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LEGAL NOTICE NO. 86

THE LEGAL AID ACT

(No. 6 of 2016)

THE LEGAL AID (GENERAL) REGULATIONS, 2022

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DAY: Tuesday	
TABLED BY:	Deputy Speaker
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THE LEGAL AID ACT
(No. 6 of 2016)

IN EXERCISE of the powers conferred by section 86 of the Legal Aid Act, 2016, the Attorney-General makes the following Regulations—

THE LEGAL AID (GENERAL) REGULATIONS, 2022
PART I—PRELIMINARY

1. These Regulations may be cited as the Legal Aid (General) Regulations, 2022. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“asset” means—

- (a) any movable or immovable property;
- (b) any corporeal or intellectual rights to property; or
- (c) any item, property or money that an applicant or the applicant's spouse receives, or is entitled to receive at a future date, from the estate of any deceased person;

“costs” means the fees payable to an accredited legal aid provider, calculated by reference to scales of fees determined by the Service in consultation with relevant professional bodies in accordance with section 75 (1) of the Act, and includes—

- (a) advocate's fees;
- (b) disbursements; and
- (c) any fees payable at an enhanced rate but does not include Value Added Tax chargeable under any written law.

“dependant” means—

- (a) an applicant's child or step-child who is under eighteen years of age; Cap 248.
- (b) the applicant's child above the age of eighteen years who is pursuing a full-time formal education or vocational training in an institution recognized in Kenya; or Cap 168.
- (c) a relative or other person who permanently resides with the applicant and relies on the applicant for financial support; No. 1 of 2011.

“disposable capital” means a person's total assets after deducting the amount of any debts secured against those assets and after deducting the amount of the value of the person's household furniture, household appliances, personal clothing and tools of trade;

“household” means individuals who comprise a nuclear family unit and who live together in the same house;

“intermediary” means a person who is—

- (a) aware of the facts giving rise to the legal redress being sought; and

- (b) able to assist the applicant to communicate with the Service;
- "person suffering from mental disorder" has the meaning assigned to it under section 2 of the Mental Health Act;
- "Public Trustee" has the meaning assigned to it under section 2 of the Public Trustee Act;
- "probability of success" means the likelihood that an applicant for legal aid will obtain a successful outcome at a trial or other final hearing in the proceeding to which the application relates; and
- "Registrar" means a judicial officer appointed as such in accordance with the Judicial Service Act, 2011.

PART II—CRITERIA FOR ELIGIBILITY

3. Legal aid shall only be available to natural persons for advice, legal assistance or legal representation in a court, tribunal or any other dispute resolution forum to which the application for legal aid relates.

Persons eligible for legal aid.

4. (1) A person qualifies for legal aid in relation to a criminal case or civil case in which he is a party if the person—

Means test.

- (a) has a net monthly income, after deduction of income tax, not exceeding thirty thousand shillings;
 - (b) has a spouse whose aggregate monthly income, after deduction of income tax, does not exceed thirty thousand shillings; or
 - (c) is a member of a household whose aggregate monthly income, after deduction of income tax does not exceed thirty thousand shillings.
- (2) An applicant who is not a member of a household may qualify for legal aid in relation to a civil or criminal case, if the applicant—
- (a) satisfies the requirements of sub-regulation (1);
 - (b) has disposable capital of a value not exceeding thirty thousand shillings; or
 - (c) is the proprietor of immovable property whose rental income or other mesne profits does not exceed thirty thousand shillings.

Amounts to be considered in the means test.

5. (1) In assessing the means of an applicant for legal aid—
- (a) any income tax paid or payable on income treated for the purpose of granting legal aid under the Act as the income of the applicant shall not be taken into account; and
 - (b) fifteen thousand shillings in respect of the applicant's living expenses and outgoings shall not be taken into account.
- (2) In determining the applicant's net monthly income for the purposes of the means test, any amount paid to an applicant under a pension scheme or a super annuity fund shall not be taken into account.

(3) In determining the applicant's net monthly income for the purposes of the means test, any amount received by an applicant on account of spousal maintenance or child support shall be taken into account.

(4) Any property, asset or investment held under a trust, settlement or other arrangement and administered by the applicant or any other person for the direct or indirect benefit of the applicant, the applicant's spouse, dependant or nominee shall be deemed to be the property of the applicant for the purpose of determining the applicant's net monthly income.

(5) In determining the applicant's net monthly income under sub-regulation (4) the percentage of the benefits accruing to the applicant under the trust, settlement or arrangement shall be taken into account.

(6) Where an application for legal aid relates to a suit against a member of the applicant's family, the applicant's net monthly income shall be assessed as if the applicant is not a member of that family.

(7) In determining the financial means of an applicant, the net monthly income of a spouse from whom the applicant is separated shall not be taken into account.

(8) An applicant who disposes of any movable or immovable assets, whether directly or indirectly, in order to become eligible for legal aid or to reduce or avoid repayment or contribution to the Service shall be disqualified from the grant of legal aid.

(9) The Service may include the assets referred to in sub-regulation (8) when calculating the applicant's net monthly income or disposable capital for the purposes of the means test or determining the contribution payable by the applicant to the Service as a pre-condition for the grant.

(10) The movable or immovable assets referred to in sub-regulation (8) include—

- (a) any assets that the applicant has transferred to another person; or
- (b) any assets that the applicant has converted into financial resources that would be wholly or partly disregarded under the Act.

PART III—APPLICATION FOR LEGAL AID

6. In this Part, "civil matter" includes civil proceedings for the review or appeal of the court decisions arising from the civil proceedings.

Interpretation:
Part III.

7. (1) An application for legal aid shall be made to the Service in Form NLAS 1 set out in the First Schedule.

Procedure for
application.

(2) Where an application is made to the Service in relation to advisory or legal services, other than legal representation in judicial proceedings, the applicant shall make the application in the county in which the applicant resides or carries on business.

(3) Where an application is made for legal representation relating to civil or criminal proceedings, the applicant shall apply to the Service at its nearest office within the jurisdiction of the court in which the proceedings are to be conducted.

(4) An application for legal aid shall be accompanied by—

- (a) a list of and the estimated value of the applicant's assets, if any;
- (b) documentary evidence of the applicant's monthly income accruing from the assets;
- (c) documentary evidence of the applicant's monthly salary for the three months preceding the application; and
- (d) the applicant's tax returns for the financial year preceding the application.

(5) In the absence of the documents required under sub-regulation (4), the Director may, at his discretion, require the applicant to make a statutory declaration, under oath, of the applicant's net monthly income.

(6) In addition to the formal application made under this Part, the Director may require an applicant to attend an oral interview for the purpose of—

- (a) clarifying any information contained in the application; or
- (b) providing such additional information as may assist the Director or officer of the Service in making the decision to grant or refuse the application.

8. A person may apply for legal aid services under the Act seeking—

- (a) legal advice concerning any issue;
- (b) legal assistance in—

- (i) the resolution of a dispute by means of alternative dispute resolution mechanisms;
- (ii) drafting of relevant documents and effecting service incidental to any legal proceedings; and
- (iii) reaching or giving effect to any out-of-court settlement; or

(c) legal representation in civil or criminal proceedings.

9. A person who has an interest in any civil or criminal proceedings, including a witness, may apply for legal aid in accordance with these Regulations.

10. (1) The Service may grant legal aid on an interim basis limited to legal advice, legal assistance or other services that are necessary to protect or preserve the rights of the applicant pending determination of the formal application in accordance with these Regulations.

Services for which application may be made.

Interested persons may apply for legal aid.

Service may grant legal aid on an interim basis.

