

2019 ICJ KENYA ANNUAL PARALEGAL REPORT

Advancing Access to Justice in Select Counties in Kenya
through Paralegal Coordination

Access to justice in counties through paralegal coordination

Introduction

For over three decades, the Kenyan Section of the International Commission of Jurists (ICJ Kenya) has coordinated a network of paralegals in Trans Mara, Taita Taveta, Kwale, Kitui, Meru and Laikipia counties. Paralegals play an integral role in the promotion of access to justice for indigent and marginalized persons at the community and grassroots level. Their role is anchored in the Constitution of Kenya and the Legal Aid Act, 2016.

Based on ICJ Kenya's 2018 annual paralegal report, it was evident that the paralegals continued to play a critical role in the expeditious settlement of civil disputes at the community level. The paralegals utilised Alternative Dispute Resolution (ADR) mechanisms such as mediation and conciliation, and also drafted court documents for people who could not afford the services of an advocate. The paralegals continued to track human rights violations in the communities and created awareness on human rights issues in collaboration with stakeholders in the justice system. They also engaged civil society organizations in discussions on promotion of effective administration of justice.

This report is the second in a series of ICJ Kenya's annual paralegal reports. It highlights the activities carried out by the paralegal networks in 2019, their successes and impact, and areas of improvement. The report also gives a brief outlook of proposed interventions for 2020.



ICJ Kenya Meru paralegals network members at a training

2019 in focus:

Community outreach and legal aid

ICJ Kenya and the paralegal networks in Taita Taveta, Kwale, Kitui, Meru and Laikipia held several public forums in their respective communities. The objectives of the forums were twofold: to create awareness on human rights and to provide legal aid to communities. A total of one hundred and thirteen (113) clients were assisted during the legal aid. In one of the legal aid community drives, ICJ Kenya partnered with the Law Society of Kenya and conducted legal aid at the Kisii men and women prison. A total of one hundred and thirty (130) inmates were attended to during the legal aid. ICJ Kenya noted that the inmates were in dire need of legal aid services so that they could represent themselves adequately during trial. A majority of the inmates were petty offenders, a situation which leads to congestion of prisons in the country.

Trainings and refresher courses

ICJ Kenya continued to train and offer refresher courses to the paralegal networks on emerging legal issues and human rights. A total number of sixty (60) paralegals were trained across the networks. The training presented the paralegals with an opportunity to build their capacity by expanding their knowledge on emerging areas of human rights law.



Trans Mara paralegals solving a family dispute in Shangoe village in Trans Mara

Areas of focus for the trainings

Opportunities for paralegals in the Legal Aid Act:

The Legal Aid Act, 2016 is a crucial piece of legislation for the provision of legal aid and the promotion of access to justice. The Act highlights accreditation and the role of accredited paralegals. It further establishes the National Legal Aid Service (NLAS), the Legal Aid Fund and the eligibility criteria for accessing legal aid in Kenya. An accredited paralegal is defined as a person accredited by the service to provide paralegal services under the supervision of an advocate or an accredited legal aid provider. The definition brings into perspective a formal mechanism for recognition of paralegals in Kenya under NLAS. The Act also advocates for the use of ADR in settlement of disputes and envisages four key parameters of legal aid: legal advice, legal representation, legal assistance and legal awareness.



ICJ Kenya providing training to some of the paralegals under the Kitui Paralegal Network

Plea bargaining as an alternative to criminal prosecution:

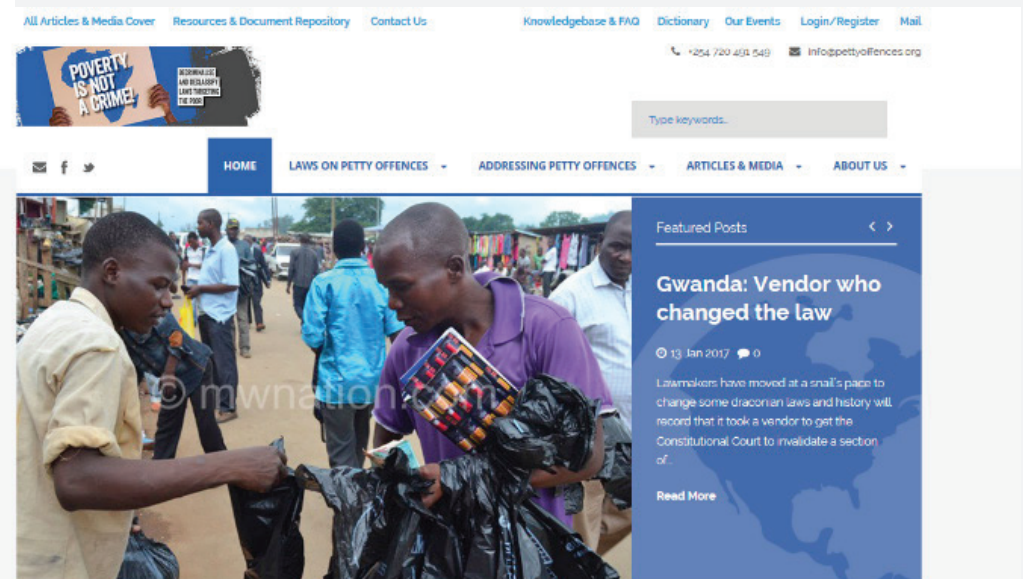
Plea bargaining is among the alternatives to criminal prosecution that the Office of the Director of Public Prosecution (ODPP) seeks to advance in order to reduce case backlogs in court and decongest prison population. It is the process by which an accused person and the prosecution can jointly agree to end a case with the approval of the court. The main goal of plea bargaining is to narrow down the issues in a criminal case and arrive at a just outcome within the shortest possible time. This includes the possibility of reaching an agreement about acceptable plea[s] of guilty and recommendations on sentencing. This agreement is arrived at mutually and reduced into writing in the form of a plea agreement before court.



