal Aid Bill which shall establish the National Legal Aid Service and other interrelated legislation.

7.5 NALEAP institutional structure

The existing institutional structure of NALEAP shall be retained as the LAS. The LAS shall design such programmes for the effective implementation of access to justice envisioned in the objectives of this policy.

8.0 MONITORING AND EVALUATION

The LAS will develop monitoring, review and evaluation tools and mechanisms to determine standards and measure for the implementation and progress made on legal aid and awareness schemes nationally. This will ensure both financial and programmatic accountability, standardization of services and general operating procedures.

The LAS will continuously undertake research, collect, analyze information to monitor and document best practices and trends in legal aid and awareness practices in Kenya. Evaluation of the interventions will be undertaken to assess the impact and shortcomings of legal aid and awareness practices. These findings will inform the review and related policy cycle improvement(s) in respect to the content and context of legal aid and awareness.

9.0 REVIEW

This Policy will be reviewed every five (5) years to take into account the changing social, cultural, legal and economic realities relevant to legal aid and awareness in Kenya.

APPENDIX: Draft Strategy To Implement The National Legal Aid And Awareness Policy

December, 2013

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STRATEGY TO IMPLEMENT THE LEGAL AID AND AWARENESS POLICY

1.0 Overview of Strategy

This strategy should be read together with the draft National Legal Aid and Awareness Policy. It is important these final stages of the draft Policy to develop a framework to guide the Ministry on the implementation of the Policy. The strategy enables the articulation of the concrete actions required to facilitate realisation of the strategic objectives outlined in the draft Policy. The strategy seeks to be as practical as possible, bearing in mind Kenya's socio-economic realities, without losing sight of the guiding principles and values of the Policy. The strategy seeks the involvement of both State and non-State actors through strategic partnerships for mobilising of resources towards implementation of a national legal aid and awareness scheme.

1.1 Policy Vision

Access to justice for all

1.2 Policy Goal

To enhance facilitation of the administration of justice through establishing a national, sustainable and quality legal aid and awareness framework in line with the Constitution, regional and international human rights standards and the right to development.

1.3 Strategic Objectives

The legal aid and awareness strategy has identified eight objectives that are mutually reinforcing and should be pursued concomitantly by key institutions and stakeholders in the legal aid sector. These are:

1. To establish a framework for policies and laws that will ensure sustainable and quality access to justice to all.
2. To provide quality, effective and timely legal assistance, advice and representation for the poor, marginalized and vulnerable.
3. To enhance access to justice through continuous legal awareness.

4. To promote and institutionalise the Paralegal Approach in the administration of justice.
5. To promote the use of Alternative and Traditional Dispute Resolution.
6. To establish an implementation, monitoring, regulatory and support framework
7. To allot fiscal, human and technical resources for legal aid and awareness services in Kenya.
8. To undertake research to ensure evidence-based initiatives.

Strategic objective 1:

To establish a framework for policies and laws that will ensure sustainable and quality access to justice to all.

Actions for achieving this objective:

- Obtain parliamentary endorsement and approval of the legal aid and awareness policy
- Enact legislation on legal aid and awareness
- Establish appropriate institutional framework for implementing legal aid and awareness policy

Strategic objective 2:

To provide quality, effective and timely legal assistance, advice and representation for the poor, marginalized and vulnerable.

Actions for achieving this objective:

- Scale up existing pilot schemes
- Determine most suitable model (or mix of models) for implementing a sustainable national legal aid and awareness scheme To determine eligibility criteria for legal aid using objective standards such as the means test, merit test and any other relevant considerations
- Form strategic partnerships with private sector, CSOs, CBOs, NGOs and other non-Governmental entities to undertake legal aid and awareness

- Integrate legal awareness and legal aid into existing community initiatives and Government run social services such as health, probation and children services, among others.

Strategic objective 3:

To enhance access to justice through continuous legal education and awareness.

Actions for achieving this objective:

- Undertake legal awareness and education programmes through print and electronic media, school curricula, social fora etc.
- Translate the Constitution and key statutes into Kiswahili and other local languages
- Develop layman's versions of key legislation in simple language
- Develop self-representation manuals
- Conduct self-representation seminars
- Collaborate with the Judiciary and other institutions in organising Open Days, formulating service charters and other means of promoting legal awareness.

Strategic objective 4:

To promote and institutionalise the Paralegal Approach in the administration of justice.

Actions for achieving this objective:

- Training of paralegals
- Development of syllabi and curricula for trainers
- Accreditation of paralegals and putting in place
- Delimit scope of operation and competence for paralegals in relation to advocates

Strategic objective 5:

To promote the use of Alternative and Traditional Dispute Resolution.

Actions for achieving this objective:

- Training of trainers, e.g. in mediation and other ADR mechanisms
- Training of traditional justice leaders
- Development of syllabi and curricula for trainers

- Carry out research on ADR and traditional justice systems
- Document best practices in ADR

Strategic objective 6:

To establish an implementation, monitoring, regulatory and support framework

Actions for achieving this objective:

- Establish training and accreditation system
- Establish quality assurance systems
- Develop monitoring, review and evaluation tools and mechanisms

Strategic objective 7:

To allot fiscal, human and technical resources for legal aid and awareness services in Kenya.