(2) Where the Service grants legal aid on an interim basis, it shall issue a provisional certificate of grant in Form NLAS 2 set out in the First Schedule.

(3) Where the Service issues a provisional certificate of grant under this regulation, civil proceedings shall not be commenced under the certificate until the Director is satisfied that it is reasonable under all the circumstances to commence, defend or continue with the proceedings.

(4) Where legal action is required to be taken immediately under any written law in order to preserve the rights of the applicant, the Director may authorise the taking of such action in the proceeding but shall not take a further action pending final determination of the application.

(5) The Service or legal aid provider, as the case may be, shall at all times keep the applicant informed and advised of the decisions and steps taken pursuant to the legal action taken under sub-regulation (4).

(6) On the final determination of the application, the Service may—

- (a) extend the term of the provisional certificate for a period not exceeding six months:

Provided that the Service shall not extend the term of the provisional certificate for a cumulative period exceeding twelve months;

- (b) cancel the provisional certificate and refuse to grant further legal aid to the applicant; or
- (c) grant legal aid, with or without conditions, and issue the applicant with a certificate of grant.

11. (1) The Service may grant legal aid to a litigant in a civil matter pursuant to section 35(2) (a) of the Act if, in the opinion of the Service—

- (a) the matter has a high probability of success;
- (b) the Service has the necessary resources available;
- (c) the pecuniary value or benefits of the probable outcome of the proceedings justify the estimated costs of the proceedings, having regard to the circumstances of the case; and
- (d) the outcome, decree or consequential orders of the court are capable of enforcement.

(2) The Service shall take appropriate steps to prevent—

- (a) default judgment against the applicant;
- (b) the presumption of waiver of any right accruing to the applicant under any written law;
- (c) adverse possession in relation to any property the subject matter of the claim; or

Determination of applications for legal aid in civil matters.

- (d) limitation of the action to which the application relates, to the detriment of the applicant.

(3) Where legal aid is granted to a party to civil proceedings in any court within Kenya, and evidence is to be heard on commission, the Service may extend legal aid to the hearing of such evidence outside Kenya if—

- (a) the Service has sufficient funds to meet the costs of such hearing; and
- (b) the Service is of the opinion that good reasons exist to justify extension of legal aid in that regard.

(4) The Service shall not provide legal aid to any person for the purpose of civil proceedings in any court outside Kenya.

12. (1) An application for legal aid in respect of a civil matter in which a child is a party shall be made by—

Application by or on behalf of a child.

- (a) any of the child's parents;
- (b) the child's next friend or guardian *ad litem*; or
- (c) the person for the time being having legal custody of or exercising parental responsibility over the child.

(2) If the proceedings to which the application relates are in the name of the next friend, guardian *ad litem* or other person in their representative capacity, the certificate of grant shall be issued in the name of the next friend, guardian *ad litem* or representative.

(3) Legal aid in respect of a child offender shall be provided at all stages of the criminal justice process, including arrest, trial, sentencing and appeal.

(4) A child offender shall not be subjected to the means test for purposes of determining the child's eligibility for legal aid.

13. (1) An application for legal aid in respect of a civil or criminal matter in which a person suffering from mental disorder is a party may be made on behalf of the person by the manager of the estate of that person, guardian or the Public Trustee, appointed by the court in accordance with the Mental Health Act.

Application by person with mental disorder.

Cap. 248.

(2) An application made on behalf of a person suffering from mental disorder under this regulation shall be accompanied by an order of the court issued under section 26 of the Mental Health Act for the custody, guardianship or management of the estate of that person and shall be subjected to the means test.

14. (1) An application for legal aid by a refugee, victim of human trafficking, internally displaced person or stateless person, in civil or criminal proceedings may be made by any person authorised by the applicant.

Application by refugee, victim of human trafficking, internally displaced person or stateless person.

(2) An application made under paragraph (1) shall be signed by the applicant.

(3) If for any reason the applicant is unable to personally sign the application, the person by whom the application is made shall make a written declaration disclosing the reasons why the person on whose behalf the application is made is unable to sign the application.

(4) The applicant shall be subjected to the means test.

15. (1) In determining whether or not to grant legal aid in constitutional matters or other matters of significant public interest pursuant to section 35 (2) (d), (e) and (f) of the Act, the Service shall consider—

Application for legal aid in constitutional matters and matters of public interest

- (a) the impact of the decision not to grant the application, and whether it would be in the public interest that legal aid be granted;
- (b) the complexity of the relevant law and procedure;
- (c) the ability of the applicant to represent himself effectively in the absence of legal assistance or representation;
- (d) the financial means of the applicant;
- (e) the probability of success of the case in relation to which the application is made; and
- (f) whether the applicant is substantially disadvantaged in comparison with the other party to the proceeding.

(2) Despite paragraph (1), an applicant for legal aid in a civil or criminal matter of public interest shall not be subjected to the means test.

(3) A case is of significant public interest if the Director is satisfied that the case is appropriate for the realization of—

- (a) benefits for an identifiable class of applicants, other than members of the applicant's family or the applicant to whom legal aid may be provided in a civil matter; or
- (b) the protection of the rights of the child, the rights of persons with disabilities, minority and marginalised groups, and the advancement or enforcement of the constitutional rights of marginalised communities.

16. (1) The Service shall not grant legal aid in any civil matter where, in its view—

Limitation and exclusion of legal aid in certain civil matters.

- (a) the claim in respect of which the application relates is vexatious; or
- (b) there is no real or substantial material benefit likely to accrue to the applicant.

(2) The Service shall grant only legal advice, in relation to any action or claim which falls within the pecuniary jurisdiction of the Small Claims Court in accordance with the Small Claims Court Act, 2016.

(3) Legal aid shall not be granted for the purpose of instituting or defending an action in a burial dispute.

No. 2 of 2016.

(4) The Service may grant legal aid to an applicant who is an opposing party to a person who has been granted legal aid.

17. The Service may grant legal aid to an applicant in relation to only one civil matter at any one time, unless the Service is of the opinion that—

Limitation on number of civil cases.

- (a) there is a probability of success in respect of all the matters for which legal aid is sought;
- (b) the cost of legal aid in relation to the cases is justifiable by the anticipated benefits to the applicant; and
- (c) the grant of legal aid to an applicant in two or more cases at any one time does not, having regard to the available resources, prejudice the right of others to access legal aid.

18. (1) An accused person has the right to legal aid in a criminal matter and to have an advocate assigned to him pursuant to Article 50 (2) (h) of the Constitution if substantial injustice would otherwise result.

Right to legal aid in certain criminal matters.

(2) For the purposes of paragraph (1), it is immaterial that the applicant has been sentenced, remanded in custody or is otherwise detained or imprisoned.

19. (1) To qualify for legal aid in a criminal matter, the applicant shall show to the satisfaction of the Service that he meets the requirements of section 36 (4) of the Act.

Eligibility for legal aid in criminal matters.

(2) Without prejudice to the generality of paragraph (1), the Service shall grant legal aid under this regulation regardless of the applicant's financial means if the interest of justice so requires, taking into account—

- (a) the urgency or complexity of the case; and
- (b) the severity of the potential penalty.

(3) In determining the applicant's financial resources under this regulation, the Service shall apply the means test prescribed in regulation 4.

(4) The Service shall be satisfied on a balance of probabilities that there is a probability of success before granting legal aid in any of the following matters—

- (a) bail appeals;
- (b) reviews and revisions;
- (c) interlocutory applications to a court other than the trial court; or
- (d) applications to recall a witness or adduce further evidence in the proceedings.

