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# A COST BENEFIT ANALYSIS OF LEGAL AID IN KENYA

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## ACKNOWLEDGMENT

ICJ Kenya is a non-governmental, non-profit, non-partisan, and member-based organization founded in 1959. ICJ Kenya is registered as a Society and has a membership drawn from the Bar and the Bench. ICJ Kenya's vision is a just, inclusive, and equitable society where everyone lives in dignity. Its mission is to promote human rights, democratic governance, justice, and the rule of law in Africa. ICJ Kenya uses various strategies to realize its mission and vision, including research. In the over 60 years of championing access to justice, ICJ Kenya has worked with the Judiciary, Prosecution Office, The police, paralegals, prison officers and, more importantly, the community. The question of accessibility of legal aid and legal aid providers has been central to the discourse on access to justice, and as such, this publication is timely.

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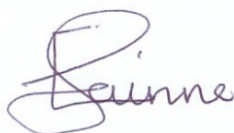
Signed  
Protas Saende  
Chairperson

## FOREWORD

The Constitution of Kenya has a progressive bill of rights with provisions such as Article 48 that obligates government to guarantee access to justice by ensuring the cost of justice does not impede its access. This provision is the anchor to legal aid in Kenya. In addition to this the parliament of Kenya enacted the Legal Aid Act to give effect to Article 48 of the Constitution. Nonetheless, the Legal Aid Act is yet to be fully implemented. Thus a majority of the indigent are unable to exercise their right of access to justice.

Many of the issues commonly faced by people possesses a legal dimension that if not resolved, can diminish access to justice. Thus, it is imperative to improve access to justice. With a population of 47.6 million, poverty remains prevalent in most parts of the country. Kenyans who live below the poverty line, experience systemic barriers to justice. In 2015, the National Council on the Administration of Justice (NCAJ) conducted an audit that found that a higher number of poor people are arrested, detained, charged and imprisoned than those who are economically well-off.

It is therefore important to have persuasive information and data that demonstrates that investing in legal aid programs is useful. In this spirit, policymakers will use this document 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.



Signed  
Elsy Sainna  
Executive Director

# TABLE OF CONTENT

<b>ABBREVIATIONS AND ACRONYMS.....</b>	<b>IV</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>6</b>
<b>CHAPTER 1: INTRODUCTION AND PURPOSE.....</b>	<b>8</b>
1.1 INTRODUCTION.....	8
1.2 BACKGROUND TO THE CONSULTANCY .....	8
1.3 OVERVIEW .....	8
1.3.1 <i>Objective of the Consultancy</i> .....	11
1.3.2 <i>Content of the report</i> .....	11
<b>CHAPTER 2: STRATEGIC APPROACH AND METHODOLOGY .....</b>	<b>12</b>
2.1 STUDY APPROACH.....	12
2.2 STUDY DESIGN.....	12
2.2.1 <i>Description of respondents</i> .....	13
2.3 DATA ANALYSIS .....	13
2.4 STUDY LIMITATIONS.....	14
<b>CHAPTER 3: RESULTS.....</b>	<b>15</b>
3.1 BENEFITS OF LEGAL AID.....	15
3.1.1 <i>Addressing civil cases involving land disputes</i> .....	15
3.1.2 <i>Supporting vulnerable group access justice</i> .....	16
3.1.3 <i>Providing protection under the law</i> .....	16
3.1.4 <i>Empowerment and Accountability</i> .....	17
3.1.5 <i>Improving the efficiency of court systems</i> .....	17
3.1.6 <i>Decongestion of detention facilities</i> .....	17
3.2 DEFINITION OF THE PROJECT CONTEXT .....	19
<i>This section outlines the landscape of legal disputes in Kenya based on published data</i> .....	19
3.2.1 <i>Type of Cases Filed</i> .....	19
3.2.3 <i>Time to Disposition</i> .....	20
3.2.4 <i>Intervention Options</i> .....	
3.2.5 <i>Rationale for CBA</i> .....	

3.3	ANALYSIS OF THE POLITICAL, SOCIAL AND INSTITUTIONAL FRAMEWORK OF THE JUSTICE SYSTEM IN KENYA .....	23
3.4	SALIENT LEGAL NEEDS IN THE KENYA AND THE MARKET DEMAND FOR LEGAL AID.....	24
3.5	ESTIMATED THE FINANCIAL COSTS AND BENEFITS OF THE WITH-PROJECT VERSUS THE WITHOUT-PROJECT SCENARIO.....	25
	3.5.1 <i>Cost Benefit Analysis estimates</i> .....	25
3.6	ESTIMATED THE ECONOMIC NET BENEFITS OF THE WITH-AND WITHOUT-PROJECT SCENARIOS .....	37
3.7	DEFINITION OF OBJECTIVES AND M&E INDICATORS OF THE PROPOSED LEGAL AID INTERVENTION .....	39
3.8	ASSESSMENT OF RISKS ASSOCIATED WITH THE IMPLEMENTATION OF THE PROPOSED PROJECT .....	40
3.9	FIVE-YEAR BUDGET FOR LEGAL AID SERVICES .....	40
<b>CHAPTER 4: FINDINGS, CONCLUSIONS AND RECOMMENDATION .....</b>		<b>42</b>
4.1	CONCLUSION.....	42
4.2	RECOMMENDATIONS.....	43
<b>ANNEXES.....</b>		<b>46</b>
	<i>Annex 1: Data collection Tools</i> .....	46
	<i>Annex 2: Research Team</i> .....	46
	<i>Annex 3: List of Key Informants</i> .....	46
	<i>Annex 4: Validation workshop Attendees</i> .....	46
	<i>Annex 5: Other Additional Information</i> .....	47

## ABBREVIATIONS AND ACRONYMS

ABC	Activity Based Costing
AJS	Alternative Justice Systems
CBA	Cost Benefit Analysis
CJS	Criminal Justice System
CMS	Case Management System
CRB	Cost Benefit Ratio
CSO	Civil Society Organization
CTS	Case Tracking System
DCRT	Daily Courts Returns Template
ENPV	Economic Net Present Value
ERR	Economic Rate of Return
FIDA	Federation of Women Lawyers-Kenya
FC	Filed cases
FNPV	Financial Net Present Value
FRR	Financial Rate of Return
GNI	Gross National Income
IBA	International Bar Association
IRR	Internal Rate of Return
JLOS	Justice Law and Order Sector
LAS	Legal Aid Service
LASPs	Legal Aid Service Providers
M&E	Monitoring and Evaluation
NCAJ	National Council for Administration of Justice
NLAP	National Legal Aid Policy
NPV	Net Present Value
NSB	Net Social Benefits
ODPP	Office of the Director of Criminal Investigations
PAS	Paralegal Advisory Services
PMMUs	Performance Management and Measurement Understandings
PPP	Purchasing Power Parity
PRC	Police recorded crime
PV	Present Value or Discounted Present Value
RC	Resolved Cases
SAR	Social Discount Rate
SCF	Standard Conversion Rate
SCR	Standard Conversion Rate
WTP	Willingness to Pay

## EXECUTIVE SUMMARY

In this report, a cost benefit analysis for legal aid services is provided.

Evidence-based policies are crucial for development of any country. Existing evidence across the globe suggest that legal aid services contribute positively to socio-economic development. In particular, legal services should be viewed alongside other social services provided to citizens by government such as education, health, and even infrastructure development.

### **Rationale for the analysis**

Arising from a dearth of empirical evidence on the benefits that accrue from legal aid services, this cost-benefits analysis was conducted to ascertain the context of the legal aid services in Kenya, the policy and institutional frameworks obtaining, salient legal aid issues, risks associated with provision of legal aid services, and to make recommendations including for monitoring and evaluation of legal aid services provision.

Data was collected from published sources as well as through interviews with key informants complemented by benchmarking best practices of legal service provision from other jurisdictions.

### **Key findings**

From this CBA the following findings ensued:

- i) *Legal aid services have important benefits which are financial, economic and social*
- ii) *Legal aid services are underfunded in Kenya compared to best practice legal aid funding*
- iii) *Cost benefit analysis exhibited a positive net present value based on the data that was used in the analysis. The data was collected from the justice system in Kenya including the police department, prisons department, registry of the Judiciary, and national legal aid services.*
- iv) *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*
- v) *There is need for a robust monitoring and evaluation framework for the legal aid services to provide data that is necessary for decision making.*
- vi) *Further studies should be conducted to Legal aid budget per capita and funding mechanisms cover the cost of specialized legal aid services provided to specific population groups such as women, children, marginalized, indigent and vulnerable populations.*

## RECOMMENDATIONS

Based on these findings, it is recommended that:

- i. Legal aid services be expanded
- ii. Funding for legal aid services be increased
- iii. Monitoring and evaluation of legal aid services be done and data used to inform further interventions in future. The monitoring and evaluation calls 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.
- iv. *Risks associated with legal aid be mitigated by accreditation of legal aid service providers such as paralegals, standardizing cost of access to services and regularizing and capacitating informal dispute resolution platforms to guarantee equity and justice in consonance with Articles 159(2)(c) and (3) of the Constitution.*
- v. *Further studies be conducted to Legal aid budget per capita and funding mechanisms cover the cost of specialized legal aid services provided to specific population groups such as women, children, marginalized, indigent and vulnerable populations to inform further legal aid interventions*
- vi. Up to 30% of the judiciary budget should be allocated to legal services in line with best practice allocations which are above 35%

This outline of this Analysis is as follows:

*Introduction*

*Strategic approach to CBA*

*Results, and lastly,*

*Conclusions and Recommendations.*



## CHAPTER 1: INTRODUCTION AND PURPOSE

### 1.1 Introduction

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a membership, non-governmental, non-partisan and not-for-profit organization 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 the recent past, ICJ Kenya has identified strengthening access to justice and legal redress for poor, marginalized and or minority communities as thematic areas of interest and enlisted them as strategic issues in its strategic plan 2021-2024.

### 1.2 Background to the Consultancy

The Legal Aid Act No. 6 of 2016 has been credited for being among the first legislations not only in Kenya, but in the East Africa region of its kind. However, the implementation of the objectives under the Act has been slow due to budgetary constraints on the National Legal Aid Service. Faced with challenging budgetary environments, the Government of Kenya is always under increased pressure to show the most cost-efficient allocation of government funding. It is therefore important to have persuasive information and data that demonstrates that **investing in legal aid programs is useful**. In this spirit, policymakers will use this document 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.