Actions for achieving this objective:

- Raise and mobilise funds for legal aid and awareness programmes
- Recruit, train, build capacity and mobilise human resources for provision of legal aid and awareness services
- Mobilise technical resources to support implementation of legal aid and awareness programmes

Strategic objective 8

To undertake research to ensure evidence-based initiatives.

Actions for achieving this objective:

- Undertake research, collect, analyze information to monitor and document best practices
- Undertake assessment of legal needs, particularly of the poor, marginalised and vulnerable, including women, children and other special interest groups
- Undertake research into impact of legal aid and awareness programmes and trends in legal aid and awareness practices in Kenya.

2.0 Institutional framework & mechanisms to implement the Legal Aid and Awareness Policy

2.1 The National Legal Aid Service (LAS)

The National Legal Aid Service will be the lead agency for the provision of legal aid and awareness services in Kenya. The Service shall have the attributes of independence and accountability, and shall the powers and functions necessary to achieve its mandate. The Service shall adopt a multi-sectoral approach and shall comprise representatives from Government, judiciary, legal professionals, private sector, organised paralegal representatives and civil society legal aid providers, among others.

2.2 The Coordinating Ministry

The Cabinet Secretary for the time being responsible for matters relating to legal aid shall oversee the implementation of the National Legal Aid and Awareness Policy.

The Cabinet Secretary shall be responsible for the drafting, submission and implementation of the National Legal Aid Bill which shall establish the National Legal Aid Service and other interrelated legislation.

2.3 NALEAP institutional structure

The existing institutional structure of NALEAP shall be retained as a secretariat of the LAS. The LAS shall design such programmes for the effective implementation of access to justice envisioned in the objectives of this policy.

3.0 Monitoring and evaluation

The LAS will develop monitoring, review and evaluation tools and mechanism to determine standards and measure for the implementation and progress made on legal aid and awareness schemes nationally. This will ensure both financial and programmatic accountability, standardization of services and general operating procedures.

The Service will continuously undertake research, collect, analyze information to monitor and document best practices and trends in legal aid and awareness practices in Kenya. Evaluation of the interventions will be undertaken to assess the impact and shortcomings of legal aid and awareness practices. These findings will inform the review and related policy cycle improvement(s) in respect to the content and context of legal aid and awareness.

4.0 Key institutions and stakeholders in the legal aid sector

The Service will form strategic collaborations and partnerships with stakeholder institutions for delivery of legal aid and awareness services. The Service will provide overall leadership in the provision of legal aid and awareness services and will define the specific roles and responsibilities of key institutions and stakeholders. Some proposed arrangements would include the following:

1. Implementing institutions/agencies: these would be involved in actual delivery of legal aid and awareness. Such institutions would comprise NGOs, CSOs and CBOs who already have existing legal programmes including but not limited to the following:

   Law Society of Kenya (LSK), Federation of Women Lawyers (FIDA-K), Coalition for Violence Against Women (COVAW), Christian Legal Education and Research (CLEAR), Kituo Cha Sheria, Legal Resources Foundation (LRF), Children Legal Action Network (CLAN), Legal Aid Centre of Eldoret (LACE), Rift Valley Law Society (RVLS), -Juvenile Access to Justice Programme, Centre for Human Rights and Civic Education (CHRCE), Women Peace Link, Isiolo District Paralegal Network, Muslim for Human Rights (MUHURI), Community Legal Education and Advisory Trust (CLEAT), Caritas of the Catholic Justice and Peace Commission (CJPC), - Moi University Legal Aid Clinic, Paralegal Support Network (PASUNE), Kenya Human Rights Commission (KHRC) and others.

   Private law firms or advocates currently offering pro bono services would also be incorporated into these arrangements.

2. Collaborating institutions: these would offer support in terms of liaison and referral. They mainly comprise Government agencies or departments with a key stake in the justice sector, including but not limited to:
   Judiciary, Police, Attorney-General, Director of Public Prosecutions, Probation Services, Department of Children's Services, Prisons, Court Users Committees, Kenya National Commission on Human Rights, National Gender and Equality Commission, Ministry dealing with Health Services, Ministry dealing with matters of Public Health, Ministry dealing with matters of Gender, Children, Sports and Social Services
3. Development partners/institutions: these would play a critical role in providing financial and technical support to legal aid and awareness programmes. Such institutions would include but not be limited to the following:
   European Union, GIZ, Konrad Adenauer Stiftung, Friedrich Boll Stiftung, UN Women, UNDP.

5.0 Funding

LAS will form partnerships with development agencies and others, including the private sector, to develop a sustainable funding base for legal aid and awareness programmes. Potential sources of funding include:

- Legal Aid Fund
- Consolidated fund
- County funds
- CSR from corporations
- Grants and technical assistance from development partners
- Endowments

The scheme will seek to provide incentives to lawyers, for example by awarding Continuing Legal Education points for doing pro bono work. Similarly, corporations could be offered tax breaks for donating funds for legal aid and awareness programmes.

7.0 Review

This strategy will be reviewed every five (5) years to take into account the changing social, cultural, legal and economic realities relevant to legal aid and awareness in Kenya.