20. (1) An officer-in-charge of a prison, police station, children remand home or other place of lawful custody shall, in consultation with the Service, keep and maintain a record of—

Application by persons in lawful custody.

- (a) the nearest branch of the Service;

- (b) accredited legal aid providers in the county specifying the particulars specified in section 60 (1) (a) to (c) and (e) of the Act; and
 - (c) entries of referrals made to the Service and to accredited legal aid providers in favour of persons in their custody and in need of legal aid.
- (2) On admitting a person into custody, the officer-in-charge shall—
- (a) inform the person of his basic rights, including the right to legal aid; and
 - (b) inquire whether the person is in need of legal aid and record the person's response in the register maintained in accordance with section 42(1)(b) of the Act.
- (3) If the person is in need of legal aid, the officer-in-charge shall, within twenty-four hours, facilitate completion of an application for legal aid and submit it to the Service and make an entry in the register stating the steps taken by the officer to facilitate access by that person to legal aid.
- (4) The Service or an accredited legal aid provider shall have access to an applicant or aided person held in custody as contemplated in section 24 (3) of the Persons Deprived of Liberty Act, 2014, for the purpose of undertaking any inquiry in relation to an application, providing legal assistance or representation under the Act.
- (5) Consultations between the Service or an accredited legal aid provider and an applicant or aided person pursuant to paragraph (4) shall be carried out in private.
- (6) A person who contravenes the provisions of this section shall be liable, on conviction, to the penalty specified in section 85 (2).
21. (1) The Service may provide legal aid to an applicant for an intended criminal appeal if—
- (a) the applicant is eligible for legal aid under the Act and these Regulations;
 - (b) the Service is satisfied that the intended appeal has a probability of success;
 - (c) the applicant is convicted and sentenced to a term of imprisonment with an unsuspended portion of more than three months, or if given the option of a fine, that fine is unpaid for a period exceeding two weeks after the date of sentence;
 - (d) an application for leave to appeal is made within the prescribed period or within a period of less than one year from the date of sentence;
 - (e) the applicant is not granted leave to appeal or seek revision of any order or judgment of the court; and

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Applications relating to criminal appeals or reviews.

(f) the Service is of the opinion that there is a probability of success in further proceeding with the appeal.

(2) Legal aid may be granted under paragraph (1) whether the services sought relate to a substantive appeal or to an application for leave to appeal.

(3) Notwithstanding paragraph (1), an accused person who is convicted of a criminal offence punishable by a term of imprisonment or the death penalty is, subject to the eligibility criteria, entitled to legal aid at all stages of the criminal justice system.

(4) A beneficiary of legal aid in a criminal trial is entitled to legal aid on appeal.

(5) Nothing in this regulation prevents a person whose application for legal aid in respect of a criminal trial was previously denied by the Service from making a fresh application for legal aid in relation to an appeal or application for leave to appeal the outcome of the trial.

22. (1) Where the Service grants legal aid, it shall issue the applicant with a certificate of grant in Form NLAS 3 set out in the First Schedule.

Certificate of grant.

(2) Where an application for legal aid is made in a representative capacity, the certificate of grant shall be issued in the name of the applicant, stating the name of the representative who made the application.

(3) The Service shall not issue a certificate of grant to the applicant or a representative of the applicant unless the applicant has given a written undertaking to pay to the Service any contribution on the condition of which legal aid is granted.

(4) A person who makes an application for legal aid in a representative capacity shall at all times be treated as an agent of the aided person.

23. (1) On granting legal aid, whether limited or unlimited, the Service shall deliver a provisional certificate of grant or certificate of grant, as the case may be, to the aided person and the legal aid provider to whom the aided person is assigned—

Duty to deliver, and to acknowledge delivery of certificate.

(a) physically to the legal aid provider or to the registered office of the legal aid provider;

(b) physically, to the aided person at his principal place of business or residence; or

(c) by registered mail to the last known address of the legal aid provider and aided person.

(2) Upon delivery of a provisional certificate of grant or certificate of grant under sub-regulation (1) the legal aid provider shall, within seven days, acknowledge receipt of the certificate in writing and either—

(a) accept to render the type of legal aid to which the grant relates; or

(b) refuse to take up the matter and issue a written notice of the refusal to the Service and to the aided person.

(3) Where the legal aid provider declines to take up the matter or fails to acknowledge receipt of the certificate within the period prescribed in paragraph (2), the certificate shall lapse.

(4) Where a provisional certificate of grant or a certificate of grant lapses under sub-regulation (3), the Service shall notify the aided person and issue a fresh certificate appointing an alternative legal aid provider.

24. (1) The Service may, pursuant to section 44 (1) (c) of the Act, refuse an application for legal aid if—

Refusal of application.

(a) the matter in respect of which legal aid is sought is expressly excluded under the Act or these Regulations; or

(b) the applicant does not meet the eligibility criteria prescribed in these Regulations.

(2) Where the Service refuses an application for legal aid in respect of a civil or criminal matter, the Service shall notify the applicant of its decision in writing stating—

(a) the reasons for refusal to grant legal aid;

(b) the right to seek review of the decision of the Service and of appeal to the High Court; and

(c) in relation to a civil matter, the applicant's right to sue as a pauper under Order 33 of the Civil Procedure Rules, 2010.

(3) Refusal of an application for legal aid in a civil matter does not defeat the applicant's right to sue as a pauper in accordance with Order 33 of the Civil Procedure Rules, 2010.

L.N. 151/2010.

25. (1) The Service may, at any time, withdraw legal aid in respect of an aided person in accordance with section 52 (1) of the Act if the aided person—

Withdrawal of legal aid.

(a) wilfully fails to comply with any requirement with regard to the information required to be given by the aided person;

(b) knowingly makes a false statement in support of his application;

(c) ceases to qualify for legal aid under the means test or other eligibility criteria;

(d) fails to notify the Service of a change in the circumstances specified in section 46 (1) of the Act;

(e) without reasonable cause, fails to appear in court in criminal proceedings, and a warrant for arrest is issued against him;

(f) unreasonably refuses to submit to an alternative dispute resolution process or to accept a settlement;

- (g) fails to make a contribution specified as a condition for which legal aid is granted;
- (h) unreasonably or without lawful justification, terminates the services of the legal aid provider instructed on his behalf by the Service;
- (i) conducts himself in such a way as to frustrate or render the delivery of legal aid services impossible; or
- (j) wilfully fails to do anything reasonably required to be done by the aided person under the Act or these Regulations.

(2) In addition to the consequences of withdrawal of legal aid specified in section 53 of the Act, the aided person—

- (a) shall not be entitled to recover any contribution or portion thereof paid by him to the Service; and
- (b) shall be liable to pay to the Service the balance of any contribution outstanding at the time of withdrawal of legal aid.

(3) Sub-regulation (2) shall also apply where the aided person voluntarily withdraws from the legal aid scheme.

(4) Where the Service withdraws legal aid in accordance with section 52 of the Act, or where the aided person voluntarily withdraws from the legal aid scheme, the retainer payable to any paralegal or legal practitioner instructed by the Service on behalf of an aided person shall, except where the Director otherwise decides, immediately determine.

(5) The Service shall withdraw legal aid in relation to any matter for which legal aid ceases to be available by reason of change of national policy or legislation.

26. (1) The Service may terminate the services of a legal aid provider if—

- (a) the instructed legal aid provider withdraws legal aid services;
- (b) where the legal aid provider engages in professional misconduct;
- (c) if the legal aid provider ceases to be accredited under the Act or these Regulations;
- (d) the legal aid provider ceases to practice by reason of ill-health or other reasons that make it impossible for the legal aid provider to carry out their obligations as a legal aid provider; or
- (e) the legal aid provider fails to effectively discharge professional responsibilities in relation to the matter for which the provider was instructed.

