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KENYAN SECTION | Since 1959

FACT SHEET ON THE COST BENEFIT ANALYSIS OF LEGAL AID IN KENYA



Background

The Constitution of Kenya guarantees access to justice for all in Article 48. It obligates the state to ensure that cost of justice does not impede its access. In addition, the National Assembly enacted the Legal Aid Act 2016 to give effect to Article 48 of the Constitution by developing a legal aid scheme to assist indigent persons access legal aid. Nonetheless, the Act is yet to be fully implemented thus, the indigent are unable to exercise their right of access to legal aid services.

It is therefore important to have persuasive information and data that demonstrates that investing in legal aid programs is useful. Such information can be used by policy makers as a tool to better evaluate the economic impact of legal aid services and make informed decisions on how to address the justice gap and allocate funding most efficiently and effectively.



What are the legal provisions for legal aid in Kenya?

1. The Constitution of Kenya, 2010 - Article 48, 49, 50 and 159.
2. Legal Aid Act 2016.

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.

ARTICLE
48

An arrested person has the right:
(1) (c) to communicate with an advocate, and other persons whose assistance is necessary;

ARTICLE
49

Every accused person has the right to a fair trial, which includes the right -
(2) (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

ARTICLE
50



LEGAL

In exercising judicial authority, the courts and tribunals shall promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The traditional dispute resolution mechanisms shall not be used in a way that--

- (a) contravenes the bill of rights;
- (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
- (c) is inconsistent with this Constitution or any written law.

ARTICLE 159



2. What are the salient legal needs in Kenya and the market demand for legal aid?



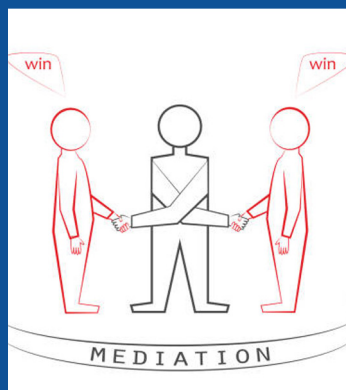
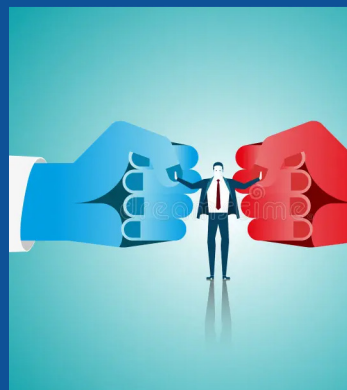
Civil Law

Child maintenance and custody, inheritance and succession with respect to land distribution