### 1.3 Overview

In the State of Legal Aid Report 2020, it is noted that the “justice gap” undermines human development, worsens conflicts, reinforces inequality and poverty traps and in some instances, allows impunity to thrive. The burden of the justice gap falls disproportionately on the most vulnerable, including women, children, persons with disability, minorities and those disadvantaged because of their age and ethnicity. Thus, lack of access to justice may be understood in three broad ways. First, people who are excluded from opportunities the law provides; second, people who live in extreme conditions of injustice, and three, people who cannot obtain justice for everyday civil, administrative, or criminal justice problems.<sup>1</sup>

A study published by the UN Taskforce on Justice highlighted that the issue on the justice gap is global and to close the justice gap in increasingly challenging budgetary environments, governments are turning to cost benefit analyses of legal aid programs to better estimate the

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<https://www.lrf-kenya.or.ke/wp-content/uploads/2021/07/State-of-Legal-Aid-Booklet.pdf>

benefits of such policies to make evidence-based decisions on the allocation of resources.<sup>2</sup> The Justice Needs and Satisfaction in Kenya Report, 2017 estimated that between 17.2 and 17.9 million Kenyan citizens had experienced one or more legal problems in the four years preceding the survey noting that 63% of adult Kenyans have encountered a situation in which an accessible, affordable and fair justice process is needed. Crime, land problems, family-related disputes, employment problems and disagreements over money the most frequently occurring legal problems at the time.<sup>3</sup>

In addition, an NCAJ report entitled *Criminal Justice System in Kenya: An Audit* reveals that Kenya's justice system is skewed against the poor, whereby more poor people are arrested, charged and jailed than the 'well-to-do'. The audit attributes this to many factors, ranging from criminalisation of poverty, bail terms and the attitude of law enforcement and justice agencies.

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa defines legal aid as:

"legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academic institutions."

In acknowledging the importance of providing legal aid at all stages of the criminal process, the Declaration provides that:

Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited paralegal, or legal assistant.

Further, the Criminal Justice Audit Report observes;

The profile of remand detainees suggests a range of ordinary Kenyans who are at the prime of income-earning potential. The holding of so many possibly productive persons who may never be found guilty on remand is counter-developmental and costly for the Kenyan state. At the same time, educational levels suggest such persons will need legal representation in order adequately to defend themselves in court. Legal representation ought to be a priority in order to realise gains envisioned by Constitution of Kenya 2010 Article 50(2) (h) that "Every accused person has the right to a fair trial, which includes the right to have an advocate assigned to the accused person by the State and at State expense, if substantial

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<sup>2</sup> <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-of-Legal-Aid.pdf>

<sup>3</sup> [https://www.hiil.org/wp-content/uploads/2018/07/hiil-report\\_Kenya-JNS-web.pdf](https://www.hiil.org/wp-content/uploads/2018/07/hiil-report_Kenya-JNS-web.pdf)

injustice would otherwise result, and to be informed of this right promptly.” Lesser offences should not result in remand and legal aid should be immediately available to detainees – many of whom do not know their rights.

The observation in the Criminal Justice Audit Report and the survey in the Justice Needs and Satisfaction in Kenya Report, 2017 then enable identification of the legal needs for legal aid at three main stages as follows:

*Legal advice and assistance at police stations*

*Legal advice and assistance in prisons*

*Legal advice and assistance at court*

One of the conclusions in the UN survey report on Access to Legal Aid in Criminal Justice Systems in Africa was that Lawyers are few in number and generally unavailable in rural areas. The report also noted that law students are underused and that budgetary allocation for legal aid is minimal.<sup>4</sup> The Economic Survey Report 2021 indicates that the number of practicing lawyers in Kenya increased by 11.1 per cent from 10,768 in 2019 to 11,960 in 2020. The report also established that liquor offences accounted for the highest number of convicted male and female prisoners at 22.1 per cent of inmates followed by offences relating to property at 13.5 per cent, and order and administration of Lawful Authority at 3.7 per cent.<sup>5</sup>

Subsequent to the revision of court filing fees in Kenya, Nyokabi Ngari opined that:

Access to justice is a fundamental constitutional human right and the increase in court fees interferes with the access to the court noting that poor Kenyans seeking justice are torn between paying high fees of between Sh1,000 and Sh5,000 and buying basic items like food. This emerging trend needs to be reversed and there is an urgent need for rigorous data collection from the Judiciary and civil societies to monitor the effect of the new court fees.<sup>6</sup>

The main challenges encountered by citizens in government courts as identified in the Access to justice in Kenya: experience and perception Report 2020, include inability to meet costs and fees, inability to be listened to by the judge or magistrate, not being listened to, complexity of courts processes and procedures, inability to obtain legal counsel or advice and long queues in handling cases.<sup>7</sup> Kenya’s gross national income at purchasing power parity per capita GNI (PPP) is \$2,961 while the most recent GNI per Capita Value (2020) is US\$ 1,840.<sup>8</sup>

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<sup>4</sup> [https://www.unodc.org/pdf/criminal\\_justice/Survey\\_Report\\_on\\_Access\\_to\\_Legal\\_Aid\\_in\\_Africa.pdf](https://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf)

<sup>5</sup> <https://www.knbs.or.ke/wp-content/uploads/2021/09/Economic-Survey-2021.pdf>

<sup>6</sup> <https://allafrica.com/stories/202112070044.html>

<sup>7</sup> [https://afrobarometer.org/sites/default/files/ken\\_r8\\_access\\_to\\_justice\\_presentation\\_12sep20\\_fin.pdf](https://afrobarometer.org/sites/default/files/ken_r8_access_to_justice_presentation_12sep20_fin.pdf)

<sup>8</sup> [https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=KE&most\\_recent\\_value\\_desc=false](https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=KE&most_recent_value_desc=false)

### *1.3.1 Objective of the Consultancy*

The general objective of this assignment was to identify the net benefit (benefits minus costs) of legal aid intervention to inform investment policy in a standardized, comparable manner. The CBA aimed to shed light on the benefits of legal aid programs in specific areas of civil and criminal law and the cost benefit of funding alternative dispute resolution mechanisms.

### *1.3.2 Content of the report*

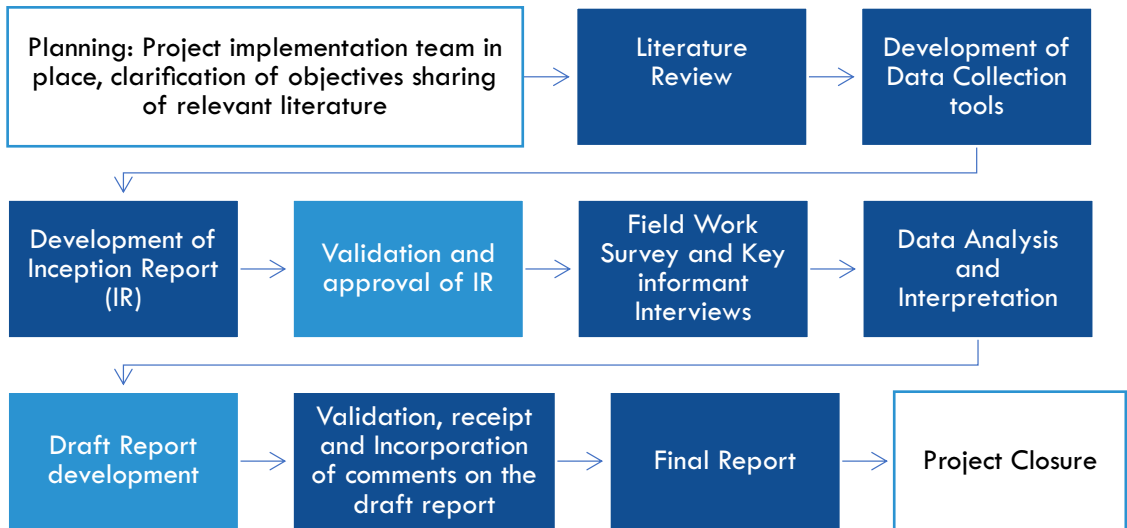
Consistent with the objective of the study, this report comprises the following aspects:

- i. Definition of the project context.
- ii. Overview of the political, social and institutional framework of the justice system in Kenya.
- iii. Salient legal needs in the Kenya and the market demand for legal aid.
- iv. Estimated financial costs and benefits of the with-project versus the without-project scenarios for legal aid.
- v. Estimated the economic net benefits of the with-and without-project scenarios.
- vi. Definition of Objectives and M&E indicators of the proposed legal aid interventions.
- vii. Assessment of risks associated with the implementation of the proposed projects.

## CHAPTER 2: STRATEGIC APPROACH AND METHODOLOGY

### 2.1 Study Approach

In conducting this analysis, a participatory and collaborative approach was employed. This study was conducted through literature review and key informant interviews in close collaboration and participation between the consultant and ICJ. Select stakeholders involved in judicial processes and legal aid were interviewed to provide the required information.



### 2.2 Study Design

A mixed method study design where the following qualitative and quantitative research methodologies was used to collect data;

- i. *Desk review*- This entailed in-depth secondary review and analysis of published documents in the domain of the study to establish the status of legal aid delivery as well the benefits of such legal aid. Review of recent literature on the cost and benefits of legal aid based on the African experience was also conducted.
- ii. *Structured questionnaire*- was administered to beneficiaries, legal aid providers and institutions dispensing and coordinating justice in Kenya at all levels (e.g the prisons police, law courts and the advocates) to estimate the extent of the benefits of legal aid services and estimates of costs of the activities set in the legal aid process. In cases where the actual costs were not available, they were imputed. The study further collected data from the beneficiaries about the various civil and criminal cases they have handled in the last five years.

- iii. *Key informant interviews*- with various stakeholders to understand the legal aid landscape in Kenya were also conducted to augment the findings from secondary data and provide insights on future improvement of legal aid landscape in Kenya.

### 2.2.1 Description of respondents

The consultant collected relevant data from various categories of respondents in the justice system who comprised the following; Beneficiaries of legal aid, Paralegals, The judiciary, Prisons service, Legal practitioners (lawyers and advocates, *pro bono* lawyers etc), Legal actors (CBOs, NGOs), NLAS and Project team (ICJ). These respondents provided relevant information that aided the development of this report.

## 2.3 Data analysis

The study computed the net social benefits of the proposed legal aid interventions using well established methods in the subject. The capital cost of establishing a national legal aid body as well as the amount required to operationalize of the body (The National Legal Aid Service) were also obtained and considered in the report.

### *Cost benefit Analysis*

The Major Steps in the Cost Benefit Analysis (CBA) included the following

*Specification on the set of aspects of legal issue at hand.*

*Mapping the benefits and costs to be included in the analysis count (standing).*

*Identifying the impact categories, cataloguing them, and selecting measurement indicators.*

*Predicting the impacts quantitatively over the life of the project.*

*Monetizing (attach shillings values to) all impacts.*

*Discounting benefits and costs to obtain present values.*

*Computing the net present value of each alternative.*

*Sensitivity analysis.*

*Recommendation.*

The following indicator was computed in the study:

### *Net Present Value (NPV)*

All costs and benefits discounted to the present value to ensure comparability. The NPV, also called Discounted Present Value, is the estimated current value of the future costs and benefits, discounted at an appropriate rate.

## 2.4 Study Limitations

- ✦ Non-response: Some of the respondents were not willing to participate in the study hence the interviews were terminated. This created a low response rate.
- ✦ Disparity of costs related to similar services especially from service providers

## CHAPTER 3: RESULTS

This chapter presents the results of the cost benefit analysis study. The chapter further presents the benefits of legal aid and analysis of the project context.