(2) Where the Service terminates the services of a legal aid provider on any of the grounds specified in paragraph (1), the Service shall—

Termination of legal aid in certain cases.

- (a) issue a notice of termination of legal aid in Form NLAS 4 set out in the First Schedule;
- (b) appoint another legal aid provider to offer legal aid to the aided person; and
- (c) notify the aided person, in writing, of the change.

(3) In terminating the services of a legal aid provider under this regulation, the Service shall apply, with necessary modifications, the procedure set out in section 54 (2), (3), (4) and (5) of the Act.

27. (1) The Service may, of its own motion, review its decision—

Review of the decisions of the Service.

- (a) to grant legal aid;
- (b) on the conditions on which legal aid is granted;
- (c) to withdraw the grant of legal aid; or
- (d) to terminate the services of a legal aid provider.

(2) In exercise of its discretion under this regulation, the Service may—

- (a) assess the net monthly income and disposable capital of the aided person; and
- (b) if the aided person's net monthly income or disposable capital have increased, the Service may require the aided person to make a higher contribution to the Fund:

Provided that the total payment required to be made by the aided person to the Service shall not exceed the cost to the Service in respect of the matter to which the cost relates.

(3) Upon review, the Service may—

- (a) uphold its decision; or
- (b) grant legal aid on such terms and conditions as the Service may think fit.

28. An appeal made under section 55 of the Act shall be by a formal application made in accordance with the rules of procedure governing appeals, as prescribed under Order 42 of the Civil Procedure Rules, 2010.

Appeals against decisions of the Service.
L.N. 151/2010

PART III—ACCREDITATION OF LEGAL AID PROVIDERS

29. (1) A person is eligible for accreditation as a paralegal if the person—

Eligibility criteria for accreditation.

- (a) has completed a training course for paralegals that is approved by the Council of Legal Education;
- (b) is employed or supervised by an advocate or accredited legal aid provider; and
- (c) is a member of a duly registered association of paralegals.

(2) An advocate is eligible for accreditation as a legal aid provider if the advocate—

- (a) is an advocate of the High Court of Kenya; and
 - (b) holds a valid annual practicing certificate.
- (3) A firm of advocates is eligible for accreditation as a legal aid provider if the firm is—
- (a) duly registered as a sole proprietorship or as a general or limited liability partnership; and
 - (b) comprised of one or more advocates qualified for accreditation as a legal aid provider under sub-regulation (2).
- (4) A public benefit organization, Non-Governmental Organization or faith-based organisation, is eligible for accreditation as a legal aid provider if the organization—
- (a) is duly registered as a public benefit organisation under the Public Benefit Organisations Act, 2013, a Non-Governmental Organization under the Non-Governmental Organizations Co-ordination Act, 1990, or a society under the Societies Act;
 - (b) has adequate office facilities and relevant qualified personnel within the area in which it seeks to provide legal aid services; and
 - (c) has in its employment at least one paralegal and one advocate qualified for accreditation as legal aid providers under these Regulations.
- (5) A university or other institution is eligible for accreditation as a legal aid provider if the university or institution—
- (a) is accredited by the Council of Legal Education under the Legal Education Act, 2012 to provide legal education or training; and
 - (b) has a full-time member of the law faculty who is an advocate of the High Court of at least seven years standing, in charge of the legal aid clinic.
- (6) A State agency is eligible for accreditation as a legal aid provider if the agency has in its employment one or more paralegals or advocates eligible for accreditation as legal aid providers under these Regulations.
30. (1) A person who is eligible for accreditation as a legal aid provider under regulation 29 may apply to the Service for accreditation in Form NLAS 5 set out in the First Schedule.
- (2) An application under paragraph (1) may be submitted to the Service at the branch of the Service nearest to the area in which the applicant is employed or has an established practice or place of business.
- (3) An application for accreditation made by an advocate or paralegal under this regulation shall be accompanied by—

No. 28 of 2013
No. 19 of 1990
Cap. 108

No. 27 of 2012

Application for
accreditation.

- (a) a written undertaking by the applicant to comply with these Regulations or other administrative procedures prescribed by the Service;
 - (b) a valid tax compliance certificate;
 - (c) an up-to-date curriculum vitae containing contact details of at least two character referees;
 - (d) in the case of an advocate—
 - (i) a valid practising certificate; and
 - (ii) a certificate of good standing issued by the Law Society of Kenya;
 - (e) in the case of a paralegal, proof of membership of a duly registered association of paralegals; and
 - (f) the fees set out in the Second Schedule.
- (4) An application for accreditation made by a public benefit organisation, faith-based organisation, university or State agency under this regulation shall be accompanied by—
- (a) a duly authenticated certificate of registration or instrument under which the applicant is established;
 - (b) a written undertaking by the applicant to comply with these Regulations and any other administrative procedures prescribed by the Service;
 - (c) a valid tax compliance certificate or certificate of exemption, as the case may be;
 - (d) the applicant's profile containing—
 - (i) an outline of its governance structure; and
 - (ii) a brief biographical data of the paralegals, advocates or other qualified personnel who shall provide legal aid once the legal aid provider is accredited; and
 - (e) the prescribed fee set out in the Second Schedule.
- (5) On receipt of the application, the Service shall—
- (a) reject the application and notify the applicant of its decision in that regard stating—
 - (i) the grounds for rejection of the application;
 - (ii) the right to review pursuant to section 49 of the Act; and
 - (iii) the right of appeal pursuant to section 55 of the Act; or
 - (b) grant the application and accredit the applicant as a legal aid provider whereupon the Service shall—
 - (i) enter the particulars of the legal aid provider in the register of accredited legal aid providers; and

(ii) issue the applicant with a Certificate of Accreditation.

(6) The accreditation of a legal aid provider shall take effect on the date on which the legal aid provider and the Service execute the accreditation agreement set out in the Third Schedule.

31. (1) A legal aid provider may apply to the Service for renewal of accreditation at least one month before the accreditation expires in Form NLAS 5 set out in the First Schedule.

Renewal of accreditation.

(2) On receipt of an application for renewal of accreditation, the Service shall—

- (a) assess whether the legal aid provider is able to offer legal aid in a proper manner; and
- (b) either renew the accreditation for a further period of one year or notify the legal aid provider, in writing, that his application is rejected.

32. (1) The Director may, in writing, request an advocate who is not registered as an accredited legal aid provider to provide legal aid in a matter that requires expertise that is not possessed by any of the accredited legal aid providers.

Exemption from accreditation.

(2) Upon receiving a request to provide legal aid under paragraph (1), the advocate shall, within forty-eight hours, inform the Director in writing of his acceptance or refusal of the request, as the case may be.

33. (1) Subject to regulation 29 (5), the Service shall provide the necessary technical assistance for the establishment and supervision of the operations of legal aid clinics in universities and institutions.

Provision of legal aid by universities and tertiary institutions.

(2) A law student in the final year of study may render legal aid in a legal aid clinic under the supervision of a qualified faculty member of the university or institution, provided that all legal documents shall bear the name and signature of the supervisor.

(3) The faculty member under whose supervision a law student offers legal aid shall bear personal professional responsibility for any act or omission of the student in the provision of legal aid.

34. (1) A legal aid provider may withdraw from the legal aid scheme by issuing a notice in writing to the Service.

Voluntary withdrawal from accreditation.

