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KENYAN SECTION | Since 1959

2023 ANNUAL PARALEGAL REPORT



*Accelerating Access to Justice for the Poor and
Marginalized Through Promoting Alternative
Justice Systems.*



ACKNOWLEDGEMENT

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a membership, non-governmental, non-partisan, and not-for-profit organisation registered as a society in Kenya since 1959.

ICJ Kenya's mandate is to promote human rights, democratic governance, justice, and the rule of law in Africa. In recent years, ICJ Kenya has identified strengthening access to justice and legal redress for poor, marginalised, and minority communities as thematic areas of interest and captured as strategic issues in its Strategic Plan 2021-2024.

This report, therefore, summarises the activities and interventions for 2023 in our efforts to implement and realise our access to justice strategic objective. Towards this end, ICJ Kenya is profoundly grateful to all individuals who contributed to the successful production of this report.

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Protas Saende

**Chairman
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FOREWORD

Article 22 of the Constitution of Kenya, 2010, provides for the enforcement of the Bill of Rights and empowers ‘everyone’ to institute court proceedings on the basis that a right or fundamental freedom has been denied, violated, infringed or threatened. In addition, Article 49(1) (c) provides for an arrested person to communicate with ‘other persons whose assistance is necessary’, while Article 50(7) allows for intermediaries to assist complainants.

Article 159(2)(c) promotes the resolution of disputes through alternative mechanisms such as mediation, reconciliation and other traditional means. These constitutional provisions give effect to Article 48, which guarantees access to justice for all and provides an anchor for paralegals services in Kenya through the Legal Aid Act 2016. Research indicates that a majority of Kenyans face impediments in their quest to access justice, a situation exacerbated by a lack of legal literacy and high levels of poverty. Further, Goal 16 of the United Nations 2030 Agenda for Sustainable Development recognizes the importance of access to justice in the development of peaceful and inclusive societies. Indeed, access to justice is indispensable to ensuring the protection of fundamental human rights in any society.

Paralegals play a key role in providing legal aid services for the poor and marginalized in the communities, which, in summary, includes enlightening the public about their legal rights and assisting them in solving legal problems. Moreover, paralegals are at the forefront of promoting justice through the resolution of disputes via alternative mechanisms like AJS; negotiate for members of local communities; consult and liaise with lawyers and legal aid organizations; mobilize communities to defend and advocate for their rights; prepare legal documents; monitor and document human rights violations; conduct preliminary investigations and fact-finding before referring briefs to advocates; refer matters to relevant parties for resolution; lead and organize communities to lobby and advocate for legal reforms; and make referrals.

Overall, community paralegals serve as grassroots champions of justice, ensuring that their communities respect and uphold legal rights. Their efforts contribute to a more inclusive and equitable legal system where access to justice is not limited by financial resources or geographical location. Paralegals’ role in providing community-level legal services cannot be overemphasized. Equal access to the law for all is critical for maintaining the rule of law in any jurisdiction.

The provision of legal aid services bridges the gap between access to justice and indigence; furthermore, paralegals serve other functions, such as mobilizing the community for public participation, which is now a constitutional requirement in certain governmental undertakings, and facilitating alternative dispute resolution within the legal and human rights framework. They can assess community needs with a legal lens and engage in all necessary advocacy with authorities. Kenya has taken the lead among developing countries in providing legal aid services through a governmental scheme, and it is hoped that it will meet with success.

In the words of the first president of the Republic of South Africa, Nelson Rolihlahla Mandela, *“To deny people their human rights is to challenge their very humanity”* It is for this reason that we should ensure that every person can access justice in Kenya despite their social status in the community.

Vincent Kimathi



Programme Manager, ICJ Kenya

INTRODUCTION

The respect and protection of human rights can be guaranteed only by the availability of effective judicial mechanisms. Access to Justice is an essential component of the system of protection and enforcement of human rights. It is a broad concept that captures both formal and informal justice mechanisms. The right to access, therefore, not only means access to courts but also empowerment of citizens to resolve their disputes in alternative dispute resolution forums of their choice.