### 3.1 Benefits of Legal Aid

#### *3.1.1 Addressing civil cases involving land disputes*

Addressing land rights, especially for women is one of the key benefits of legal aid programs. In Kenya, as in most agricultural countries, land is the most important asset held by poor households with land acquisition predominantly achieved through inheritance. However, in a patriarchal setting, women are less likely to inherit land or other resources from either their own family or from the husband's family. Consequently, land disputes are widespread in Kenya, and in some instances, the disputes spill over into clan conflicts involving vulnerable groups, such as women and children relatives. Poverty and social impact analysis of such situations show that female-headed households are the most profoundly affected by land conflicts. Apart from family-related land conflicts, land appropriation by powerful and well-connected individuals has led to evictions, and forceful grabbing of the same in some instances, resulting in deaths among warring parties. Such have affected the overall land tenure security across the country and impacted development, as the threat of eviction undermines investments on land. In addition, it exacerbates social exclusion, given that some of the affected groups, and substantial proportion of the transfers, do not have documentary evidence. This situation has resulted in different interpretations of wills and acerbates into costly disputes.<sup>9</sup>

Government departments have recognized the challenges created by land conflicts and have established specialized units dealing with land matters. Despite the presence of such organs to address land conflicts, the challenge still persists. Previous studies show that land conflicts in Kenya negatively impact land-related investments, as neither of the warring parties can effectively utilize the land under dispute until settlement. Furthermore, over time, the time required to handle land disputes is long; especially in the Courts. In the interim, people commit many crimes (e.g., murders) arising from non-settlements or improper settlements relating to land disputes in the country.

Furthermore, there is compelling evidence showing that legal aid, especially alternative dispute resolution (ADR) has supported the strengthening of land rights for vulnerable groups. For instance, a study based in other countries<sup>10</sup> shows that community-based legal aid activities were

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<sup>9</sup> <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CE DAW/RuralWomen/InternationalLandCoalition.pdf>

<sup>10</sup> *ibid*



able to change cultural norms and attitudes that affect women' access to land rights as well as improved access to services and information at minimal fees.

### 3.1.2 Supporting vulnerable group access justice

The provision of legal aid is key to access to justice. There are numerous benefits associated with providing such services. According to the World Bank, the availability of publicly provided legal aid, especially in developing countries, is linked with minimal occurrences of due process violations and the reduced duration of both pre-trial detention and case resolution. Furthermore, in some instances, legal aid is targeted at vulnerable groups, such as women and children, who generally face impediments in accessing legal services. Evidence<sup>11</sup> further shows that legal aid services to such vulnerable groups reduce social exclusion and increase the likelihood of family maintenance and the reduction in re-occurrences of domestic violence. In addition, legal aid interventions empower communities and this indirectly improves their welfare status through the allocation of more resources to productive activities.<sup>12</sup>

### 3.1.3 Providing protection under the law

One other benefit of access to legal aid is that it enables a majority of the citizens to access protection under the law. Globally, an estimated 5.1 billion people (approximately 55% of the world's population) live outside the protection of the law. Previous studies show that a big population 'without legal identity' cannot participate fully in national development. A growing body of evidence shows that access to justice will lead to noticeable benefits, including greater personal safety and welfare for the millions excluded from the protection of the law. In Kenya, although a large proportion of the citizens are aware of the right to access justice, they are nonetheless unaware of the institutions that can offer help in case of disputes. Specifically, according to the 2014 GLOS study report nine out of every ten Kenyans are not aware of their right to seek justice. On the other hand, most of those who are aware of their rights predominantly prefer informal dispute resolution mechanisms as opposed to courts of law. Generally, the poorest Kenyans are less likely to be aware of judicial institutions or if they do not have adequate means to access the institutions and their services. Consequently, the poorest sections of society are less likely to use the courts due to the lack of knowledge of their presence or the costs to expect to be able to participate in a legal pursuit.

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<sup>11</sup> Willems, A. (2014). The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: A Step Toward Global Assurance of Legal Aid?. *New Criminal Law Review*, 17(2), 184-219.

<sup>12</sup> Schönsteich, M. (2012). A powerful tool of justice: paralegals and the provision of affordable and accessible legal *South African Crime Quarterly*, 42, 21-27.

### *3.1.4 Empowerment and Accountability*

Apart from increasing the possibility of parole, legal aid, especially legal aid provided by paralegals has been documented to increase accountability among citizens. A study in Liberia showed that its mobile paralegal service reduced bribes paid to police officers or other public officials by 10 percentage points<sup>13</sup>. The Paralegal Advisory Services (PAS) are able to catalyze changes within the criminal justice institutions, e.g., by ensuring that suspects are paraded at police stations and opening files immediately for them, has demonstrated that it is possible to provide legal advice and assistance to detainees in the criminal justice system, for individuals who would otherwise have had no such access, at a reasonable cost. As indicated in the study,<sup>14</sup> there are calls for countries with very few lawyers to enact legislation to allow paralegals to represent clients in court.

### *3.1.5 Improving the efficiency of court systems*

The provision of legal aid leads to considerable direct benefits to the justice system by increasing the efficiency of the system and the courts. Those accessing legal aid assistance do not have the funds and often do not have the information to adequately navigate the justice system. There are a number of areas where legal aid provides efficiency benefits to the justice system, including the resolution of legal issues at an early stage and the appropriate streamlining of matters through the provision of legal advice, information and education; the diversion of cases from the courts toward dispute resolution mechanisms, e.g., mediation; and the increased speed of courts processes by having duty lawyers on hand to help potential self-represented litigants address the courts and present relevant information.<sup>15</sup> As such, the **avoidance of costs** to the justice system represents a considerable benefit from legal aid. The avoided costs include administrative (filing) costs at the courts among others.

### *3.1.6 Decongestion of detention facilities*

Another major benefit of legal aid relates to reducing the overall costs of incarceration/detention. There are significant economic costs related to pre-trial detainees and their families, as measured by income and employment, education, incarceration-related expenses and long-term effects. People detained while awaiting trial cannot work or earn income while detained and frequently lose their jobs, often after only a short period of absence from work. If the period of detention is lengthy, the detainee's future earning potential is also

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<sup>13</sup> [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid\\_Report01.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf)

<sup>14</sup> *ibid*

<sup>15</sup> [https://www.unodc.org/pdf/criminal\\_justice/Survey\\_Report\\_on\\_Access\\_to\\_Legal\\_Aid\\_in\\_Africa.pdf](https://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf)

undermined.<sup>16</sup> Many pre-trial detainees are young adults, some of whom will have their education interrupted as a result of their detention, making it more difficult to find a job upon release and limiting their lifetime earnings. From the state side, pre-trial detention costs money. The estimates for Kenya indicate the average daily cost of maintaining a prisoner is about KSh. 500, and for the estimated 25,000 prisoners on remand, this translates to daily expenditures for remand prisoners of KSh. 12.5 million or KSh. 0.158 billion annually.

In view of the foregoing and following from previous studies, in undertaking a cost-benefit analysis of legal aid, there would be need to estimate the Net Social Benefits (NSB) of the Legal Aid. To estimate the desired parameters the following generic equation can be used by substituting the appropriate variables collected from the field or information obtained from other studies or published sources:

$$NSB_1 = \sum_{t=1}^n \frac{b_i(t) - c_i(t)}{(1 + r)^{t-1}} \dots\dots\dots (1)$$

Where  $b_i(t)$  are the benefits in monetary terms derived in year  $t$ , and  $c_i(t)$  are costs in money terms in year  $t$ ;  $(1 + r)^{t-1}$  is the discount factor at annual interest rate  $r$ , and  $n$  = the lifetime of the policy (assumed to be 5 years in the medium term).

For this study, the information used in the assessment relates to the cost of court time saved, the cost of setting up and running the National Legal Aid Service, expanding the legal aid services and supporting cooperating partners. Other information relates to the average cost of detention; the proportion of the prison population on remand and the effect size, i.e., expected reduction in detention rates as a result of implementing the National Legal Aid Program (NLAP). The above information was obtained from interviews of key stakeholders as well as from secondary sources (i.e., published reports from Justice Law and Order Sector (JLOS) and Legal Aid Service Providers (LASPs)). The assumptions used to estimate the CBA of implementing the NLAP are outlined below.

Costs of Legal Aid Services includes those presented in Table 1.

Table 1: Costs of Legal Aid services

TO THE INDIVIDUAL	TO THE JUSTICE SYSTEM:
Loss of Income for unpaid work	Pre-trial detention

<https://www.justiceinitiative.org/uploads/84baf76d-0764-42db-9ddd-0106dbc5c400/socioeconomic-impact-pretrial-02012011.pdf>

Legal Costs	Prosecution Incarceration Court expenses associated with legal cases (e.g., filing, court staff time for record keeping etc.)
<b>TO THE INDIVIDUAL AND SOCIETY</b>	<b>TO THE JUSTICE SYSTEM:</b>
Pain, suffering and quality of life losses Behavioral problems and performance decline and lost education of children	<i>Skills of legal aid clients and self-represented litigants developed as a result of capacity building training</i>

### 3.2 Definition of the project context

This section outlines the landscape of legal disputes in Kenya based on published data.

#### 3.2.1 Type of Cases Filed

According to the Justice Needs and Satisfaction Survey, one in five Kenyans who encounter a legal problem do not pursue any resolution avenues irrespective of their income status. Further, 48% of those who do attempt to settle their legal disputes informally including through friends, family, church leaders and elders. The survey also established that 3 in 10 Kenyans from the lowest income group indicated that they did nothing because the other party was more powerful compared to 1 in 10 people in the highest income group. Moreover, lower income Kenyans are also more likely to say that they did not pursue justice because of a lack of money 16% compared to those in the high-income groups 9%.<sup>17</sup>

In the Financial Year 2020/21, **356,997** cases were filed in all courts; **242,457** criminal cases and **114,540** civil cases.<sup>18</sup> By the end of the FY 2020/21, there were **649,112** pending cases in the Judiciary comprising **293,605** criminal cases and **355,507** civil cases.

During the review period, ordinary civil matters constituted the highest proportion of filed civil cases at 19.9% followed by probate and administration cases at 19.2% while family miscellaneous cases were the least filed at 0.4%. Probate and administration cases were the highest resolved cases at 23.5% while family appeals were the least at 0.2%. In the criminal division, criminal revisions constituted the bulk of the filed cases in the High Court at 44% followed by criminal applications at 26% and Murder and criminal appeals at 15% each.

In the Magistrates Courts, 73.1% of the filed cases were criminal cases, 21.6% were traffic cases, 4.5% were sexual offences while 0.6% and 0.2% constituted those of children in conflict

<sup>17</sup> <https://globalaccessstojustice.com/global-overview-kenya/>

<sup>18</sup> <https://www.judiciary.go.ke/resources/reports/>

with the law and inquests respectively. The distribution of filed civil matters were as follows; civil cases (57.2%), probate and administration (30.2%), children civil (8.4%), divorce separation (4%) and workman compensation (0.2%).