(2) On receipt of the notice of withdrawal under sub-regulation (1), the Service and the legal aid provider shall settle accounts in respect of fees and expenses due and payable to, or recoverable from, the legal aid provider as at the date of the notice.

(3) Upon withdrawal from the legal aid scheme, the legal aid provider shall, within seven days of withdrawal—

- (a) deliver the legal aid file in his possession to the Service; and
- (b) submit to the Director a report on the status of all incomplete work assigned to the legal aid provider.

(4) Upon withdrawal from the legal aid scheme under this regulation, the Service shall strike out the name of the legal aid provider from the register of accredited legal aid providers.

35. (1) Where the Service suspends the accreditation of a legal aid provider on any of the grounds specified in section 66 (1) of the Act, the legal aid provider shall, within seven days of receipt of the notice of suspension issued under section 66 (2) of the Act—

Duty of legal aid provider on suspension or cancellation of accreditation.

- (a) deliver any legal aid file in their possession to the Service when required so to do;
- (b) report to the Director on the status of all incomplete work assigned to the legal aid provider; and
- (c) render an account for the fees and disbursements, if any, paid to or by the legal aid provider on account of the matters assigned to them.

(2) Where the Service suspends the accreditation of a legal aid provider, it shall make an entry in the register of accredited legal aid providers stating—

- (a) the date of suspension;
- (b) the period for which the accreditation of the legal aid provider shall remain suspended;
- (c) the conditions, if any, to be met by the legal aid provider before reinstatement to the register of accredited legal aid providers; and
- (d) any other relevant matter relating to the suspension.

(3) The provisions of paragraph (1) shall apply, with necessary modifications, where the Service cancels the accreditation of a legal aid provider under section 67 of the Act.

(4) Where the Service cancels the accreditation of a legal aid provider, the Service shall, subject to a decision made on review pursuant to section 67 (4) of the Act, strike out the name of the legal aid provider from the register of accredited legal aid providers.

36. (1) A legal aid provider may, with the written approval of the Director, employ the services of an expert, private investigator or consultant, whose services are required for the effective discharge of legal aid services for which the legal aid provider is tasked.

Engagement of experts or consultants by legal aid providers.

(2) A request by a legal aid provider to employ the services of an expert, private investigator or consultant shall be made to the Director in writing and shall state—

- (a) the name, contact address and other particulars of the expert, private investigator or consultant;
- (b) the nature of the services required;
- (c) the estimated maximum cost of the service; and

(d) the reason for requiring the service.

(3) The expenses incurred in retaining the services of an expert, private investigator or under sub-regulation (1) shall be paid out of the Legal Aid Fund.

PART IV — ENFORCEMENT OF CONDITIONS FOR GRANT OF LEGAL AID

37. (1) Where the Service grants legal aid on condition that the aided person shall make a financial contribution to the Fund pursuant to sections 69 (1) (b) and 79 (2) (b) of the Act, the aided person shall pay into the Fund such amounts as are agreed and stated in the certificate of grant, subject to the limit set out in the Fourth Schedule.

Financial contribution by an aided person.

(2) An aided person shall not be granted legal aid unless he complies with the condition specified in paragraph (1).

(3) If legal aid is granted on condition that the aided person makes a financial contribution to the Fund, the amount stated in the grant may be paid in equal monthly instalments in advance and on such terms as the Service directs, until—

- (a) the amount of contribution is paid in full;
- (b) the termination of the trial or other proceeding; or
- (c) in a criminal case, the accused is convicted and sentenced to a term of imprisonment in consequence of which no further payment shall become due and payable.

(4) Where legal aid is granted for a maximum amount stated in the certificate of grant, the aided person shall be liable to the Service for any costs incurred in excess of the stated amount.

38. Where the aided person is awarded costs in civil proceedings, the legal aid provider shall—

Recovery of costs.

- (a) notify the aided person of the award;
- (b) deliver to the Service the certificate of costs issued under the hand and seal of the Registrar; and
- (c) deliver to the party from whom such costs are recoverable, or to his advocate, the certificate of costs referred to in paragraph (b).

39. Where an aided person is entitled to recover pecuniary damages or other property under a judgment, decree, order or settlement, the legal aid provider shall, unless the aided person has paid into the Fund the contribution specified in sections 69 (1) (b) and 79 (2) (b) of the Act —

Settlement where contribution is not made.

- (a) before payment to the aided person of any money recovered for the aided person, pay to the Fund an amount not exceeding the contribution due and payable by the aided person under the grant; or
- (b) before delivery to the aided person of any property or the title relating to the property, other than money recovered for

the aided person, and subject to the approval of the Director—

- (i) ensure that the aided person charges the property in favour of the Service for the costs incurred in the proceedings or contribution due and payable by the aided person under the grant; and
- (ii) register the instrument of charge in the Register of Charges and submit the duplicate with notations of registration to the Director.

PART IV—PAYMENT FOR LEGAL AID SERVICES

40. (1) The fees payable to a legal aid provider shall be limited to those specified in the scale of fees prescribed by the Service in consultation with relevant professional bodies pursuant to section 75 (1) of the Act.

Fees payable to a legal aid provider.

(2) A legal aid provider shall not receive or accept a fee, gratuity or other compensation with respect to legal aid that exceeds the fees provided by the Service in accordance with paragraph (1).

(3) The fees and disbursements payable to a legal aid provider in a civil matter shall not exceed the amount awarded under a Certificate of Costs, if any, on account of party-to-party costs in favour of a successful aided person, or of the opposing party.

41. (1) A legal aid provider who completes the work assigned to the provider by the Service, or who ceases to act shall submit to the Director—

Submission of accounts and supporting documents.

- (a) an account of the fees and disbursements, in duplicate, showing the date upon which, each item of service was performed and certified in accordance with the certificate set out in the Fifth Schedule;
- (b) a copy of the certificate of grant issued by the Service to the aided person;
- (c) a written authorization to engage an expert, consultant or private investigator, if any, or of other relevant disbursements;
- (d) the accounts of an expert, consultant or private investigator, if any, engaged in the matter, and certified in accordance with the certificate of compliance set out in the Fifth Schedule;
- (e) a certified copy of the judgment, order or administrative decision given in determination of the matter in which the legal aid provider was engaged;
- (f) where, before the issue of the certificate of grant, the legal aid provider was engaged by the aided person to perform services with respect to the same matter—
 - (i) a detailed statement of the services rendered by the legal aid provider;

- (ii) an account of disbursements made by the legal aid provider before the issue of the certificate of grant;
- (iii) a statement of payments, if any, made by the aided person to the legal aid provider on account of their fees and disbursements; and
- (g) other supporting documents that may be required by the Director.

(2) An account submitted under paragraph (1) shall set out in reasonable detail the services rendered and, where appropriate, detail the time actually spent, together with the fees and disbursements sought in accordance with the appropriate schedules of fees and disbursements, for each item of work.

(3) The disbursements referred to in paragraph (2) shall be limited to—

- (a) court disbursements, including filing fees on account of pleadings, applications or other court process;
- (b) out-of-pocket expenses incurred on account of day-to-day attendances and services, including transport expenses, postage and courier charges, reasonably incurred;
- (c) fees and expenses incurred on account of expert opinion or evidence with the prior approval, in writing, of the Service;
- (d) witness expenses incurred with prior approval, in writing, of the Service;
- (e) fees payable for transcription of evidence by a third party engaged by the legal aid provider in accordance with regulation 36 with the prior approval, in writing, of the Service;
- (f) court fees on account of the proceedings supplied by the Registrar to the legal aid provider; and
- (g) any other fees or out-of-pocket expenses properly and reasonably incurred with the written approval of the Director in furtherance of the proceedings or matter in which the legal aid provider is engaged.

