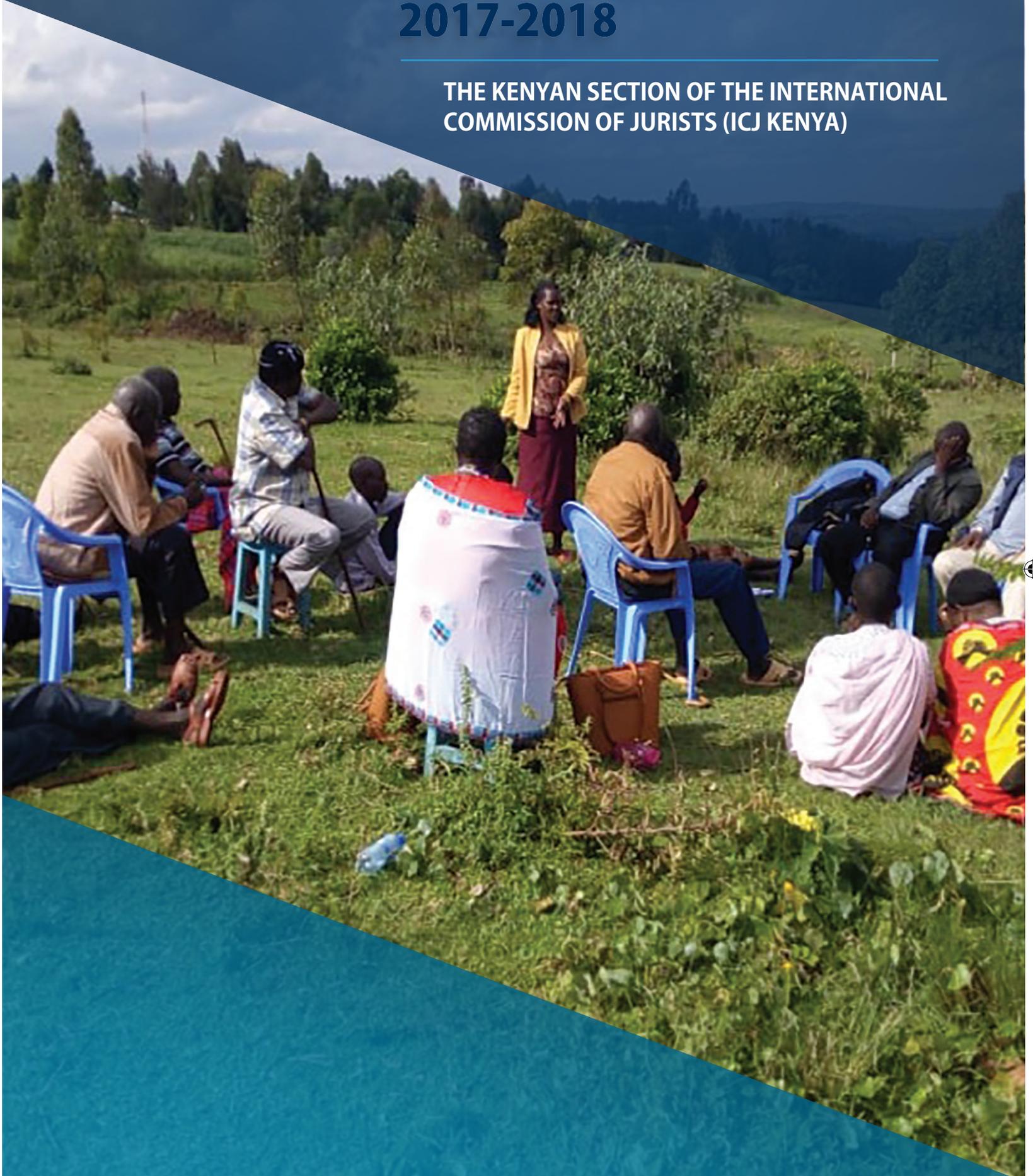


PARALEGAL REPORT

2017-2018

THE KENYAN SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA)



A paralegal trained by ICJ Kenya solving a domestic dispute in the community in Trans Mara County



Published by:

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Paralegal networks supported by ICJ Kenya since 1996

4

out of 6 paralegal networks have membership in the Court User Committees in various court stations around Kenya

121

active paralegals across the six paralegal networks.