### 3.2.3 Time to Disposition

Under the Judiciary Performance Management and Measurement Understandings (PMMUs) Evaluation Report (2018/2019), the overall disposition time for courts to dispose of the pending cases based on their current efficiency is 443.17 days or 1.23 years.<sup>19</sup> The PMMUs commitments and measures require conclusion of civil and criminal cases within 360 days of filing.

### 3.2.4 Intervention Options

The Legal Aid Act, 2016 was enacted to give effect to Articles 19 (2), 48, 50 (2) (g) and (h) of the Constitution to facilitate access to justice and social justice; to establish the National Legal Aid Service; to provide for legal aid, and for the funding of legal aid and for connected purposes. In the State of Legal Aid Report (2020), it is noted that there is a high dependency on donor supported interventions which threatens the sustainability of legal aid work in Kenya. The justice centres established by non-state actors are temporary owing to the difficulties in sustaining personnel and associated administrative costs attendant.

One notable intervention in this regard has been the Alternative Justice Systems (AJS) policy which was developed to respond to the requirement of Article 159(2) (c) of the Constitution (2010) and everyday experiences of justice by Kenyans and proposes strategies for mainstreaming and upholding autonomous practices of AJS mechanism using methods that meet the threshold of the Constitution of Kenya and international human rights standards to primarily ensure affective and efficient access to justice towards expanded freedom, inclusive, equitable and balanced access to and outcome of justice for all in Kenya.<sup>20</sup>

### 3.2.5 Rationale for CBA

CBAs have been identified as important decisional tools aimed at compelling public agencies to gather, organize, and analyze information before undertaking major projects or regulations.<sup>21</sup> Cost-benefit analysis has become an increasingly popular, if contentious, decisional tool. At a high level of generality, it advocates a particular methodology for gathering, sorting, and analyzing information about the effects that administrative or regulatory decisions have on social welfare.<sup>22</sup>

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<sup>19</sup> <https://www.judiciary.go.ke/judiciary-performance/>

<sup>20</sup> [https://www.unodc.org/documents/easternafrika/Criminal%20Justice/AJS\\_Policy\\_Framework\\_2020\\_Kenya.pdf](https://www.unodc.org/documents/easternafrika/Criminal%20Justice/AJS_Policy_Framework_2020_Kenya.pdf)

David M. Driesen, *Is Cost Benefit Analysis Neutral?*, 77 U. COLO. L. REV. 335 (2006); 339–42.

ADLER & POSNER, NEW FOUNDATIONS, *supra* note 6, at 13

It does not tell people *which* decisions to make. Rather, it is said to provide a way of assessing information about the impact of those decisions. Thus, Kaldor and Hicks suggests that a project should be approved if its beneficiaries gain enough from the project so that they could, at least hypothetically, compensate those harmed by it.<sup>23</sup> Thus, for an intervention to have value, the impact of the legal aid must be worth more than the cost of providing the aid. This analysis thus involved a set of comparisons between the status quo and the with-project state and account for the effect these states would have on the target beneficiaries and thereafter reduced to a single unit of measurement, usually monetary.<sup>24</sup>

To calculate the CBA of the interventions, this assignment assessed the costs of the legal fees associated with the legal area the aid is intended to intervene, support or fund. For this assessment, the main cost area assessed for the economic and social costs of crime estimates were costs in response to crime including costs to the police (release of accused persons on bail and savings on prison/remand expenses) and criminal justice system (CJS).

### **Police costs**

*These include the opportunity cost of police time and resources taken up by investigating a certain crime rather than engaging in other activities, such as responding to non-crime activities. For these, the analysis will assess the budget allocation for dealing with identified legal aid intervention crime types and associated overheads using activity-based costing.*

### **Other CJS costs**

*Assesses costs incurred by crime response and redress agencies and processes established by the Government to control crime and impose penalties on those who break the law and include those for the Office of the Director of Criminal Investigations (ODPP), courts, legal aid, non-legal aid defence, prison and probation service.<sup>25</sup>*

The United Nations Office on Drugs and Crime observes that the sustainability and efficacy of legal aid in the CJS is dependent on the mode of delivery of legal aid services categorizing the following primary models:<sup>26</sup>

- i. *Public defender schemes*
- ii. *Private lawyer schemes - provided by lawyers working in private law firm organized as: Contract schemes, ex officio or panel schemes (lawyers are appointed to act in individual*

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<sup>23</sup> J.R. Hicks, *The Foundations of Welfare Economics*, 49 ECON. J. 696, 704–06 (1939)

<sup>24</sup> [https://www.americanbar.org/content/dam/aba/administrative/business\\_law/opinions/tribar/materials/200907150000\\_01.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/opinions/tribar/materials/200907150000_01.pdf)

<sup>25</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/954485/the-economic-and-social-costs-of-crime-horr99.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954485/the-economic-and-social-costs-of-crime-horr99.pdf)

<sup>26</sup> <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-3/key-issues/6--models-for-delivering-legal-aid-services.html>

cases, normally by a prosecutor or judge who is dealing with a specific suspect or accused person) or Pro bono schemes.

- iii. Paralegal schemes - provided by paralegals, who may or may not have a legal qualification
- iv. Specialized legal aid service providers - provided for people from certain socio-demographic groups, such as children, women, ethnic minorities, prisoners.

The World Bank observes that unaddressed legal needs have impacts which are not only monetary losses, such as stolen or damaged property, medical expenses, the loss of employment, income or productivity, but also socioeconomic costs that are real but harder to quantify. Often referred to as victimization costs, these may include pain, suffering, trauma, fear, reduced quality of life, damaged reputation, lost dignity, and reduced life chances. Children in families unable to assert their rights may be harmed by the effects of avoidable family breakdown, homelessness, and disrupted schooling, which may limit their ability to become productive and well-integrated members of society and may increase the likelihood of them requiring state support or intervention.<sup>27</sup>

While access to justice can prove expensive when it depends on the formal justice institutions, alternative justice systems enhance access to justice, especially for the poor and marginalized.<sup>28</sup> Through informal but structured alternative justice mechanisms, it is envisaged that Sustainable Development Goal 16 on peace, justice and strong institutions can be enhanced including through strategic intervention 5 of the AJS Framework Policy of strengthened and sustainable resource allocation and mobilization.

The AJS Policy Baseline<sup>29</sup> notes that informal justice systems are less costly than formal justice systems as the former are linked to the communities and are mostly non-institutionalized and usually do not involve fees such as filing and advocate fees. While the baseline observes that the State does not have to pay most of the AJS practitioners as these individuals play their role as part of their organic and time-honored communal-based role-sets, this analysis identified the need recompense and capacitate such practitioners to maintain the efficacy and integrity of AJS. This finding corroborates those in the Training Needs Assessment for Paralegals in Kenya conducted in 2021 where it was observed that:

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<sup>27</sup> <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Analysis-of-Legal-Aid.pdf>  
<http://kituochasheria.or.ke/wp-content/uploads/2022/02/AJS-Policy.pdf>  
<https://www.judiciary.go.ke/download/alternative-justice-systems-baseline-policy-and-policy-framework/>

*...in as much as volunteerism is important, people have bills to be paid at the end of the day and as part of the conversation, there must be put in place a mechanism for compensating paralegals as is done for example for community health volunteers.*

The Training Needs Assessment for Paralegals in Kenya found that community paralegals are an important constituency in the justice sector and key justice enablers who possess invaluable tacit knowledge of the communities they serve and have established networks that are fundamental to the overarching objective of access to justice. This analysis notes that their experience can be invaluable in the provision of legal aid services through the collaboration in autonomous and autonomous third-party Alternative Justice System (AJS) institutions. As established in the AJS Baseline Policy, training and retraining on due process is a critical asset for a rule of law driven AJS regime and therefore, the training needs of the AJS decision makers must first be assessed to delineate areas for building capacity of adjudicators on key technical and functional competencies relevant to AJS duties.

### **3.3 Analysis of the political, social and institutional framework of the justice system in Kenya**

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. Under Article 159, Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established thereunder. In exercising judicial authority, the courts and tribunals shall be guided including by the following principles:

- a) justice shall be done to all, irrespective of status
- b) justice shall not be delayed;
- c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3).

The system of the courts include the superior courts and subordinate courts established under Parts 3 and 4 of Chapter 10.

In Kenya, the National Prosecuting Authority is the Office of the Director of Public Prosecutions established pursuant to Article 157 and the Office of the Director of Public Prosecutions Act, 2013.

Part 4 of Chapter Fourteen of the Constitution establishes the National Police Service *alio* to promote and guarantee national security.



Article 6 (2) of the Constitution recognizes the need for collaboration and cooperation amongst state agencies in service delivery to the citizens. Further, Article 10 (2), underscores the relevance of good governance as a national value. The Judicial Service Act, 2011 establishes NJAC to spearhead the inter-agency coordination in the justice sector institutions on service delivery. At the court level, the Court Users Committees that mimic the NJAC at national level reinforce the spirit of cooperation on expeditious service delivery at the grass-root level.<sup>30</sup>

### 3.4 Salient legal needs in the Kenya and the market demand for legal aid

The following have been identified as areas where the indigent and the vulnerable in Kenya tend to require legal support and these include;

- (a). **Civil Law:** including on Child maintenance and custody, inheritance and succession with respect to land distribution
- (b). **Criminal law:** including Defilement cases, bail/bond applications for general criminal charges and pre-trial detentions
- (c). **Alternative Dispute Resolution:** For example, sponsoring paralegals to support ADR efforts and PIL Advocates to file public interest petitions such evictions from informal settlements.

During a key informant interview, the case distribution by types as reported by paralegal networks in 2021 was as follows:

Nature of cases	Number of cases per region					
	Meru	Laikipia	Kwale	Kitui	Trans Mara	Taita Taveta
Land Disputes	20	4	5	9	13	5
Succession	17		21	5		
Children	12	5		8	14	29
Marriage	15	5	27	8	19	21
Criminal		2	6	3	2	2
Constitutional		10	12			
<b>Total</b>	64	26	71	33	48	57

Source: ICJ 2022

The findings from primary data and secondary data also established that inasmuch as the statistics on criminal cases are higher, there is available, albeit insufficient funding, for indirect costs associated with criminal cases especially for pre-trial detainees and inmates.

<https://gazettes.africa/archive/ke/2021/ke-government-gazette-dated-2021-11-17-no-234.pdf>

### 3.5 Estimated the financial costs and benefits of the with-project versus the without-project scenario

#### 3.5.1 Cost Benefit Analysis estimates

Cost benefit analysis (CBA) has a number of important features that makes it outstanding in decision making process. It is accomplished through systematic cataloguing of impacts as benefits (pros) and costs (cons) and then by attaching monetary values, the costs and benefits can indicate if benefits outweigh costs. CBA is a policy assessment tool for quantifying in monetary terms the value of all consequences of a policy on all members of society. CBA applies to policies, programs, projects, regulations, demonstrations, and other government interventions. The aggregate value of a policy is measured by its net social benefits (NSB), sometimes simply referred to as the net benefits. The net social benefits, NSB, equal the social benefits, B, minus the social costs, C. Effectively, the study looked for those costs and benefits related to legal aid in Kenya.