ICJ Kenya is committed to strengthening and promoting access to justice and legal redress for the poor, marginalized, and minority communities. A hallmark of ICJ Kenya's work in promoting access to justice is through the entrenchment of paralegalism. For over three decades, ICJ Kenya has coordinated a network of paralegals in Trans Mara, Taita Taveta, Kwale, Kitui, Meru and Laikipia regions of Kenya. The partnership with six regional networks has given us presence in the grassroot level by offering legal aid services.

ICJ Kenya's research-based study on the Cost-Benefit Analysis of Legal Aid identified that the provision of legal aid leads to considerable direct benefits to the justice system by increasing the efficiency of the system and the courts. For instance, the resolution of legal issues at an early stage and the diversion of cases from the courts toward dispute resolution mechanism forums like AJS.

In the 2022 report, the role of paralegals in promoting access to justice in the communities was illuminated. The statistics indicate that 768 members of the community benefitted from the six paralegal networks through legal aid. This report therefore, underscores the importance paralegals in promoting access to justice with the great partnership of the six paralegal networks.

■ Alternative Justice Systems at a glance

Background

In March 2016 a taskforce on Alternative Justice Systems was appointed to assess various Traditional, Informal and other Mechanisms used to Access Justice in Kenya (Alternative Justice Systems). The principle objective of the taskforce was to examine the legal, policy and institutional framework for AJS and develop a national policy to give effect to Article 159(2) of the Constitution of Kenya 2010 which requires the judiciary to promote alternative forms of dispute resolution including traditional dispute resolution mechanisms.

Role of Paralegals in the Implementation of the AJS Policy

The AJS Policy has formulated appropriate dispute resolution models and pathways that make justice more accessible and pragmatic in Kenya. The Policy seeks to recognize, regulate, and enhance the use of various AJS models as a linkage between the formal and informal justice systems. As a result, the role of paralegals in promoting access to justice in policy implementation is recognized. Paralegals are typically defined under the Legal Aid Act as persons employed by the National Legal Aid Service or an accredited legal aid provider who has completed a training course in the relevant field of study in an institution approved by the Council of Legal Education.

The Policy embraces a pluralistic approach to justice and considers the people's cultural, social, economic, and geographic diversity. Therefore, paralegals are critical in achieving this objective since they are the first point of contact for their communities' justice needs. They have direct contact among the first responders to the poor and marginalized, seeking legal redress when disputes arise. They are, therefore, essential in gathering information and offering technical support for implementing the AJS policy, which recognizes the importance of integrating traditional values, customs, and beliefs into the justice system. In addition, they articulate challenges and address access to justice needs in their communities. Further, they enjoy trusting community connections and have proved reliable in offering legal advice to their community members. In this regard, regular training and capacity building of paralegals on AJS would significantly improve implementation of the Policy.

Further, the AJS Policy envisions expanded freedom, inclusive, equitable, and balanced access to and outcome of justice for all in Kenya. In addition, it aligns its strategies to meet the threshold of the Constitution of Kenya and international human rights standards on equitable and inclusive justice for all. As community justice defenders, paralegals are privy to the different needs prevalent in their communities as they daily track and handle cases. In addition, paralegals are critical to ensure the inclusion of all categories of communities and vulnerable groups in implementing the Policy.

The Judiciary has continued to roll out AJS suites and the AJS Action Plans across various counties. In this regard, paralegals must be integrated to complement these interventions and efforts. They are critical in informing and educating the communities and mobilizing community members to participate in capacity-building forums to raise awareness and understanding of AJS and its role in enhancing access to justice.

Finally, we posit that whereas paralegals receive little financial assistance as they are regarded as volunteers, the lack of recognition and financial support significantly impedes their role in contributing to implementing the AJS Policy. Therefore, the state must find mechanisms to allocate resources to facilitate paralegals' important work in our communities.

■ Milestones for the year 2023

Awareness creation workshops on Alternative Justice Systems.

ICJ Kenya has been conducting a series of awareness creation workshops across the six paralegal networks throughout the year. The objectives of the workshops were to build the paralegals' capacity on AJS whilst focusing on enhancing restorative Justice to bring together the victims, offenders, and community members to address and resolve disputes. Throughout the workshops, the role of paralegals in promoting AJS was illuminated.