(4) Nothing in this regulation prevents a legal aid provider from incurring out-of-pocket expenses on account of any matter or proceeding without prior approval of the Director in emergency cases.

42. (1) A legal aid provider shall submit an account to the Director pursuant to regulation 41 within six calendar months of completion of the services to which the account relates.

Limitation of time
for submission
accounts.

(2) The Service shall not be liable for an account that is submitted after the time specified in paragraph (1) and the account shall not be taxed but shall be returned to the legal aid provider.

(3) Notwithstanding paragraph (2), the Director may, for good cause, extend, in writing, the time within which a legal aid provider may submit an account under regulation 41.

43. (1) A legal aid provider who incurs out-of-pocket disbursements in excess of ten thousand shillings may apply to the Director for reimbursement in Form NLAS 6 set out in the First Schedule, before the submission of an account under regulation 41.

Advance for disbursements.

(2) The application under paragraph (1) shall set out the details of the disbursements for which reimbursement is sought.

(3) The Director shall reimburse the amount claimed by the legal aid provider under sub-regulation (1) if satisfied that—

- (a) the disbursements were paid by the legal aid provider;
- (b) the disbursements were necessary and proper; and
- (c) the legal aid provider has not received any reimbursement for the disbursements.

44. (1) A legal aid provider has no right of lien for his fees, charges or expenses on account of legal aid upon the property or legal documents in his possession belonging to an aided person.

Exclusion of lien in favour of legal aid provider.

(2) Nothing in these Regulations shall be considered to deprive a legal aid provider of his lien on the property or legal documents in his possession for the fees, charges and expenses that the aided person was liable to pay to him for professional services rendered before the issuing of a certificate of grant and not covered in the certificate of grant.

45. The Legal Aid (General) Regulations, 2022, are hereby revoked.

Revocation.
L.N. 187/2021.

FIRST SCHEDULE

FORMS

Form NLAS 1 r. 7(1)

APPLICATION FOR LEGAL AID

Section 1: Applicants Personal Information

County

Date:.....

Name: Ref:

Sex: ☐Female ☐Male

ID.NO.....

Age:..... Date of Birth.....Email Address.....

Postal Address:..... Telephone

Residence:..... Other No.....

Level of Education: ☐Primary ☐Secondary ☐Certificate
☐Diploma ☐DegreeLanguage: ☐English ☐Kiswahili ☐LocalProficiency level: ☐Written ☐SpokenEmployment Status: ☐Casual ☐Permanent ☐Contract
☐Unemployed

Occupation.....

Applicant's income per month: Kshs.....

Applicant's income Per day Kshs.....

Marital Status: ☐Single ☐Married ☐Divorced ☐Widowed ☐SeparatedVulnerability: ☐Orphaned ☐Divorced ☐Child ☐Woman ☐Disability

Household income per month: Kshs.....

Household income Per day Kshs.....

Section 2: Nature of case:

Abuse of office (Administrative)	Criminal	Civil
<input type="checkbox"/> Intimidation <input type="checkbox"/> Threats <input type="checkbox"/> Disappearance. <input type="checkbox"/> Wrongful detention <input type="checkbox"/> Corruption by formal government authorities <input type="checkbox"/> Access to legal documents. <input type="checkbox"/> Appeals of judicial review nature <i>Others (specify)</i>	<input type="checkbox"/> Robbery with violence <input type="checkbox"/> Theft <input type="checkbox"/> Assault <input type="checkbox"/> Domestic violence. <i>Sexual offences:</i> <input type="checkbox"/> rape, <input type="checkbox"/> sexual harassment <input type="checkbox"/> defilement <i>Others (specify)</i>	<input type="checkbox"/> Child abandonment/neglect <input type="checkbox"/> Wife neglect <input type="checkbox"/> Maintenance <input type="checkbox"/> Marital problems <input type="checkbox"/> Child custody/access <input type="checkbox"/> Divorce <input type="checkbox"/> Succession <input type="checkbox"/> Burial dispute <input type="checkbox"/> Employment <input type="checkbox"/> Unpaid wages <input type="checkbox"/> Breach of contract <input type="checkbox"/> Debt <input type="checkbox"/> Housing <input type="checkbox"/> Land/property disputes <input type="checkbox"/> Eviction <input type="checkbox"/> Accident claims <input type="checkbox"/> Migrant (IDPs) <i>Others (specify)</i>

Has legal aid been sought on the same matter: (If, yes), state the number and the institution from which it was sought and the understanding of the client on the nature of assistance given

If a case was filed,

- (a) When case was filed.....
- (b) In which court..... Case Number.....
- (c) Status: ☐ Part-heard ☐ Fresh ☐ Finalized ☐ Don't know
- (d) Number of times applicant attended court
- (e) Representation: ☐ pro se ☐ pro bono ☐ paid-up advocate
- (f) Results: ☐ Judgment ☐ Stood Over Generally
☐ Dismissed ☐ Acquittal ☐ Don't know

SUMMARY OF CASE:

Tell us about your legal problem and include, for example:

- (a) What the legal problem is
- (b) Who is involved and how they are involved
- (c) How and when the legal problem started
- (d) What has happened since then
- (e) Financial details (Whether you have any income)

(f) Any special circumstances that apply to your situation

.....

.....

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.....

Section 3: Declaration

Are you making this application for yourself? Yes ☐ No ☐

What authority do you have to make this application for someone else? (e.g. power of attorney, parent, guardian)

.....

.....

.....

.....

I acknowledge it is an offence to:

- (a) make a false or misleading statement when applying for legal aid;
- (b) give a false or misleading statement when applying for legal aid; or
- (c) refuse to give information requested by the legal aid provider with the intent to deceive or mislead the legal aid provider.

I declare that all the information I have given is true and correct.

Applicant's or authorized person's signature.....

Date

Section 4: For Official Use Only

Application approved without conditions

.....

.....

.....

.....

.....

Application approved with conditions

.....

.....

.....

.....
.....
Application not approved
.....
.....
.....
.....
.....

Name of authorising officer Signature.....

Date.....

Form NLAS 2

r. 10(2)

CERTIFICATE OF PROVISIONAL GRANT OF LEGAL AID

Date:

To:

This is to notify you that your application for legal aid has been provisionally approved by the National Legal Aid Service and is subject to you fulfilling the conditions for eligibility for grant of legal aid under Part II and III of the Legal Aid (Application and Accreditation) Regulations, 2019.

Legal aid shall be granted by _____ (Name of legal aid provider) in relation to Civil/Criminal case number _____ filed at _____.

The legal aid shall include (give details of nature of legal aid)

—
This certificate is valid for a period of six (6) months from the date of issue.

Note that the Legal Aid Provider reserves the right to terminate provision of legal aid to you upon notice.

Authorised officer.....Signature.....

Date.....

Form NLAS 3

r. 22(1)

CERTIFICATE OF GRANT OF LEGAL AID

To:

This is to notify you that your application for legal aid has been approved by the National Legal Aid Service.

Legal aid shall be granted by _____ (name of legal aid provider) in relation to Civil/Criminal case number _____ filed at _____.

The legal aid shall include (give details of nature of legal aid)

Note: The legal aid provider reserves the right to terminate provision of legal aid to you upon notice.

Authorised officer.....Signature.....

Date.....

Form NLAS 4

r. 26(2)(a)

NOTICE OF TERMINATION OF LEGAL AID

To:

This is to notify you that the National Legal Aid Service has terminated provision of legal aid services to you in relation to Civil/Criminal case number _____ filed at _____.