280

clients assisted through legal advice and ADR between 2017-2018.

1204

clients assisted by paralegals between 2017-2018.

"ICJ Kenya will continue to empower paralegals to promote human rights, rule of law and good governance in localities where we do not have physical presence."

Dear readers,

In the two-year period from 2017 to 2018 covered by this report, ICJ Kenya has been promoting and strengthening its advocacy efforts through the application of approaches such as research, coalition building, litigation, partnerships development, capacity building, and awareness creation. The partnership with six (6) regional paralegal networks has given us presence at the grassroots level by offering legal aid services through the paralegal networks in the following regions: Meru, Kitui, Laikipia, Kwale, Taita Taveta, and Trans Mara. The paralegals are trained in basic law and human rights and they have become key players in access to justice, and promotion and enjoyment of human rights.

The paralegal networks' core target groups are persons living in rural areas and low-income earners who lack knowledge of their rights and court procedures, or lack the financial capacity to take their case through the formal court process. The paralegals ensure access to justice in rural areas; most significantly, they reduce the cost of litigation for low-income earners and access to alternative dispute resolution where possible.

The enactment of the Legal Aid Act in 2016 heralded a new era for strengthening paralegal movements in their contribution to access

to justice through provision of legal aid. Section 2 of the Act defines legal aid as, "legal advice, legal representation, assistance in resolving disputes by alternative dispute resolution, drafting of relevant documents and effecting service, creating awareness, recommending law reform and undertaking advocacy work on behalf of the community".

This report underscores the legal backing of paralegalism in Kenya and the fundamental task of monitoring, documenting and reporting human rights violations, civil disputes, and other forms of abuses and cases at the grassroots level through the great partnership between ICJ Kenya and the paralegal networks.

ICJ Kenya thanks the paralegal networks and all its partners for ensuring that the poor and indigent have access to justice.



Samwel Mohochi
EXECUTIVE DIRECTOR

NORMATIVE FOUNDATIONS OF LEGAL AID IN KENYA AT A GLANCE

The paralegal approach in Kenya has had tremendous impact and has acquired formal recognition in the legal system. The national and international legal and regulatory frameworks support the existence of paralegals as service providers in the criminal justice process. The Constitution of Kenya recognizes fundamental human rights which are reinforced by the principles of rule of law, equity, social justice, inclusiveness, equality, non-discrimination and protection of the marginalized. Below is a brief on the normative foundation of legal aid in Kenya.

The Constitution of Kenya, 2010 mandates States to ensure access to justice for all persons and if any fee is required, to make it reasonable and not impede access to justice¹.

The Legal Aid Act, 2016 facilitates the provision of affordable, accessible, sustainable, credible and accountable legal aid services to indigent persons in Kenya².

Persons Deprived of Liberty Act provides for the right to visits by human rights officers of duly recognized institutions for the purposes of inspecting and assessing the conditions under which such persons are held³ and further accords legal aid and legal assistance to aliens in prisons where consular assistance is not available⁴.

The Universal Declaration of Human Rights sets out in general terms, as a common standard of achievement for all peoples and all nations that everyone charged with a penal offence should be granted all the guarantees necessary for his defense⁵ including legal representation and legal aid.

The International Covenant on Civil and Political Rights mandates States to ensure that accused persons have adequate time and facilities for the preparation of their defense and to communicate with counsel of their own choosing⁶, and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it.⁷

The Convention on the Rights of the Child mandates State parties to ensure that the child is informed promptly and directly of the charges against him or her, and, if appropriate, through his or her guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense⁸. States are required to ensure that legal aid is provided to children in all criminal cases unless special circumstances would dictate otherwise.

¹Article 48 of the Constitution of Kenya, 2010.

²Section 3 of the Legal Aid Act No. 6 of 2016.