Overall, the benefits of providing legal aid are summarized in Box 1.

#### **Box 1: Benefits of providing legal aid**

- 1) *Reduction in time spent in remand cells e.g., in police and prisons*
- 2) *Reduction in the number of inmates on remand in prison*
- 3) *Reduction in both the direct costs of accessing the court as well as the costs associated with punitive formal system remedies (e.g., by using paralegals instead of lawyers).*
- 4) *Reduction in court time (court t time avoided+ court t cases diverted)*
- 5) *Employment-related benefits (post-detention productivity)*
- 6) *Provision of psycho-social support to vulnerable groups*
- 7) *Providing access to justice that would lead to greater personal safety and material well-being for citizens living outside the protection of the law*

The population of Kenya has been increasing annually at the rate of 2.28% as confirmed by the 2019 census survey report. Similarly disputes that require free legal assistance are on the rise. For instance, contests over scarce resources e.g., land have increased. Additionally, the rates of family disputes e.g., domestic violence and defilement cases have remained very high and, as such, the need for legal aid services has increased. A survey by the Judiciary, in conjunction with the Hague Institute for Innovation of Law found that only 10% of Kenyans use the formal justice system to resolve their disputes. Further, alternative justice processes help to reduce the burden on courts and are meant to strengthen the links between formal and informal justice systems rather than replace the reliance on courts. In some areas, such as Northern Kenya,

informal justice systems have almost replaced the formal justice system, also in dealing with criminal offences. The benefits of legal are discussed next.

### **3.5.1.1 Data for the calculation of the CBA of Legal Aid**

In undertaking the current CBA of legal aid, we used three main analytical approaches. This was necessitated by the prevailing situation is that the National Legal Aid Services is in the initial stages of implementation while the Judiciary has been underfunded for a quite a number of years. The policy-makers are considering how to increase funding levels to make the judicial processes function efficiently and ICJ has been advocating operationalizing a legal aid program for victims of land issues and persons domestic violence. The incremental approach was adapted because of the increase in population there are also NLAS reported increase in litigations on civil matters. The following was done in order to obtain the data and information suitable for the calculation of the CBAs:

- 1. Developed a method of estimating the costs and benefits for the current Legal Aid Service (LAS) program to be operationalized. We collected data on the amount of money from the Treasury and/or private funding that was used in supporting the development and recurrent requirements for the current legal aid programmes. This we considered as the total costs for legal aid, while benefits were derived from the number of local land cases and domestic violence cases that were litigated or those in the process of adjudication. If the legal aid support was to succeed then these costed benefits would be avoided due to the support from this program. The benefits included many sub-items, of which the most common are the avoidance of: confinements in the remand cells, suffering, health deterioration, decrease in production, consumption costs, administrative costs, second generation costs and the economic costs of transfers.*
- 2. The second consideration was to estimate the scope and funding for the “with-LAS project” alternative and make a projection of the costs and benefits under this scenario. The costs of this scenario would be those associated with additional funding for the provision of legal aid. The main benefits would come from the additional reduction of costs resulting from cases of land and domestic violence avoided due to the new legal aid program. This was estimated using the same criteria as for the existing program.*
- 3. Lastly, a comparison was made between the results of the “with” and “without” additional funding for LAS and maximizing giving more support to the judiciary (i.e., determining the net benefits as a result of adding more funds). These net benefits would be used to calculate financial and economic performance LAS programme and obtaining the indicators, which would monitor the effectiveness of the additional funding. In other words, if the*

*performance indicators show that adding funds to the existing legal aid program will bring net additional benefits, then that program activities were economical.*

### **3.5.1.2 Costs of Legal Aid Services**

Legal aid services will deliver a range of benefits to the beneficiaries. These include tangible costs and benefits which are those that involve monetary payments as a result of the provision of legal aid services or through paralegal actions or interventions. These costs and benefits were estimated precisely. Examples of tangible costs we extracted for the calculations included government expenditures on legal aid programs, out-of-pocket losses to legal aid clients as well as the costs of *pro-bono* services provided by private lawyers, bar associations and that of other providers. Tangible benefits extracted include public benefits recovered on behalf of legal aid clients or cost savings to the government and society from avoided provision of government welfare programs. Tangible benefits also include efficiency gains to the justice system from more expedient court processes as a result of representation by legal aid litigants.

### **3.5.1.3 Type of Cases Filed and the mandatory court charges paid**

According to the Justice Needs and Satisfaction Survey, one in five Kenyans who encounter a legal problem do not pursue any resolution avenues irrespective of their income status. Further, 48% of those who do attempt to settle their legal disputes informally including through friends, family, church leaders and elders. The survey also established that 3 in 10 Kenyans from the lowest income group indicated that they did nothing because the other party was more powerful compared to 1 in 10 people in the highest income group. Moreover, lower income Kenyans are also more likely to say that they did not pursue justice because of a lack of money (16%) compared to those in the high-income groups (9%). In the Financial Year 2020/21, **356,997** cases were filed in all courts; **242,457** criminal cases and **114,540** civil cases. By the end of the FY 2020/21, there were **649,112** pending cases in the Judiciary comprising **293,605** criminal cases and **355,507** civil cases.

During the review period, ordinary civil matters constituted the highest proportion of filed civil cases at 19.9% followed by probate and administration cases at 19.2% while family miscellaneous cases were the least filed at 0.4%. Probate and administration cases were the highest resolved cases at 23.5% while family appeals were the least at 0.2%. In the criminal division, criminal revisions constituted the bulk of the filed cases in the High Court at 44% followed by criminal applications at 26% and Murder and criminal appeals at 15% each. In the Magistrates Courts, 73.1% of the filed cases were criminal cases, 21.6% were traffic cases, 4.5% were sexual offences while 0.6% and 0.2% constituted those of children in conflict with

the law and inquests respectively. The distribution of filed civil matters were as follows; civil cases (57.2%), probate and administration (30.2%), children civil (8.4%), divorce separation (4%) and workman compensation (0.2%).

### 3.5.1.4 Court Fees

The judiciary court fees assessment schedule provides the following fees for the lodging or filing of the respective documents in the relevant proceedings before the specified courts and tribunals.<sup>31</sup>

C.	<b>High Court (Civil Cases)</b>	
1.	<i>Liquidated claim, counter claim</i> originating summons: a. <i>Plaint, counterclaim or originating summons</i> b. <i>Verifying affidavit</i> c. <i>Summons</i> d. <i>List of witnesses</i> e. <i>List of documents</i> f. <i>Statements</i> g. <i>Documents</i> h. <i>Agreed issues</i> i. <i>Pre-trial questionnaires or checklist</i> j. <i>Reply to defence or counterclaim</i>	Assessed according to the Second Schedule and subject to a minimum of Ksh. 2,000 and a maximum of Ksh. 71,000.
2.	Memorandum of appearance (Memorandum of Appearance)	100
3.	Defence: a. <i>Statement of defence</i> b. <i>List of witnesses</i> c. <i>List of documents</i>	500
4.	Any type of application: a. <i>Application</i> b. <i>Affidavit</i> c. <i>Annexures for the first one hundred pages or twenty-five megabytes of data</i> d. <i>Order</i>	750
5.	Annexures exceeding one hundred pages 01 twenty-five megabytes of data	300
6.	Response to an application: a. <i>Affidavits</i> b. <i>Grounds of opposition or objection</i> c. <i>Submissions</i> d. <i>Annexures for the first one hundred pages or twenty-five megabytes of data</i>	750
7.	Notice of appeal to the Court of Appeal against a judgment or ruling (Notice of appeal)	450

[http://kenyalaw.org/kenyalawblog/wp-content/uploads/2020/12/G.N-NO-10181 Court Fees Assesment Scedule.pdf](http://kenyalaw.org/kenyalawblog/wp-content/uploads/2020/12/G.N-NO-10181-Court-Fees-Assessment-Schedule.pdf)

8.	Bill of costs: a. Bill of costs b. Certificate of Taxation c. Bundle of documents	500
9.	Objection to taxation (letter of objection)	100
10.	Court collection fees a. Application for execution (Auctioneers) b. Legal deposits	1,500
11.	Application under certificate of urgency: a. Certificate of urgency b. Affidavit c. Application d. Order e. Annexures for the first one hundred pages or twenty-five megabytes of data	2,250
12.	Registration of a non-pecuniary foreign judgment for adoption: a. Notice of motion or plaint b. Copy of certified foreign judgment c. Affidavit d. Certified copy of decree	2,000
13.	Registration of pecuniary foreign judgment for adoption: a. Notice of motion or plaint b. Copy of certified foreign judgment c. Affidavit d. Certified copy of decree	Assessed according to the Second Schedule and subject to a minimum of Ksh. 2,000 and a maximum of Ksh. 71,000.
14.	Any appeal or review from subordinate courts and tribunals: (a) Notice of appeal (b) Memorandum of appeal (c) Record of appeal	1,550
15.	Registration of arbitration award (a) Application or letter (b) Affidavit (c) Certified copy of the arbitration award (d) Decree or order	10,100
16.	Election petition: (a) Election petition (b) Affidavits or statements (c) Annexures (d) List of witnesses	30,100
17.	Election petition appeal from subordinate courts, tribunals or the Independent Electoral and Boundaries Commission: a. Notice of appeal b. Memorandum of appeal c. Record of appeal (proceedings, judgment, order)	25,000
18.	Security for costs in election petitions (petition)	500,000

D.	<b>High Court (Criminal Cases)</b>	
1.	Public prosecution: a. Charge sheet b. Statements c. Exhibits	
2.	Private prosecution: a. Application b. Affidavit c. Annexures d. List of witnesses e. Order f. List of exhibits	5,000
3.	Petition of appeal or revision in the High Court: a. Memorandum of appeal or application b. Affidavits c. Annexures d. Order	500
4.	All criminal applications: a. Application b. Affidavit c. Annexures d. Order	500
5.	Petition (Constitutional reference): a. Petition b. Affidavit c. List of documents d. Order	6,000
6.	Constitutional petition application: a. Application b. Affidavits c. Annexures d. Order	1,000
7.	Application for order of habeas corpus: a. Application b. Affidavit c. Annexures d. Order	1,000