The awareness creation sessions analyzed AJS in four fold. First it interrogated the AJS Typologies namely, Autonomous AJS Institutions, Autonomous Third-Party AJS Institutions and Court-Annexed AJS Institutions. Second, it analysed the social imperatives of AJS which among others it promotes access to justice through the reduction of case

backlogs and It is a site for reclaiming ossified customary norms. Third it looked into the doctrines of interaction with the formal system, whereby its voluntary nature was emphasized since courts defer to the AJS process only when both parties agree. Fourth, the workshop provided a platform to promote equality and recognition of minority groups in dispute resolution. This is attributed to the deep rooted partriachial norms that place women and persons with disabilities at a disadvantaged position to participate in dispute resolution forums. As a result, the place of minority groups such as women and persons with disabilities in AJS dispute was emphasized.

The workshops were conducted in the regions below;

Taita Taveta

The Taita Taveta Paralegal Organization is registered as a CBO with paralegals who partner with other CBOs in the region to promote women's rights and campaign against Gender Based Violence. In February 2023, ICJ Kenya convened 22 paralegals for an awareness raising session.



Figure 1.1 ICJ Kenya Programme Officer, Damaris Kemunto facilitating a session on AJS during the workshop in Taita Taveta.



Figure 1.2 A Group photo with members of the Taita Taveta Paralegal Network after the AJS workshop.



Kwale Paralegal Network was registered as a CBO in 2017. It operates throughout four sub counties in Kwale namely; Msambweni, Matuga, Lungalunga and Kinango. In March 2023, ICJ Kenya convened 25 paralegals for the awareness creation session.



Figure 2.1 George Theuri, an AJS-Kenya Secretariat member, facilitating a session on AJS during the workshop in Kwale



Figure 2.2 A Group Photo of the Kwale Paralegals after the workshop on AJS



Kitui Paralegal Network is registered as a CBO. It has a great partnership and collaboration with the Children's department and the local administration due to their determination to offer legal aid services. In March 2023, ICJ Kenya convened 19 paralegals for the awareness creation session.



Figure 3.1 ICJ Kenya member and the National Steering Committee member on implementation of Alternative Justice Systems Policy (NaSCI-AJS) facilitating a session on AJS during the workshop in Kitui



Figure 3.2 A group photo of the Kitui Paralegals after the workshop on AJS



Meru Paralegal Network is registered as a CBO. The organization's mission is to reach many people in the larger Meru County by conducting outreach and awareness creation on human rights. In March 2023, ICJ Kenya convened 25 paralegals for the awareness creation session.



Figure 4.1 David Njoroge, an ICJ Kenya member and a National Steering Committee member on the Implementation of Alternative Justice Systems Policy (NaSCI-AJS), facilitating a session on AJS during the Kitui Workshop.



Figure 4.2 A group photo of the Kitui Paralegals after the workshop on AJS



The Laikipia Legal Forum is registered as a CBO. Through partnerships with other stakeholders, they have been able to solve numerous matters through ADR. In July 2023, ICJ Kenya convened 25 paralegals for the awareness creation session.



Figure 5.1 Damaris Kemunto making remarks during the AJS workshop in Laikipia



Figure 5.2 Group Photo of the ICJ Kenya Laikipia Paralegal Network after the AJS workshop



The Trans Mara Paralegal Network is registered as a self help group under the Ministry of Social Services with paralegals who have been trained to offer basic legal services. In September 2023, ICJ Kenya convened 25 paralegals for the awareness creation session.



Figure 6.1 ICJ Kenya member and the National Steering Committee member on implementation of Alternative Justice Systems Policy (NaSCI-AJS) facilitating a session on AJS during the workshop in Trans Mara



Figure 6.2 A group photo of the Trans Mara Paralegals after the AJS Workshop

Cumulative Figures of the number of Paralegals trained on AJS in 2023.

The table below highlights the number of paralegals trained by ICJ Kenya on AJS in 2023.

Gender	Number of Paralegals Trained							Total
	Meru	Laikipia	Kwale	Kitui	Trans Mara	Kitui CUC	Taita Taveta	
Male	15	11	14	11	12	19	13	95
Female	10	5	11	8	13	14	9	70
Others	0	0	0	0	0	0	0	0
Total	25	16	25	19	25	33	22	165

2023 Annual Alternative Justice System Conference

The National Steering Committee on AJS Policy organized the 2nd Annual AJS Conference that took place on 26-28th June at Tangaza University College, Nairobi.