³Section 24(5) of the Persons Deprived of Liberty Act.

⁴Ibid at Section 11(2).

⁵Article 11 (1) of the Universal Declaration of Human Rights.

⁶Article 14(3)(b) of the International Covenant on Civil and Political Rights.

⁷Ibid at Article 14(3)(d).

⁸Article 40(2)(ii) of the Convention on the Rights of the Child.

United Nations Standard Minimum Rules for Treatment of Prisoners also known as Mandela Rules, purposes to enhance human right situations in places of detention. States are required to provide prisoners with access to effective legal aid and the opportunity to discuss with their legal adviser in a confidential situation free of interference.

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, mandates States to guarantee the right to legal aid in their national legal systems and incorporating the same in their constitutions⁹. Further, States have the responsibility of ensuring that legal aid is accessible, effective, sustainable, and credible¹⁰. States should also not interfere with legal aid providers¹¹ and are required to conduct public education on legal aid¹². Member States, like Kenya, are required to ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence is entitled to legal aid through every stage of their case. The State's responsibility to provide legal aid includes children accused of criminal offences.

The African Charter on Human and People's Rights (the Banjul Charter) provides that an accused person has the right to defense, including the right to be defended by counsel of his choice¹³. Despite the Banjul Charter not expressly stating that a defense counsel must be provided free of charge where the accused is unable to afford the legal fee, it can be implied that the government is mandated to ensure the defendant's rights to defense is attained.

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Dakar Declaration) mandates States to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states may base their legislation¹⁴.

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa provides that the delivery of effective legal aid must include paralegal services.

The Kyiv Declaration on the Right to Legal Aid provides a number of standards on legal aid that are relevant for assessing the performance of governments and other stakeholders. The declaration recognizes that the poor and vulnerable have a right to legal aid, and stipulates that the State has the primary responsibility for creating legal aid schemes.

⁹Article 14 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

¹⁰Ibid at Article 15

¹¹Ibid at Article 16

¹²Ibid at Article 17

¹³Article 7(1)(c) of the African Charter on Human and People's Rights (the Banjul Charter).

¹⁴Ibid at Article 45(c).

THE ICJ KENYA PARALEGALS REGIONAL COORDINATION

ICJ Kenya paralegals project began in 1996 with the recognition of a need for human rights advocacy around the country. Through a baseline survey to determine the human rights violations and needs in various areas, Embu was mapped out as a pilot and pioneer region with 45 paralegals trained for more than two years on human rights issues and interventions. This pilot project ended in 2000. In 2002, more baseline surveys were conducted in Kitui, Meru, and Taita Taveta regions. This led to the commencement of the first generation of ICJ Kenya paralegals in those three regions with a total of 95 paralegals trained on human rights and basic legal skills underscored in the baseline surveys. In 2004, the paralegal project was extended to Kwale, Laikipia, and Trans Mara regions. This led to an addition of 95 trained paralegals, increasing the total number across the six regions to 190 paralegals. ICJ Kenya is currently supporting the six paralegal networks to monitor and document cases of human rights infringement and also to settle disputes through Alternative Dispute Resolutions (ADR)¹⁵ mechanisms.

ICJ Kenya has developed a strategic plan for the period from 2016 to 2020, which outlines the roadmap and goals for the organization for the upcoming years. It was guided by its vision as a premier human rights organization promoting a just and equitable society, through programmatic interventions on human rights, access to justice, governance, and international justice. The strategic plan is valuable for evaluating progress and changing methods in the course of implementing activities.

ICJ Kenya recognizes in its strategic plan that partnership development plays a critical role in fulfilling its vision, mission, and values. Working at the community level ensures that human rights are upheld. However, through partnerships and networks, there is still a need to further strengthen and sustain the promotion and protection of human rights at the grassroots level. One of the ways of ensuring this is through the provision of legal assistance to low-income earners whose rights have been violated or persons who are in conflict with the law. The local partnerships have enabled ICJ Kenya to work in regions out of its reach and physical presence.