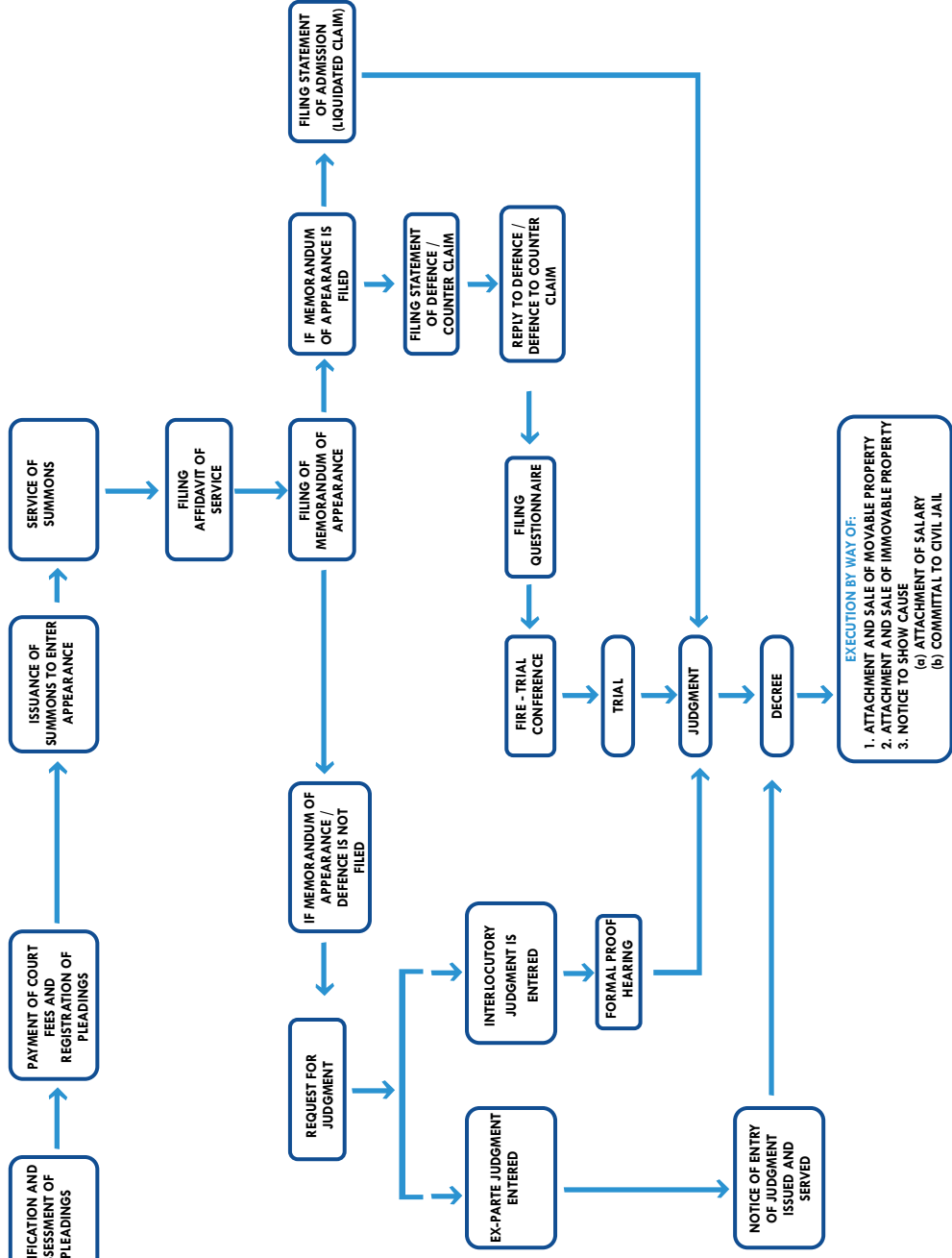
<b>M. Magistrates' Courts (Civil Cases)</b>		
1.	Liquidated claim, counterclaim, originating summons or originating motion	Assessed according to the Second Schedule and subject to a minimum of Ksh. 2,000 and a maximum of Ksh.71,000.
2.	Unliquidated claim, counterclaim originating summons or originating motion. Further court fees shall be paid based on the amount awarded on the determination of the case.	2,000
3.	Filing memorandum of appearance	100
4.	Defence	500
5.	Any type of application: (a) Application for warrant of attachment and sale (b) Application to set aside sale (c) Application for execution of decree or order (d) Application for stay of execution of decree (e) Miscellaneous application	1,000
6.	Response to application: a. Replying affidavit b. Submission c. Grounds of opposition d. List of authorities e. Annexures for the first one hundred pages or twenty-five megabytes of data	500
7.	Annexures exceeding one hundred pages or twenty-five megabytes of data	300
8.	Assessment of costs: a. Request letter b. Decree c. Certificate of cost	500
9.	Objection to assessed costs	100
10.	Court collection fees	1,500
11.	Election petition	15,100
12.	Security for costs in election petitions	100,000
13.	Divorce causes: a. Petition b. Affidavit c. Annexures d. Notice to appear	1,000
14.	Divorce petition for a marriage celebrated outside Kenya: a. Petition b. Affidavit c. Annexures d. Notice to appear	1,500
15.	Appeals from decisions of Registrar of Marriages	750



16.	Cross-appeal or objector	750
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O.	<i>Magistrate's' Courts (Criminal Cases)</i>	
1.	Miscellaneous criminal applications -private applications for anticipatory bail	485
2.	Applications for private prosecution	1,485
3.	Issuance of summons	1,000
4.	Hearing after the first hearing for each day or part thereof	1,000

Civil case flow chart in subordinate courts.<sup>32</sup>



<sup>32</sup> <https://www.judiciary.go.ke/wp-content/uploads/2018/07/CIVIL-CASE-FLOW-CHART-IN-SUBORDINATE-COURTS.pdf>

### **3.5.1.5 Cost of operationalizing the National Legal Aid Services**

There are direct costs and indirect costs associated with legal aid provision or services. There are also opportunity costs associated with the implementation of a legal aid programme.

In this assignment another issue of study was to estimate the cost of the Legal Aid System in Kenya in the short and long term. We have considered a five-year horizon to be consistent with the medium-term expenditure framework for the government budgeting process. The national legal aid Service that is envisaged is a service provider and compared with the current Directorate of Public Prosecutions (DPP), which is staffed by either state attorneys or public defenders, the Service is intended to have in-house, state-sponsored, legal aid providers to supplement other external but accredited legal aid providers. Unlike the DPP, it is envisaged that the NLAS will have a mandate beyond defending prosecution to the provision of legal advice as well as psycho-social support. The overall proposed costs and benefits of legal aid services are shown as key inputs to the calculation of the CBA of legal aid in Table below.

Table 2: Key inputs | Into the calculations of benefits

<b>(A) Civil Land Cases</b>		
Estimated number of reported (Land related cases) civil cases annually		34,832
Estimated cost of resolving a civil dispute (KShs 2020 prices)		87,500
<b>Estimated Benefits of resolving civil cases</b>		<b>3,047,800,000</b>
<b>(B) Prisons</b>		
Total Prison population (Daily population)		<b>15,534</b>
Average length on remand (Capital: Months)		10.95
Average length on remand (Petty offences: Months)		2.5
Average daily cost of maintaining inmates in Prison		<b>2,950</b>
Estimated Annual Cost of maintaining remand prisoners (KShs)		<b>26,775,650,000</b>
<b>(C) Courts</b>		
Crime Rate per 100,000 persons		270
Warder/Prison Rate		10
Case load per Judge		1250
<b>(D) Police</b>		
Number of cases investigated annually (Land related cases)		34,832
Number of cases submitted to DPP		60,853
Estimated number of detainees in police custody		39,106
<b>Estimated Reduction in spending due to detainees released (KShs)</b>		<b>2,926,732,065</b>
<b>(E) Employment</b>		
<b>Released Police Detainees: Employment Benefits (Assuming daily wage of KES 500)</b>		<b>4,995,791,500</b>
Prison Inmates Released Employment benefits (KShs 500)		<b>3,199,332,675</b>

### **3.5.1.6 Assumptions –in the establishment of the National Legal Aid Services and calculation of the CBA**

Legal Aid Services is a relatively less understood among the citizenry, particularly its benefits among the policy makers hence the need for CBA

A restructured justice sector should push for the established NLAS as well as non-state legal service providers.

The present legal aid services should be decentralized to the County Governments because this is where more poor people live who should benefit from these services.

The number of legal aid field offices is guided by the available High Courts.

Finally, in addition to the costs of running the National Legal Aid Service, we also consider the costs of the sustainability of provision of legal services and the provision of psycho-social support and in each magisterial area to promote paralegals.

### **3.5.1.7 Challenges**

1. In some quarters particularly in government provision of legal services *pro bono* was tantamount to supporting the opposition since the funding for such services were coming from donors and most of such cases were political cases.
2. Lack of appreciation of the benefits of legal aid by government. It is considered non aggregate collective demand item to be considered by government like education or health where benefits to the society are quantifiable.
3. Even the Judiciary does not appreciate that benefit of legal aid include reduction in number cases, in costs of running the judiciary. In any case the Judiciary is underfunded such that they would advocate for inclusion of an item in the budget line that would require billions of shillings.
4. The Population of Kenya has grown tremendously and with it the number of cases to be addressed. This means that access to justice in Kenya is still a recurrent need and this has social and economic consequences.
5. The County Governments have been less proactive in this front as they wait for the National Government to act. The whole issue revolves on small allocation to the counties as well.
6. Some legal aid providers who would offer to give support are unable because they cannot even get office space to undertake legal aid provision.

### 3.6 Estimated the economic net benefits of the with-and without-project scenarios

This Section presents the estimated costs and benefits of implementing legal aid with the findings showing that there are cost benefits associated with provision of legal aid.

**Table 1: Estimated Costs and benefits of implementing a Legal Aid Policy in Kenya (K shs, 000 Millions)**

Regulatory Item	Description of cost/saving	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Estimated costs</b>						
National Legal Aid Services	Cost of set up and operation	48,600	48,600	48,600	54,000	62,100
Legal Aid field offices	Cost of set up and operations	315,000	315,000	350,000	392,000	402,500
Alternative Justice System	Cost of operation	55,000	58,000	60,000	85,000	100,000
The Judiciary	Cost of operation	1,601,600	1,601,600	1,601,600	1,960,000	1,667,500
<b>Total cost</b>		<b>2,020,200</b>	<b>2,023,200</b>	<b>2,059,600</b>	<b>2,491,000</b>	<b>2,232,100</b>
<b>Estimated Benefits</b>						
Individuals: Civil cases	Resolution and compensation as well as reducing the number of legal problems faced	2,304,800	3,142,000	3,240,000	3,340,000	3,444,000
Police	Reduction in detention in police cells	2,927,000	3,219,000	3,541,000	3,895,000	4,285,000
Prisons	Reduction in population on remand (i.e. pre-trial detention and remand)	1,874,000	2,062,000	2,268,000	2,495,000	2,744,000
Courts	Reduction in Court time (Court time avoided+ Court cases diverted)	3,805,000	4,186,000	4,604,000	5,065,000	5,571,000
Individuals	Employment related benefits (Post detention productivity)	8,195,000	9,015,000	9,916,000	10,908,000	11,998,000
Individuals	Receipt of Psycho-social support	1,862,000	2,048,000	2,253,000	2,478,000	2,726,000
Government	Benefits of using paralegals instead of legal officers at magistrate districts	2,630,000	2,893,000	3,182,000	3,500,000	3,850,000
FIDA	Pro-Bono service	1,434,000	1,578,000	1,735,000	1,909,000	2,100,000
<b>Total Benefits</b>		<b>25,031,800</b>	<b>28,143,000</b>	<b>30,739,000</b>	<b>33,590,000</b>	<b>36,718,000</b>
<b>Net Benefits</b>		<b>23,011,600</b>	<b>26,119,800</b>	<b>28,679,200</b>	<b>31,099,000</b>	<b>34,485,900</b>

N/B: Discount Rate is deemed 13% Current Bank Rates for Borrowing money.