The Conference was themed ***“AJS as Culture and Innovation in Accelerating Social Transformation Through Access to Justice.”*** The theme stems from the provisions of Article 11 of the Constitution of Kenya 2010, which describes culture as a moral foundation of the nation. Moreover, it is further informed by the role of AJS in transforming access to justice since it deviates from the adversarial system.

The Conference brought together justice actors, AJS practitioners, judicial officers, academia, policymakers, civil society actors, development partners, and other stakeholders in the access to justice ecosystem.

The Conference provided a platform for discussion on the AJS models and their implications on social transformation and their impact on access to justice for the poor and marginalized in the communities. Consequently, ICJ Kenya supported and invited the coordinators of its six paralegal networks to the conference as an experiential learning and experience sharing opportunity on the AJS mechanisms in Kenya.



Figure 6.1 A poster of the 2023 AJS Conference



Figure 6.2 A group photo of the Paralegal Coordinators during the 2023 AJS Conference

3rd Annual Paralegal Summit 2023

Paralegal Society of Kenya, the umbrella body coordinating paralegals and their activities across the republic, convened the 3rd Annual Paralegal Summit on the 4th -5th December 2023 at the United Kenya Club Nairobi. The conference was organized by the governing council of PSK, comprising four civil society organisations that enhance access to justice initiatives in which ICJ Kenya is the chairperson.

Since 2017, the Society has consistently held annual paralegal summits to take stock of the gains made in the paralegal movement and propose strategies to improve the movement, besides motivating paralegals to continue serving humanity.

The paralegal movement is growing rapidly across Kenya. In 2020, the society launched a five-year strategic plan and promulgated its constitution in 2021. These instruments pioneer a paralegal recruitment drive and establishment of a devolved system of governance named County foras. In this regard, this year's summit was themed, "Strengthening paralegal movement in Kenya with a view to enhance grassroots Justice." The theme was informed by the need to devolve paralegal practice into counties, by establishing county fora.

The idea is to empower the paralegal movement at the county level to operate and function under the guidance of the national secretariat.

This, therefore, calls for a collaborative effort to operationalize this timely initiative. Consequently, the summit convened over 100 paralegals and provided a platform for them to share ideas on how this can be fully implemented.



Figure 7.1 A poster of the 2023 PSK Summit



Figure 7.2 A group photo of the Paralegals during the 2023 PSK Summit

■ Paralegal Summit Award Ceremony

The governing council organized an award ceremony to recognize paralegals who have made the most outstanding contributions to access to Justice in their communities. The awards aim to strengthen paralegal practice and movement in Kenya by recognizing distinguished service delivery in the realm of legal Aid.

The awards were divided into different categories namely; Council Member Awards, National and Regional Awards. ICJ-Kenya's Josephat Kasina, coordinator Kitui Paralegal Network, emerged as the best overall community paralegal in both the council member awards and the national awards categories.



Figure 8.1 A photo of Josephat Kasina after receiving an award during the 2023 PSK Award ceremony



Figure 8.2 A photo of Vincent Kimathi, Programme Manager, Damaris Kemunto, Programme Officer and Josephat Kasina during the 2023 PSK Award ceremony

Case data analysis per region

The table below highlights the nature and number of cases reported to the various para-legal networks in 2023. Children, Family and Land disputes were the highest, and environment and wild life conflict cases recorded the lowest numbers.

Nature of cases	Number of cases per region						Total
	Meru	Laikipia	Kwale	Kitui	Trans Mara	Taita Taveta	
Land Disputes	64	1	31	33	34	6	169
Succession	33	2	22	26		4	87
Children	54	9	8	20	37	80	208
Marriage	12	3		5	5	1	26
Family	20	5	75	22	33		155
Criminal	1	4	2	36			43
Civil	5	3	1	32	3		44
Domestic Violence	20	4		7	5	4	40
Environment			1				1
Wild Life Conflict						1	1
Total	161	24	126	168	102	88	768

Impact stories

The paralegals have expressed appreciation for the knowledge they gained during the awareness creation sessions on AJS. They appreciated that, AJS is an effective way of resolving disputes. Moreover, the paralegals have utilized the knowledge gained and made presentations on AJS during Court Users Committee meetings as representatives of CSOs.