¹⁵Section 2 of the Legal Aid Act, 2016 defines "Alternative Dispute Resolution" as settling a dispute by means other than through the court process and includes negotiation, mediation, arbitration, conciliation and the use of informal dispute resolution mechanisms.

REGIONAL NETWORKS

Meru County

The Meru Paralegal Based Community Organization was registered in 1999 under the Ministry of Social Services as a Community Based Organization (CBO). The CBO is based in Meru town and is managed by a County Coordinator. It currently has a total of 25 active paralegals who volunteer their time to provide legal aid services.

The CBO has not only assisted many clients through ADR mechanisms, but also through access to justice through formal court procedures. The organization's mission is to reach many people in the larger Meru County by conducting outreach and awareness creation on human rights.



The Meru paralegal coordinator, Mrs Judith Wangari (in blue) training the youth on sexual and reproductive health rights



Members of the Kwale Paralegal network pose for a photo with the officer Commanding Station at lungalunga police station after a closed door meeting to discuss child trafficking in Kwale County.



Two women seeking legal advice at Taita Taveta paralegal network office

Trans Mara Sub-County

The Trans Mara Paralegal Group is registered as a self-help group under the Ministry of Social Services. It handles issues requiring redress throughout Narok County. It currently has 25 active paralegals who are trained to offer basic legal services. They also conduct sensitization activities on issues encompassing early marriages, education to alleviate the illiteracy levels and children rights.

Kitui County

The Kitui Paralegal Project is registered as a CBO. It has a great partnership and collaboration with the children's department and the local administration in Kitui County in their provision of legal aid services. Currently, it has 19 active members who go across the county to create awareness and settle disputes through mediation and referral to other appropriate institutions.

Laikipia County

The Laikipia Legal Forum is registered as a CBO, and has a total of 24 members providing free, voluntary services to communities across Laikipia County. Through partnerships with other stakeholders, they have been able to solve numerous matters through ADR, and referral to the court when necessary.

Kwale County

The Kwale Paralegal Network (KPN) was registered as a CBO in 2017. It operates throughout the four sub-counties in Kwale: Msambweni, Matuga, Lungalunga, and Kinango. It currently has 16 active members who undertake different assignments depending on their area of expertise and the ability to follow up on cases. KPN has been involved in sensitization activities in schools to raise awareness on issues such as teenage pregnancies, early marriages, and drug abuse. It also works in the larger community to address harmful traditional practices. They are currently seeking capacity building on the area of extractives in Kwale County.

Taita Taveta County

The Taita Taveta Paralegal Organization is registered as a CBO. It has 12 active paralegals who partner with other CBOs in the region to promote women's rights and campaign against Gender Based Violence. The paralegal office is also involved in child protection program through collaboration with other CSOs. The paralegals use ADR as one of the core approaches of settling disputes across the four sub-counties in the broader Taita Taveta County.

Number of Paralegals in the 6 Regional Networks

PARALEGAL NETWORK	NUMBER OF ACTIVE MEMBERS	GENDER	
		MALE	FEMALE
Meru Paralegal CBO	25	16	9
Trans Mara Paralegal Project	25	15	10
Kitui Paralegal Project	19	13	6
Laikipia Legal Forum	24	11	13
Kwale Paralegal Network	16	9	7
Taita Taveta Paralegal Organization	12	6	6
TOTAL	121	70	51

LEGAL AID, AWARENESS & REPRESENTATION BY ICJ KENYA PARALEGALS

Case Data Analysis Per Region

CASE REGION	MERU	TAITA TAVETA	LAIKIPIA	TRANS-MARA	KITUI	KWALE	TOTAL
LEGAL ADVISE & ADR	205	-	65	2	8	-	280
DOMESTIC DISPUTES	70	-	19	32	60	-	181
CHILDREN CASES	90	100	60	22	44	14	330
LAND SUCCESSION	54	4	10	15	-	1	84
	30	7	26	-	34	3	100