The study also established that 5.2% of the interviewed paralegals get paid for the work they do and only by Federation of Women Lawyers - Kenya (FIDA). The amount was Kshs. 5,000 per month. Further, the primary data indicated that the sampled paralegals handled an average of 17 cases each per month. This translates to a cost of Kshs 294.12 per case. Under the formal court system, the minimum filing fees for a civil dispute in the Magistrates Courts is Ksh. 2,000 while the minimum instructions fees under the Advocates Remuneration Order is Ksh, 10,000 for proceedings in the subordinate courts whose value do not exceed Kshs. 50,000. Using the cited amount, if a budget of Kshs 5000 per paralegal is proposed per case, this will result in a saving of minimum 7,000 per case if resolved for example through autonomous AJS where no filing or advocate fees are required. Thus, if the lowest formal fees are compared with the paralegal fees, the former would be 2.4 times higher than the informal direct fees otherwise expended in resolving the civil claim through AJS.

### **Alternative Legal Aid Services as a way of cost savings**

Thus, with an expanded publicly provided legal aid scheme, it is likely that the case backlog in the judiciary will be substantially reduced. Further, having legal aid service providers accessible across the country would reduce the perceived or actual corrupt practices associated with the justice sector service providers.

Available legal aid services, are usually restricted to urban and pre-urban centres, partly due to the urban bias, the number of people receiving legal services remains low. There is also evidence to show that most Kenyans are unaware of the location or availability of legal aid providers. This relatively lower awareness may be partly explained by the limited presence of alternative legal aid providers at the lower levels of county governments. Generally, the limited knowledge reflects the distance between legal aid service providers and citizens. There is also the need to assist in providing training to these cadres in the legal aid services. The net effect will be reduction in cost to the litigants, clamp on corrupt practices by the court clerks in the Law courts, increase in the number of those getting aid services and increased economic activities. There will also be savings in cost of travel to main towns and cities to look for *famous* advocates. Some of such costs have been imputed and captured in the analysis.

Further, the impact of legal services extends also to decongestion of prisons and police cells for which a savings of Kshs. 4.3 billion and Kshs. 2.7 billion will be realized.

This study proposes 30% of the current judiciary budget as a necessary addition to the annual judiciary budgetary allocation to be channeled to legal aid programs such as the AJS, and

paralegal training among other legal aid interventions.

### 3.7 Definition of Objectives and M&E indicators of the proposed legal aid intervention

In order to ensure that the legal aid services are effectively provided, the following indicators will be monitored at regular interval to ascertain if the legal aid services are effective in Kenya:

*Number of land cases resolved through the courts of Law and through Alternative Dispute Resolution*  
*Increase or decrease in the number of civil cases in areas of interest such as Land cases*  
*Average time taken to dispose of land cases*  
*Number of cases where paralegals are involved as adjudicators or representatives*  
*Number of vulnerable persons that accessed legal aid services in a given period*  
*Number of persons empowered to understand the use of legal services in the country by counties*  
*Improvements in the efficiency of the court systems*  
*Improvement in the decongestion of detention facilities, prisons over time*  
*Economic empowerment to individuals or community due legal aid services*  
*Number of service providers trained on legal aid services*

The information on the above were collected collated and transformed in readiness for use in the computation of the CBA of legal Aid services in Kenya. From the analysis of the costs and benefits, the net social benefits are positive for five years and will likely increase over time due to expected gains in employment benefits. Individual employment benefits, the other sources of benefits of operationalizing the NLAS will accrue from reducing court time as well public wage gains from tasking more paralegals or in-house advocates instead of external advocates to offer legal aid services.

The study shows that there are considerable benefits from providing legal aid as well as operationalizing the NLAS. First, as highlighted above, the cost of maintaining the status quo is very high to indigents and vulnerable persons. Additionally, without expanded and publicly provided legal aid, it is unlikely that the backlog in the judiciary will be substantially reduced. Finally, having LASPs accessible would reduce the perceived or actual corrupt practices associated with the courts.

The study also notes that a substantial proportion of legal aid services is underfunded and is likely to continue even during the implementation of NLAP. At the moment, what is required from the government is a framework through which both state and non-state legal aid will be provided. Specifically, the government has to establish the nature of the minimum legal aid



package provided by the different LASPs as well as the level at which the local governance structure will improve the individual's access to legal aid.

### 3.8 Assessment of risks associated with the implementation of the proposed project

The table below presents the risk analysis matrix in the implementation of legal Aid service

Risk	Risk rating	Proposed Action	Responsibility
Prevalence of quacks in provision of legal aid services	High	Training, Registration and certification of paralegals, Accreditation of training institutions	NLAS, ICJ
Extortion of beneficiaries by certain cadres of legal aid providers	Moderate	Development of a service charter indicating the rights of the beneficiaries and Awareness creation on the charter	NLAS, ICJ
Inequitable or unjust resolution of disputes in informal dispute resolution for a	Moderate	Establishment of committees and boards to settle appeal cases  Operationalization of AJS	Judiciary
Underfunding from national budget	High	Continuous advocacy for increased funding and decentralization of legal aid services	NLAS, CBOs, Judiciary, National Assembly, Treasury
Overreliance on donor-funding	High	Rollout and implementation of sustainability frameworks including through strategic partnerships with stakeholders	NLAS, CBOs, National Government, County Governments, Justice Sector Stakeholders

### 3.9 Five-year budget for legal aid services

A summary of five-year cost estimates to address the legal aid access gaps across the 42 counties where NLAS does not have presence is presented in Table below. The costs are twofold; Opex (operational costs) and Capex (capital costs).

Year	Year 1 (15 counties)	Year 2 (15 counties)	Year 3 (12 counties)	Year 4 (42 counties)	Year 5 (42 counties)	Total
	"000" Ksh	"000" Ksh	"000" Ksh	"000" Ksh	"000" Ksh	"000" Ksh
Capex	450,000.00	450,000.00	360,000.00	-	-	1,260,000.00

Opex	90,000.00	180,000.00	252,000.00	252,000.00	252,000.00	1,026,000.00
<b>Total</b>						<b>2,286,000.00</b>

The proposed budget is therefore Kshs 2.286 billion comprising Kshs 1.26 billion for infrastructure/ facilities set-up and Kshs 1.026 billion for operational (OPEX) subsidies.

**Assumptions:**

1. Capex of Ksh 30M per office
2. Construct offices in 15 counties per year for the first 2 years and 12 office counties in yr 3
3. Opex of Ksh 500,000 per month per office = Ksh 6 Million per office/year
4. All countries will have legal aid office by end of yr 3

The foregoing notwithstanding, and in line with international best-practice, 30% of the enhanced annual judiciary budget should be allocated to legal aid interventions.

## CHAPTER 4: FINDINGS, CONCLUSIONS AND RECOMMENDATION

### 4.1 Conclusion

#### *(a) Benefits of legal aid*

In terms of the costs and benefits, the net social benefits are positive for five years and will increase over time due to expected gains in employment benefits. Apart from individual employment benefits, the other sources of benefits of operationalizing the NLAS Act arise from reduction in court time as well as public wage gains from using more paralegals instead of lawyers to provide legal advice. Further, the cost of land cases will be lowered by the amount reflected as costs incurred and paid by the litigants.

#### *(b) Community paralegals*

Community paralegals were found to be crucial to the delivery of justice yet their capacity is limited and needs enhancement through targeted paralegal education and training program especially as potential Alternative Justice System (AJS) adjudicators. In addition, funding of paralegal programs needs to be increased because they are crucial to the delivery of justice and as justice enablers, their intervention result in efficient access to justice by avoiding certain costs such as advocate costs are relatively high. Court filing fees in instances where disputes can be resolved through autonomous AJS and autonomous third party AJS mechanism are also avoided through the intervention of paralegals.

#### *(c) Enhancing access to justice*

The CBA also shows that there are major economic and financial benefits arising from provision of legal aid as well as implementing the expansion of NLAS. For example, the cost of maintaining the status quo is very high to indigents and vulnerable persons which constitutes a barrier to justice. Additionally, with expanded and publicly provided legal aid, it is likely that the backlog of cases in the judiciary will be substantially reduced. Thirdly, having NLAS accessible to many people will advance the objectives envisaged under the Legal Aid Act, 2016. Currently, NLAS has presence in only 5 of the 47 counties necessitating establishment of offices in the other 42 counties.

#### *(d) Summary of findings*

A summary of findings from this CBA are as follows:

1. *Legal aid services have important benefits which are financial, economic and social*

2. *Legal aid services are underfunded in Kenya compared to best practice legal aid funding and that maintaining the status quo is very high to indigents and vulnerable persons which constitutes a barrier to justice.*
3. *Cost benefit analysis exhibited a positive net present value based on the data that was used in the analysis. The data was collected from the justice system in Kenya including the police department, prisons department, registry of the Judiciary, and national legal aid services.*
4. *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*
5. *There is need for a robust monitoring and evaluation framework for the legal aid services to provide data that is necessary for decision making*
6. *Further studies should be conducted to Legal aid budget per capita and funding mechanisms cover the cost of specialized legal aid services provided to specific population groups such as women, children, marginalized, indigent and vulnerable populations*

## **4.2 Recommendations**

### *(a) Effective framework for legal aid package*

The calculations of the CBA indicate that a substantial proportion of legal aid services is donor financed and is likely to continue even after the full roll out of NLAS. In this regard, a framework through which both state and non-state legal aid will be provided should be put in place. Specifically, the nature and minimum legal aid package to be provided by the different contributions from NLAS should be established as well as the extent to which the county governance structure should be enhanced to improve access to legal aid by an eligible individual's

### *(b) Deepening the operationalization of NLAS Act*

There is need for further and sustained operationalization of NLAS as provided in the Act. The net benefits above costs is positive indicating that investing in the NLAS is financially viable. Ancillary to this, resources, financial and otherwise, should be availed to operationalize paralegals curriculum and provide continuous capacity building - seminars, workshops, and

forums to enable them deliver justice to general public and especially to the indigent, marginalized and vulnerable.

*(c) Specific budget provisions for legal aid services*

In addition, as echoed in Guideline 12, of the UN Principles and Guidelines, on Funding the nationwide legal aid system:

Recognizing that the benefits of legal aid services include financial benefits and cost savings throughout the criminal justice process, States should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.<sup>33</sup>

As shown by best practice, over 30% of the justice budget should be dedicated to legal aid. It is recommended that Kenya enhances its judiciary budget and allocate 30% of it to legal aid services.

*(d) Continuous evidence-based interventions*

Thus, based on the foregoing, UN Principles and Guidelines, there is also need to:

1. Conduct a National Study for Legal aid budget per capita, for both criminal and civil cases in Kenya and prepare a road map for its enhancement to international best practice.
2. Conduct a study on what funding mechanisms cover the cost of specialized legal aid services provided to specific population groups such as women, children, marginalized, indigent and vulnerable populations and prepare an action plan to effectively meet the legal aid needs for this category of the population.