The legal aid has been terminated due to (give details)

Authorised officer.....Signature.....

Date.....

Form NLAS 5

r. 30(1), 31(1)

APPLICATION FOR ACCREDITATION OF LEGAL AID SERVICE PROVIDERS

Section 1: Applicant's Registration Data	
Name of Organisation	
Date of Registration	
Registration Certificate Number (attach Registration Certificate)	
Nature of Business of the Organisation	
Tax Registration Status (attach tax compliance certificate)	
Section 2: Applicant's Contacts	
Physical Address	
Postal Address	
Telephone	
Email	
Section 3: Applicant's Personnel	
Number of Employees	
Number of Advocates (attach current practicing certificates of all Advocates)	

[illegible]

Section 5: Declaration

Authorised person

I acknowledge it is an offence to:

- (a) make a false or misleading statement when applying for accreditation to provide legal aid services;
- (b) give a false or misleading statement when applying for accreditation to provide legal aid services; and
- (c) refuse to give information requested by the legal aid service with the intent to deceive or mislead the legal aid service.

I declare that all the information I have given is true and correct.

Authorised person's signature

Date

Section 6: For Official Use Only

Application approved without conditions

Application approved with conditions

Application not approved

Name and signature of authorising officer

Date

Form NLAS 6

r. 43(1)

CLAIM FORM FOR REIMBURSEMENT INCURRED BY ACCREDITED LEGAL
AID SERVICE PROVIDERS

Section 1: Details of legal aid provider

Physical Address

Postal Address

Telephone

Email

Section 2: Period of Claim

From:

To:

Section 3: Itemised Legal Aid Matters Handled and Completed/Terminated

Date of completion/ Terminated	Case Number	Parties	Outcome

Add further details to support the claim

Section 6: Declaration

Authorised person

I acknowledge it is an offence to:

- (a) make a false or misleading statement when making claims to the Legal Aid Service;
- (b) give a false or misleading statement when making claims to the legal aid service ; or
- (c) refuse to give information requested by the Legal Aid Service with the intent to deceive or mislead the Legal Aid Service.

I declare that all the information I have given is true and correct.

Authorised person's signature

Date

Section 6: For Official Use Only

Claim approved without conditions

Claim approved with conditions

Claim not approved

Name and signature of authorising officer

Date

SECOND SCHEDULE

FEES

r.30(3) (f), (4)(d))

Provider	Accreditation	Renewal
Advocate		
0-3 years	1,000	1,000
3-5 years	3,000	1,500
5-10 years	5,000	2,000
Above 10 years	7,000	2,500
Law Firm	10,000	5,000
Paralegal Organisation	10,000	5,000
Civil Society or Public Benefit Organisation	10,000	5,000
University or other institution operating legal aid clinics	10,000	5,000
Government Agency	10,000	5,000

THIRD SCHEDULE

r. 30(6)

ACCREDITATION AGREEMENT FOR AN ACCREDITED LEGAL AID PROVIDER

Entered into between

(The accredited legal aid provider)

and

The National Legal Aid Service

Whereas:

A. the National Legal Aid Service has appointed the accredited legal aid provider to its register of accredited legal aid providers; and

B. the National Legal Aid Service is willing to instruct the accredited legal aid provider to render legal services on behalf of a successful applicant for legal aid;

Now therefore the parties agree that the following terms and conditions will apply to the relationship between the accredited legal aid provider and the National Legal Aid Service:

1. OBJECTS OF THE ACCREDITATION

The parties acknowledge:

- (a) the need to exercise a high sense of responsibility with regard to their respective roles.
- (b) the need to provide legal services in the most efficient and economic manner.
- (c) the need to ensure that quality legal services are provided to aided persons.
- (d) the need, as far as possible, to match appointed legal aid provider's qualifications, skills, experience and expertise with the types and complexity of the cases for which such provider is appointed.

2. WARRANTIES

The accredited legal aid provider warrants:

- (a) to accept appointment by the Service only where the matter in question falls within the special field of expertise of the legal aid provider;
- (b) that once appointed in a particular matter the legal aid provider will deal with the matter expeditiously;
- (c) that the legal aid provider is a member of a professional body; and
- (d) that the legal aid provider has a valid tax clearance certificate from the Kenya Revenue Authority.

3. INFRASTRUCTURE

The Legal Aid provider undertakes to ensure that:

- (a) there is adequate secretarial or reception facilities available to ensure telephone contact during office hours;
- (b) fax facilities are available;
- (c) there is internet services and an email system that can receive all documentation including instructions from the National Legal Aid Service;
- (d) provision will be made for typed accounts and reports;
- (e) there is reasonable and ready access for clients and provision exists for consultations and meetings;
- (f) a proper file management system is in place combined with an efficient diary system, which will enable files to be dealt with expeditiously and without unreasonable delay;
- (g) legal aid instructions sent by Short Message Service (SMS) will be responded

to by SMS within the deadline specified in the SMS enquiring about the legal aid provider's availability.

4. UNDERTAKING TO COMPLY WITH THE NATIONAL LEGAL AID SERVICE REQUIREMENTS

The legal aid provider undertakes and agrees to comply with the Legal Aid Act and any regulations made thereunder, and Circulars issued by the National Legal Aid Service from time to time. In particular, the legal aid provider undertakes and agrees:

- (a) that in the event of a decision not to accept legal aid instruction or if the instruction is accepted the legal aid provider shall without delay sign and return the acceptance or rejection of the instruction to the National legal aid Service;
- (b) to submit timely and regular reports to the National Legal Aid Service;
- (c) that upon withdrawal of legal aid, the legal aid provider shall furnish proper and adequate reasons for withdrawal and to notify the client in writing;
- (d) to furnish the National legal aid Service with the outcome of the matter including Judgments together with copies of Orders of Court and Settlements as soon as the same become available;
- (e) to investigate on a regular basis the qualification of the client in terms of the means test and inform the Service in the event that a client no longer qualifies for legal aid;
- (f) to inform the service of any abuse by applicants to obtain legal aid by fraudulent or other means;
- (g) to ensure that the legal aid provider's mandate is not exceeded without the prior consent of the service;
- (h) to ensure the use of the prescribed Legal Aid Service documentation as contained in the Regulations, as applicable;
- (i) to ensure the protection of the client's rights and to prevent default judgment;
- (j) not to give any information regarding any legal aid matter to any media representative, without the written approval of the Service; and
- (k) to render an account in accordance with the provisions of the Regulations of the finalization of any matter, failing which the right to payment prescribes.

5. MONITORING, QUALITY CONTROL AND FEEDBACK

The legal aid provider agrees that:

- (a) where applicable, the provider's services will be monitored by a legal professional body and at the request of the service and the body may report on the quality of the services rendered by the legal aid provider;
- (b) the quality of the services rendered by the legal aid provider may be evaluated by the staff of the Service from time to time and that the legal aid provider shall permit such staff access to the files of aided persons;

(c) an aided person represented by the legal aid provider shall be entitled to report to the Service on the quality of service rendered to him.

6. REMOVAL OF A LEGAL AID PROVIDER'S NAME FROM THE REGISTER OF ACCREDITED LEGAL AID PROVIDERS

The legal aid provider acknowledges that he has read the Legal Aid (General) Regulations and acknowledges that the National Legal Aid Service shall be entitled to remove his name from the register of accredited legal aid providers in appropriate circumstances in accordance with the procedure set out in the Regulations.