ICJ Kenya chairman
visit at the prison

Campaign to decriminalize and reclassify petty offences in Kenya:

Petty offenses are minor criminal acts that attract less severe punishment and are considered to be of a lower level of seriousness compared to felonies. These offenses include: idleness, loitering, begging, drunkenness, disorderliness, and generally offensive behaviour. Petty offenses mostly affect hundreds of poor, vulnerable and minority populations in Kenya such as hawkers, sex workers, injecting drug users, street families and homeless persons, among others, who face punishment, deprivation of liberty, and violence meted on them by law enforcement agents. Following the training on petty offences in Kitui, paralegals managed to document thirteen cases involving petty offenders mostly accused of being drunk and disorderly.



Summary of cases reported to the paralegal networks

The table below highlights the nature and number of cases that were reported to the various paralegal networks in 2019. Children related cases were the highest followed by land related cases. Employment related cases were the lowest in number.

Nature of Cases	Number of Cases per Region						
	Kitui	Kwale	Laikipia	Meru	Taita Taveta	Trans Mara	TOTAL
Land cases	28	-	52	83	12	37	212
Succession	13	2	-	5	9	-	29
Family/domestic dispute	70	15	15	38	24	40	202
Gender based violence	22	-	-	-	-	-	22
Children cases	30	20	25	36	74	38	223
Sexual offence	5	-	-	3	-	21	29
Petty offences	13	-	-	-	-	-	13
Environment related cases	-	9	-	-	-	-	9
Employment related cases	-	-	3	-	1	-	4
Debt recovery	10	-	6	-	1	-	17
TOTAL	191	46	101	165	121	136	760

Impact stories

The paralegals have reported remarkable successes in their interventions. An example is a land dispute between two brothers that was reported to the Meru Paralegal Network Office. John Murume and Michael Mwendwa (not their real names) owned a piece of land jointly. Michael sold the piece of land to a third party without the consent of his brother. The aggrieved brother reported the case to the paralegal network and the coordinator, Mrs. Judith Wangari, summoned the brothers and the buyer of the land to her office. She informed them about the value of out of court settlement and the steps involved. The parties agreed to settle the matter amicably. The purchaser agreed to compensate the aggrieved brother with an alternative parcel of land equivalent to the plot that he initially owned.

In Taita Taveta, Jeremiah Cherezuga, the coordinator of the Taita Taveta paralegal network, assisted two step brothers to represent themselves in court in a land matter. The case involved three step brothers named Peter Shake, Austine Mghanga and Java Mwaeghwa .Peter Shake was claiming that his step brothers had registered land that belonged to them jointly in their names without including his name or involving him in the process. Mr Jeremiah summoned all the parties to his office in order to try and reach an amicable solution. However, the efforts to settle the matter out of court were not successful. Peter sought the services of a lawyer to file a suit and the paralegals assisted his step brothers to file a defence because they couldn't afford a lawyer. The suit has since been determined in favour of Austine Mghanga and Java Mwaeghwa.



ICJ Kenya providing training to some of the paralegals under the Kwale Paralegal Network

Challenges

- a) Lack of financial resources to facilitate the work of the paralegals.
- b) Insecurity when handling sensitive cases.
- c) Mistrust between advocates and paralegals because advocates refer to them as quacks.

Recommendations

- a) Recruitment of more paralegals is necessary to meet the demand for legal aid by the poor and marginalised. Recruitment of paralegals in prisons will ensure prisoners are able to articulate their rights during trial.
- b) Training of paralegals on issues and cases that are prevalent in their respective regions will build their capacity to handle the cases.
- c) Community outreach programs in collaboration with strategic partners such as constitutional commissions such as National Land Commission (NLC) and NLAS will enable members of the community to be aware of their rights and responsibilities.
- d) Resource mobilisation for activities and administration related costs will make the work of paralegals efficient.



ICJ Kenya Meru Paralegal Network at a community sensitization forum and legal aid in Meru County.

Conclusion

ICJ Kenya will continue partnering with paralegal networks and support them to monitor and document human rights violations at the grassroots level. Full implementation of the Legal Aid Act will ensure that paralegals receive accreditation.

Therefore, ICJ Kenya will support the relevant government agencies to actualise the legal Aid Act. ICJ Kenya also plans to continue building the capacity of paralegals through trainings in order to enable them to provide sound legal advice to community members.



ICJ Kenya Kwale Community Paralegals Training on monitoring, documenting and reporting Human Rights violations and abuses at grass root levels.