© *Summary recommendations*

Furthermore, and based on the key findings of the CBA the following is a summary of the recommendations:

1. Legal aid services be expanded to have physical presence in all 47 counties
2. Funding for legal aid services be increased to 30% of the judiciary budget
3. Monitoring and evaluation of legal aid services be done and data used to inform further interventions in future. The monitoring and evaluation calls 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

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<sup>33</sup> [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid\\_Report01.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf)

Service Board to support regular monitoring and reporting on quarterly and annual basis to inform further policy and operational interventions.

4. *Mitigate the risks associated with legal aid by accreditation of legal aid service providers such as paralegals, standardizing cost of access to services and regularizing and capacitating informal dispute resolution platforms to guarantee equity and justice in consonance with Articles 159(2)© and (3) of the Constitution.*
5. *Further studies be conducted to generate required evidence for further improvement of legal aid services and access to justice.*

## ANNEXES

### Annex 1: Data collection Tools



Annex 2

KII\_TA\_02042022.pdf



Questionnaire.pdf

### Annex 2: Research Team

Name	Role
Mr. Arnold Otieno	Team Leader
Mr. Mike D.V. Franklin	Project Manager
Mrs. Jane Nyambura Wanderi	Legal Advisor
Prof. Thomas K. Ayodi	Senior Consultant
Mr. Kibor Kibet	M&E Expert

### Annex 3: List of Key Informants

Name	Organization
Ms. Fresiah Githumbi	National Legal Aid Service
Hon. Jacky Kibosia	The Judiciary
Dr. John Karanja	Kenya Prisons Service
Ms. Santana Simiyu	International Commission of Jurists -Kenya
Zackary Omweri	Pro Bono Advocate
Ancent Reese	Probono Lawyer
Mwaura Kabata	Law Society of Kenya
Bilasio Wandera	Paralegal
Shadrack Wambui	Sheria Mtaani na Shadrack Wambui

### Annex 4: Validation workshop Attendees

Name	Organization
Mary Airo	Paralegal Society of Kenya
Valarie Ang'awa	Kituo Cha Sheria
Brenda Yambo	FIDA Kenya
Fresiah Githumbi	National Legal Aid Service
Edigah Kavuravu	Justice defenders
Wanjiru Ndungu	Kwale paralegal Network
Annette Mbogoh	Kituo Cha Sheria
Adrian Wangatiah	CREAW
Wangari Kagai	LSK
Judith Adhiambo	Langata Legal Aid centre
Judith Wangari Njue	Meru Paralegal Network
Bilasio Wandera	Paralegal
Ansen Reese	Advocate
Jeremiah Cherezuga	Taita Taveta Paralegal Network
Josephat Kasina	Kitui Paralegal Network
Anita Moragwa	Advocate- Judiciary
M. Arum	Legal Resources Foundation

Mary Konchellah	Trans Mara Paralegal Network
William M. Thiga	Laikipia paralegal network
Santana Simiyu	International Commission of Jurists - Kenya

### Annex 5: Other Additional Information

It is important to understand that the costs incurred by the beneficiaries is eliminated or supported translate to benefits to the beneficiaries.

**Table 2. Comparative Crime Figures for 2014, 2015 and 2016**

S/No	Offences	Year 1	Year2	Year3	Total	% Of the Total
1	Homicide <sup>8</sup>	2,411	2,313	2,090	6,814	2.9
2	Offences Against Morality <sup>9</sup>	3,39	3,153	3,525	10,117	4.4
3	Other Offences Against Persons <sup>10</sup>	20,247	17,304	18,723	56,274	24.3
4	Robbery	7,967	6,936	5,234	20,137	8.7
5	Breaking	9,242	8,454	7,420	25,116	10.9
6	Theft of Stock	2,380	2,219	2,209	6,808	2.9
7	Stealing	13,119	12,589	10,874	36,582	15.8
8	Theft By Servant	3,217	2,874	2,700	8,791	3.8
9	Vehicle And Other Thefts	2,037	1,718	1,660	5,415	2.3
10	Dangerous Drugs <sup>11</sup>	5,761	6,356	5,821	17,938	7.7
11	Traffic Offences	60	38	62	160	0.1
12	Criminal Damage	3,852	3,236	3,518	10,606	4.6
13	Economic Crimes	1,868	1,390	1,873	5,131	2.2
14	Corruption	182	107	252	541	0.2
15	Offences Involving Police Officers	6	29	76	111	0.0
16	Offences Involving Tourist	40	32	84	156	0.1
17	Other Penal Code Offences	8,013	6,652	6,104	20,769	9.0
18	Total	83,841	75,400	72,225	231,466	100.0

Source Kenya Police Report

**Table 3. Case Summary for 2015-2016**

Case status	2015	2016
Referred to KACC	755	1447
Other Investigative Agencies	827	1075
Public Service Organizations	1445	1548
Avail More information	35	88
Advised on right authority to report matter to	1284	3517
Advised to seek civil redress	987	638
No further Action by KACC	294	262
<b>Total cases</b>	<b>5709</b>	<b>8575</b>

Source: Kenya Anti-Corruption Commission 2017.



**Table 4: Returns from Magistrate Courts 2014-2016**

Case Status	Year 1	Year 2	Year 3
Total cases filed during the year	189,642	171,775	172,515
Average No. of pending cases during the year	77,316	82,212	110,881
Total cases decided during the year	166,177	165,511	158,272

Source: Judiciary 2017

\*Projections were done for year 2017 and year 2018

**Table 5: Total Prisons Admissions**

Offences	Convicted				Unconvicted			
	2014	2015	2016	Total	2014	2015	2016	Total
Rape	1113	1172	1530	3815	701	722	626	2049
Attempted Rape	168	164	158	490	714	676	697	2087
Assault	2173	2568	2653	7386	7386	6756	7753	21895
Murder	182	195	237	614	1337	1324	1232	3893
Robbery	2356	2341	2279	6976	5693	5937	5794	17424
Breaking & Stealing	2367	2316	2430	7113	4085	4200	4646	12931
Theft of Motor Vehicle	161	96	106	363	314	247	285	846
Corruption	44	46	112	202	134	119	125	378
Drug Related	2582	3081	3243	8906	4480	4393	4525	13398
Defilement	793	728	797	2318	1557	1511	1703	4771
Stealing	3130	3574	3932	10636	6597	6578	6053	19228
Theft of stock	1124	1092	1095	3311	204	1877	2093	6024
Obtaining	434	563	437	1434	1139	1375	1520	4034
Abduction	195	151	115	461	481	465	392	1338
<b>Totals</b>	<b>16822</b>	<b>18087</b>	<b>19124</b>	<b>54033</b>	<b>34822</b>	<b>36180</b>	<b>37444</b>	<b>110296</b>

Source: Kenya Prisons Service, 2017

**Table 6. Data on crime detection, Prosecution and Conviction**

Indicator	2014	2015	2016
Crime detection	83,841	(75,400 + 5709) 81,109	(72,225 + 8575) 80,800
Prosecution	189,642	171,775	172,515
Conviction	16822	18087	19124

Source: Extracts from Kenya Police Force, KACC, Magistrate Courts (2017)

**Table 8. Data on Backlog**

Year	Average monthly number of pending cases
2014	77,316
2015	82,212
2016	110,881

Source: Magistrates Courts (2016)

**Table 9. Data on population eligible to receive legal aid**

Year	Number of Murders
2014	164
2015	120
2016	115
Total	399

Source: Files at the Deputy Registrar, Criminal Divisi

### Comparative Crime Figures for 2014, 2015 And 2016 in the Months of January to December

S/No	Offences	2014	2015	2016	Total	% of the Total
1	Homicide <sup>22</sup>	2,411	2,313	2,090	6,814	2.9
2	Offences Against Morality <sup>23</sup>	3,39	3,153	3,525	10,117	4.4
3	Other Offences Against Persons <sup>24</sup>	20,247	17,304	18,723	56,274	24.3
4	Robbery	7,967	6,936	5,234	20,137	8.7
5	Breaking	9,242	8,454	7,420	25,116	10.9
6	Theft of Stock	2,380	2,219	2,209	6,808	2.9
7	Stealing	13,119	12,589	10,874	36,582	15.8
8	Theft By Servant	3,217	2,874	2,700	8,791	3.8
9	Vehicle And Other Thefts	2,037	1,718	1,660	5,415	2.3
10	Dangerous Drugs <sup>25</sup>	5,761	6,356	5,821	17,938	7.7
11	Traffic Offences	60	38	62	160	0.1
12	Criminal Damage	3,852	3,236	3,518	10,606	4.6
13	Economic Crimes	1,868	1,390	1,873	5,131	2.2
14	Corruption	182	107	252	541	0.2
15	Offences Involving Police Officers	6	29	76	111	0.0
16	Offences Involving Tourist	40	32	84	156	0.1
17	Other Penal Code Offences	8,013	6,652	6,104	20,769	9.0
18	<b>Total</b>	<b>83,841</b>	<b>75,400</b>	<b>72,225</b>	<b>231,466</b>	<b>100.0</b>

Source: Kenya Police Service 2007

### NLAS DATA REPORTS

#### GRAND TOTAL 5 YEARS

#### NLAS GRAND TOTAL FROM FY 2016/17 TO FY2020/21

FINACIAL YEARS DATA	NUMBERS
FY 2020/2021 (as of 3rd Qtr)	<b>1,114,715</b>
FY 2019/2020	<b>1,206,904</b>
FY 2018/2019	<b>175,294</b>
FY 2017/2018	<b>16,884</b>
FY 2016/2017	<b>8,153</b>
<b>GRAND TOTAL</b>	<b>2,521,950</b>

Data from the NLAS show an increasing trend in the number of cases involved as shown above

OFFICES	2013/14	2014/15	2015/16	2016/17	SUM	
NAIROBI	1,359	1,398	2,437	3,995	9,189	
NAKURU	760	609	1,055	1,418	3,842	
ELDORET	953	1,145	1,217	1,986	5,301	
KISUMU	397	314	305	479	1,495	
MOMBASA	699	882	1,296	947	3,824	
<b>GRAND TOTALS</b>		<b>4,168</b>	<b>4,348</b>	<b>6,310</b>	<b>8,825</b>	<b>23,651</b>
	<b>MAX</b>	<b>1,359</b>	<b>1,398</b>	<b>2,437</b>	<b>3,995</b>	<b>9,189</b>
MIN	397	314	305	479	1,495	AVERAGE 834
						870 1,262 1,765 4,730



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**International Commission of Jurists - Kenyan Section**

📍 ICJ Kenya House, Off Silanga Road, Karen    ✉ P. O. Box 59743-00200 | Nairobi-Kenya

📞 +254 720 491 549    ✉ info@icj-kenya.org    🌐 www.icj-kenya.org

📘 @ICJ.Kenya    🐦 @ICJKenya