In addition, their attendance and participation during the AJS Conference and the PSK summit have enriched, their knowledge further as they learnt from other paralegals from different regions and picked best experiences.

■ AJS offers hope for the Ntakira Couple

A couple in the Ntakira sub-location, Imenti North Constituency, Meru County, on the brink of separation, found solace in the Meru Paralegal Network's office. What could have become a long, tedious and expensive court battle transformed into a story of reconciliation, demonstrating the power of dialogue in promoting access to justice through AJS. This story reveals the effectiveness of informal dispute resolution mechanisms as the blueprint for facilitating access to justice in Kenya.

The Constitution of Kenya 2010 obligates the state to ensure access to justice for all, and if any fee is required, it shall be reasonable and not impede justice. Moreover, Article 159 (2) (c) recognizes and promotes alternative forms of dispute resolution with a caveat that it shall not be inconsistent with the Constitution. Legislations and policies further give these constitutional safeguards effect. For instance, the Legal Aid Act 2016, whose objective is, among others, is to provide legal aid services and promote alternative dispute resolution methods that enhance access to justice in accordance with the Constitution. This story, therefore, reveals that linking legal aid services with AJS provides a cost-effective alternative to lengthy court processes, particularly for the poor and marginalized who cannot afford legal representation.

In this case, the voluntary nature of the AJS process facilitated an open dialogue, allowing the couple to address the root causes of their marital discord. Through guided discussions by the Meru paralegals, they better understood each other's needs and perspectives. This focus on its participatory nature, a pillar of AJS, proved effective; moreover, the couple, with newfound clarity, reached a consensus.

The success of Meru Paralegal Network, in this case, reflects the importance of capacity-building programs for AJS amongst paralegals. ICJ Kenya, through its research on the cost-benefit analysis of legal aid, established that paralegals are critical in promoting access to justice in the communities. It is, therefore important to acknowledge the role of ICJ Kenya in empowering the Meru paralegals to deliver such impactful services. Through ICJ Kenya's capacity-building initiatives on AJS, the Meru paralegal network has been equipped with the skills and resources necessary to assist the community resolve disputes through AJS effectively. This story validly justifies that paralegals can be agents of change in their communities in promoting access to justice. ICJ Kenya, therefore, is profoundly grateful to be an enabler of change through its AJS paralegal awareness creation initiatives.

The Ntakira couple's story sheds light on countless communities facing similar challenges, revealing that AJS is a powerful tool for reconciliation. Moreover, it is a catalyst for access to justice through its restorative principles. With the increasing demand for legal aid services and AJS mechanisms, organizations like ICJ Kenya are committed to empowering more paralegals with legal knowledge to realize change in their communities.

Challenges

- **Financial Sustainability-** Paralegals are primarily dependent on civil society organizations for sustainability. On the other hand, these organizations depend on donor support for their operation. With the shifting donor priorities, these organizations lack funds to support the paralegals; as a result, the paralegal networks operate through difficulties and risk closure.
- **Lack of office equipment-** Paralegals lack essential office equipment like computers, printers, and stationery. Such equipment forms part of their work, primarily in drafting and printing documents, and outsourcing them is not cost-effective.
- **Lack of motivation-** Paralegal work in the community is primarily voluntary. Most paralegals lack the motivation to continue with voluntary work.
- **Lack of Recognition-** The Legal Aid Act 2016 is silent about the recognition and accreditation of community paralegals. The lack of legal recognition hinders the authenticity of their work in the community.

Recommendations

- **Empowerment-** There is an overwhelming need to support and build the competencies of the paralegals in resource mobilization by training them in the basics of proposal writing and pitching.
- **Organize training based on the prevalence of cases reported per region.**
- **Organize refresher trainings on new laws that have been enacted each year and those subject to amendments.**

Conclusion

- Paralegals are the cornerstone of our work and linkage in the community. ICJ Kenya will continue to work with paralegals in advancing human rights and promoting access to justice for the poor and marginalized in our communities.
- ICJ Kenya shall continue to monitor government efforts in the implementation and realization of the fundamental right to access justice and hold it accountable for the promise made to implement the Legal Aid Act 2016.



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