CASE REGION	MERU	TAITA TAVETA	LAIKIPIA	TRANS- MARA	KITUI	KWALE	TOTAL
MAR- RIAGE & DIVORCE	11	2	-	-	10	7	30
CRIMINAL	30	4	-	5	20	2	61
CIVIL CAS- ES	-	2	4	-	24	-	30
SEXUAL OFFENCES	41	3	-	2	-	-	46
WOMEN RIGHTS	7	-	-	-	29	1	37
MATRI- MONIAL PROPERTY	-	7	-	5	-	-	12
COM- MERCIAL DISPUTES	-	-	-	1	-	-	1
TENANCY	-	-	6	-	-	-	6
HEALTH	-	-	-	-	-	4	4
ENVIRON- MENT	-	-	-	-	-	2	2
TOTAL	538	129	190	84	229	34	1204

During the period under review, the Meru paralegal network recorded the highest number of clients assisted among the paralegal networks. A total of 1,204 clients were assisted by the ICJ Kenya paralegal networks with cases settled through ADR registering the highest across the regions at 280.

Paralegal Partnerships

ICJ Kenya regional paralegal networks have collaborated with other institutions to offer legal aid services. Specifically, all the six regions work closely with the police, the Department of Children Services at the county level, and the National Government Administrative Offices at the national level. They also work closely with other community-based organizations and Non-Governmental Organizations to create awareness in the various regions they represent. For example, the Taita Taveta paralegal organization works with World Vision on child protection program and Sauti Ya Wanawake on championing for women's rights and gender issues; and the Meru Paralegal community-based organization works with the county social services department to assist people living with HIV/AIDS. They also collaborate with religious organizations to raise awareness.

ENGAGEMENT WITH COURT USERS COMMITTEES (CUCS)

The CUCs provide a platform for actors in the justice sector at the local or regional level, to consider improvements in the operations of the courts, coordinate functions of all agencies within the justice system and improve the inter-

action of these stakeholders¹⁶.

There are forums where different organizations meet, brain-storm, and direct synergy towards facilitating and improving the courts' administration of justice. They have been found to be of tremendous importance in improving coordination among the different core players within the system of the administration of justice¹⁷. The Committees were borne out of a need to coordinate responses to legal issues by the Judiciary. They provide an opportunity to address these issues in an open and deliberative way, through both precautionary and responsive approaches¹⁸.

Out of the six paralegal networks that ICJ Kenya supports, four of them are members of CUCs at various courts: the Taita Taveta Paralegal Organization has a representative in both the Wundanyi Court CUC and the Taveta Court CUC; the Trans Mara Paralegal Group is represented in the Kilgoris Law Courts; the Meru Paralegal CBO is represented in the Meru Law Courts; and the Kitui Paralegal Project has representation in the Kitui Law Courts. The two networks that do not have membership to CUCs are the Kwale Paralegal Network and the Laikipia Legal Forum. However, both networks have submitted applications to be considered as members.

The representation of these networks in CUCs has been beneficial as it facilitates improved interactions with various relevant agencies.

¹⁶Dr. Willy M Mutunga, 'Guidelines for Court Users Committees' (2013) <https://www.law.berkeley.edu/wp-content/uploads/2015/10/Kenya_NCAJ_Guidelines-for-CUCs_Nov-2013.pdf>

¹⁷Justice Isaac Lenaola, 'Public Participation in Judicial Processes' (2011) <<http://kenyalaw.org/kl/index.php?id=1934>> accessed on 1 June 2016.

¹⁸KELIN Kenya, 'Dialogue on Access to Justice in the context of Women Land and Property Rights' (2016) <<http://www.kelinkenya.org/tag/court-users-committee/>> accessed on 1 June 2016.