Criminal law

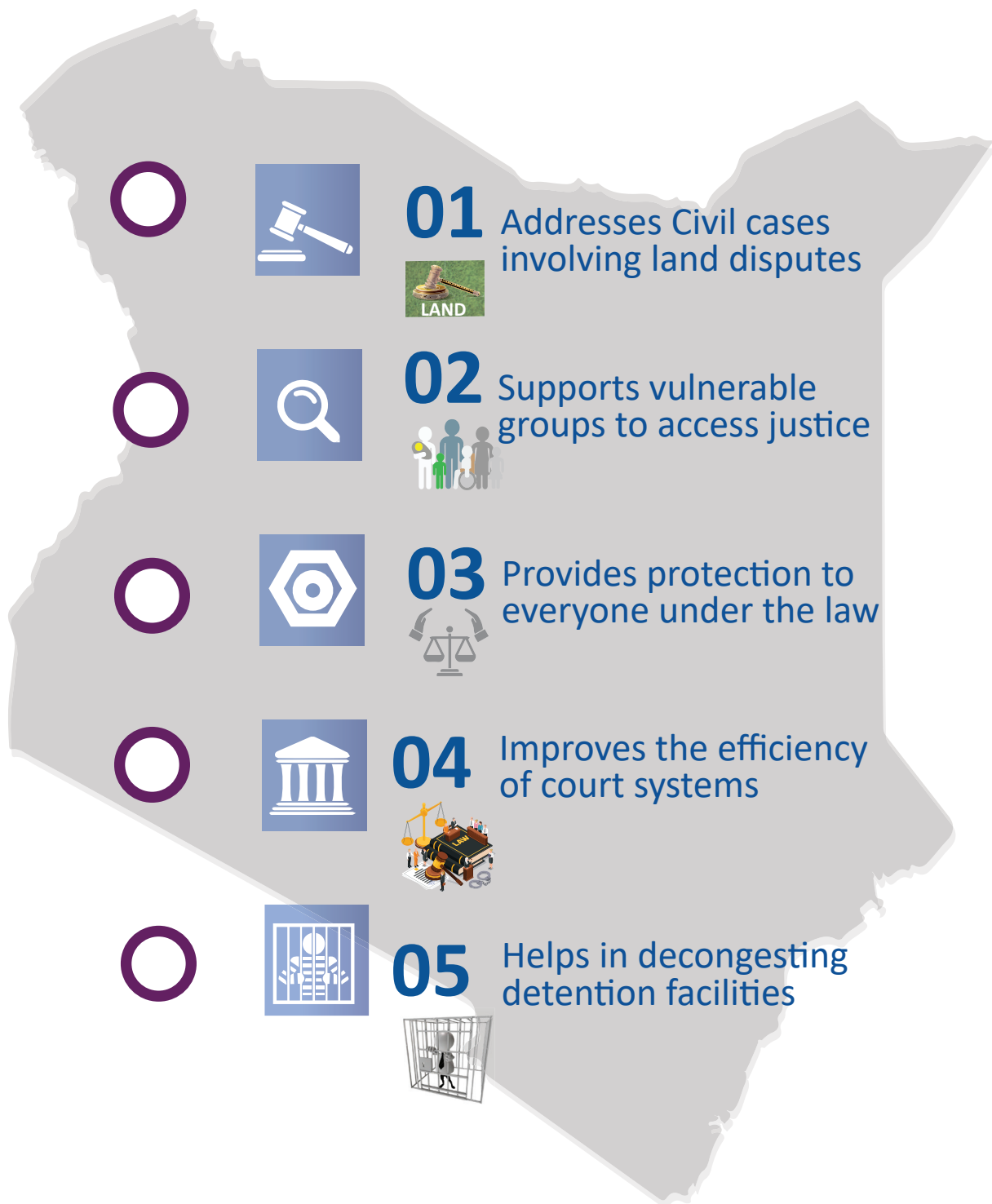
Petty offences, bail/bond applications for general criminal charges and pre-trial detentions



Alternative Dispute Resolutions

For example: Mediation, Negotiation, Arbitration, Alternative Justice Systems Models

3. What are the benefits of legal aid?



Key findings and recommendations from the study

a)

Legal aid services have a range of benefits including; the decongestion of prisons and police cells and the reduction in litigation costs.

b)

Legal aid services are underfunded in Kenya.

c)

There is a positive net value in investing in legal aid programs.



d)

The risks associated with legal aid services include:

- Prevalence of quacks in provision of legal aid services.
- Extortion of beneficiaries by certain cadres of legal aid providers.
- Inequitable or unjust resolution of disputes in informal dispute resolution for a Underfunding of Legal Aid.

e)

Legal aid monitoring and evaluation framework is essential in tracking the data provided by legal aid service providers.

f)

Further studies should be conducted on the cost benefit analysis of specialized legal aid services to specific population groups such as women.



Key Recommendations

a)

Legal aid services be expanded to have physical presence in all 47 counties.

b)

Funding for legal aid services be increased to 30% of the judiciary budget.

c)

Legal aid monitoring and evaluation Framework should be developed to evaluate legal aid services to inform further interventions in future.



LEGAL AID

d)

Monitoring and evaluation of legal aid services be done and data used to inform further interventions in future. The monitoring and evaluation call for the strengthening of this function within the justice system by developing and harmonizing M&E Frameworks for legal aid including by the National Legal Aid Service Board to support regular monitoring and reporting on quarterly and annual basis to inform further policy and operational interventions.



d)

Risk associated with Legal Aid services should be mitigated by; accreditation of legal aid service providers such as paralegals and regularizing informal dispute resolution platforms in consonance with Articles 159(2) (c) and (3) of the Constitution.

e)

Further studies should be conducted to generate required evidence for further improvement of legal aid services and access to justice.





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