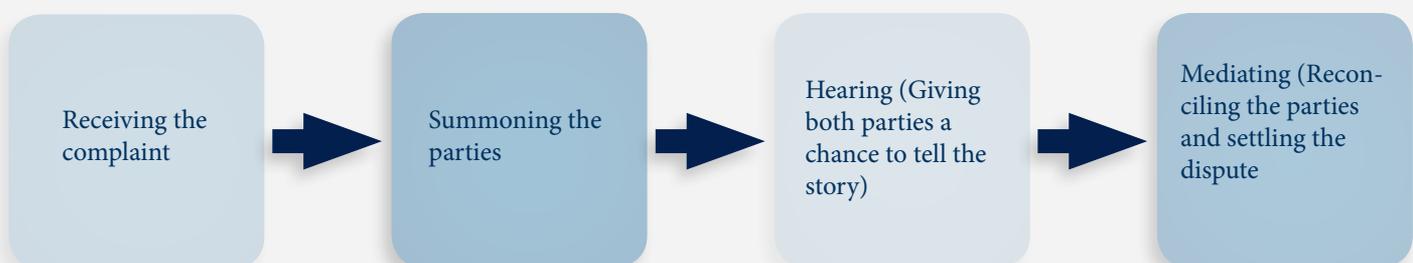
This has enhanced the advocacy agenda of the paralegals.

The engagement and coordination with other CUC members has led to the establishment of courts in various regions. For instance, the collaborations in Trans Mara has led to the establishment of two mobile courts: one in Emurwa Dikir Constituency and another one in Lolgorian. Additionally in Taita Taveta, a proposal has been made to have a court in Mwatate sub-county.

Paralegals and Alternative Dispute Resolution

ADR, in a nutshell, is a means of settling disputes without reference to the litigation process. It entails a neutral assessment of issues through negotiation, mediation, and arbitration. The ADR procedures are normally less costly and more expeditious. ICJ Kenya has trained its regional paralegals in ADR mechanisms such as reconciliation and mediation, which they have been using at the community level to settle disputes in the various regions. Some of the matters handled through ADR include domestic disputes and child maintenance.

A simple dispute resolution process adopted by paralegals



Most of the civil disputes that need intervention by the paralegal networks are settled through ADR. Criminal cases are usually referred to the police. However, where the complainant agrees, some minor criminal matters such as simple assault are settled through reconciliation.

MILESTONES AND CHALLENGES

Milestones

Extensive capacity building through community initiatives.

Expedient settlement of civil disputes at the community level through ADR mechanism. Majority of the civil disputes like family matters, children cases on maintenance, etc., have been settled

through ADR when the disputing parties are cooperative.

Better engagement and increased partnerships with other organizations; this enhances recognition in the community.

The establishment of new offices in Trans Mara and Kwale; the presence of offices in the two regions has led to better interactions with communities in the region.

Challenges

Insufficient funds to traverse the counties: The paralegals cover very wide regions to deliver services. This requires funds not only for transport but also mobilization.

Public expectation and perception: Although the paralegals offer their services for free, they are approached with the expectation to facilitate cases that would be better settled in court. When community members are advised to go to court, they expect the paralegals to not only draft their pleadings but also offer them the filing fees. Further, since the paralegals cannot commission documents, which require an advocate, any referral to an advocate is perceived negatively.

Lack of recognition: Paralegals provide voluntary services in communities where they reside. There is insufficient recognition of paralegals since the Legal Aid Act, 2016 has not been implemented fully for commencement of accreditation.

Shortage of Paralegals: Majority of the ICJ Kenya paralegal networks have few active paralegals to address issues in their respective regions. Since it is voluntary work, some of them lack the motivation to work as paralegals.

Lack of office equipment like computers and photocopying machines: Printing and scanning of documents usually has to be done in cyber cafes which are far from the office. This has proven to be quite expensive.

WAY FORWARD AND CONCLUSION

ICJ Kenya will continue to support the paralegal networks, and depending on the need and availability of funding, continue to identify regions where new networks can be established. ICJ Kenya will also advocate for the operationalization of the Legal Aid Act, 2016 so that paralegals can be accredited sooner than later. Other issues that will be addressed directly by the paralegal networks include: fundraising for advocacy and legal aid activities; capacity building through training on various legal requirements like drafting court documents, proposal writing, and refresher courses on ADR; and training paralegals as trainers of trainers to support awareness creation on the grassroots level.



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