7. DAMAGES CLAIMS AGAINST ACCREDITED LEGAL AID PROVIDERS

(a) The legal aid provider warrants that:

- (i) he has read the Legal Aid (General) Regulations and agrees to be bound by the terms and provisions thereof; and
- (ii) failure to comply with the Regulations may render the legal aid provider liable for damages in addition to any other remedy the service may enjoy in law.
- (b) the provisions of the Legal Aid Act and the regulations made thereunder shall apply to every legal aid instruction received by the accredited legal aid provider and all rights and obligations and any disputes arising there from;
- (c) in case of any dispute between the National Legal Aid Service and the accredited legal aid provider, the parties shall consider arbitration as a dispute resolution mechanism; and
- (d) the National Legal Aid Service will not effect payment of any account unless the accredited legal aid provider is in possession of and provides the National Legal Aid Service with a valid tax clearance certificate from the Kenya Revenue Authority.

SIGNED BY THE ACCREDITED LEGAL AID PROVIDER

NAME/NAME OF AUTHORISED OFFICER _____ SIGNATURE _____

DATE _____

WITNESSED BY:

1. NAME _____ SIGNATURE _____

DATE _____

2. NAME _____ SIGNATURE _____

DATE _____

SIGNED BY THE NATIONAL LEGAL AID SERVICE

NAME OF AUTHORISED OFFICER _____ SIGNATURE _____

DATE _____

WITNESSED BY:

1. NAME _____ SIGNATURE _____

DATE _____

2. NAME _____ SIGNATURE _____

DATE _____

FOURTH SCHEDULE

LIMIT OF CONTRIBUTION

r. 37 (1)

1. If the applicant's disposable income is Kshs. 300,000 per annum or less, the maximum income contribution payable to the Fund is Kshs. 5,000.
2. If the applicant's disposable income exceeds Kshs. 300,000 per annum, but does not exceed Kshs. 360,000 per annum, the maximum contribution payable to the Fund is Kshs. 12,000.
3. If the applicant's capital resources exceed Kshs 250,000, the contribution payable to the Fund is Kshs 10,000 plus ten per cent of the amount in excess of Kshs 250,000

FIFTH SCHEDULE

CERTIFICATE OF COMPLIANCE

r. 41 (1) (a), (d)

I certify that the disbursements set out in the accounts annexed hereto have been paid and that they were necessary and proper, and I have not received a reimbursement for any of them.

Signed by

Accredited legal aid provider

Made on the 11th May, 2022.


P. KIHARA KARIUKI,

Attorney-General.

LEGAL NOTICE NO. XX

THE LEGAL AID ACT, 2016

(No. 6 of 2016)

THE LEGAL AID CODE OF CONDUCT FOR ACCREDITED
LEGAL AID PROVIDERS, 2022

ARRANGEMENT OF PARAGRAPHS

Paragraph

PART I — PRELIMINARY

- 1— Citation.
- 2— Objectives of the Code.
- 3— Application of the Code.

PART II — DUTIES OF AN ACCREDITED LEGAL AID
PROVIDER

- 4— Skill, competence and diligence.
- 5— Honesty and good faith.
- 6— Duty to act impartially, avoid discrimination or harassment.
- 7— Confidentiality.
- 8— Duty to avoid conflict of interest.
- 9— Duty not to offer or accept payment.
- 10— Duty in relation to aided person's property.
- 11— Duty to court, the legal profession and law enforcement agencies.

PART III — MISCELLANEOUS

- 12— Change of representation.
- 13— Termination of legal representation.
- 14— Matters against public interest.
- 15— Excessive caseload.
- 16— Standards of conduct.
- 17— Complaints.

LEGAL NOTICE No. 87

THE LEGAL AID ACT, 2016

(No. 6 of 2016)

IN EXERCISE of the powers conferred by section 61(2) of the Legal Aid Act, 2016, the National Legal Aid Service makes the following Code of Conduct—

THE LEGAL AID CODE OF CONDUCT FOR ACCREDITED
LEGAL AID PROVIDERS, 2022

PART I — PRELIMINARY

1. This Code may be cited as the Legal Aid Code of Conduct for Accredited Legal Aid Providers, 2019.

2. The objectives of this Code are to—

- (a) set standards of conduct for accredited legal aid providers;
- (b) facilitate access to justice; and
- (c) promote integrity, respect, confidentiality, accountability, public responsibility and competence of accredited legal providers.

3. This Code shall apply to an accredited legal aid provider in addition to any other code of conduct prescribed by the regulatory body, the employer of an accredited legal aid provider or by the professional body that the accredited legal aid provider is a member.

PART II — DUTIES OF AN ACCREDITED LEGAL AID
PROVIDER


4. (1) An accredited legal aid provider shall have sufficient experience, skill, knowledge and competence to provide quality representation to an aided person and shall exercise diligence in the provision of legal aid.

(2) An accredited legal aid provider shall have knowledge of general legal principles and procedures, the substantive law and procedures for the legal services they provide.

(3) An accredited legal aid provider shall not undertake a matter if the accredited legal aid provider is not competent to handle the matter.

(4) If an accredited legal aid provider lacks the skills or competence to act in a matter in which they are instructed, the accredited legal aid provider shall—

- (a) decline to act;
- (b) if the accredited legal aid provider had commenced action, cease to act; or
- (c) obtain the consent, in writing, of the Service to retain, consult or collaborate with another accredited legal aid provider or expert who is competent and licensed to undertake that matter.

	
THE NATIONAL ASSEMBLY	
LEGAL AID	
DATE:	04 OCT 2022
DAY:	Tuesday
TABLED	Deputy Speaker
BY:	H. Subarwa
CLERK-AT	
THE OBJECTIVES OF THE	
Code:	

Application of the
Code.

Skill, competence
and diligence.

- (5) An accredited legal aid provider shall—
- (a) investigate facts, identify issues, ascertain the objectives of a matter, consider possible options and advise an aided person on the appropriate course of action;
 - (b) implement the chosen course of action by applying appropriate skills, including —
 - (i) legal research;
 - (ii) analysis;
 - (iii) application of the law to the relevant facts;
 - (iv) legal writing;
 - (v) negotiation;
 - (vi) mediation or any other alternative dispute resolution; and
 - (vii) advocacy.
 - (c) advise, assist or represent an aided person in a diligent and cost-effective manner;
 - (d) communicate to an aided person at all relevant stages of the matter in a timely and effective manner;
 - (e) respond to a reasonable inquiry by the aided person in a timely and effective manner;
 - (f) ensure that all applicable deadlines are met;
 - (g) manage their own practice or services effectively;
 - (h) pursue appropriate training and development to maintain and enhance knowledge and skills;
 - (i) adapt to changing requirements, standards, techniques and practices;
 - (j) if the accredited legal aid provider is an advocate, comply with, in letter and spirit, all the requirements and standards of legal practice prescribed by the Law Society of Kenya and any other written law;
 - (k) comply with any relevant standards of practice prescribed by the respective professional or regulatory body; and
 - (l) maintain up-to-date records of the legal aid services.
5. (1) An accredited legal aid provider shall be honest and candid when conducting any matter on behalf of an aided person. Honesty and good faith.
- (2) An accredited legal aid provider shall not knowingly or recklessly give false information.
- (3) An accredited legal aid provider shall not—
- (a) knowingly aid or encourage any dishonesty, fraud, crime or illegal conduct;

- (b) do or omit to do anything that the accredited legal aid provider knows will assist, encourage or facilitate any dishonesty, fraud, crime or illegal conduct by an aided person or any other person; or
- (c) advise an aided person or any other person on how to violate the law or avoid punishment.

6. (1) An accredited legal aid provider shall not discriminate directly or indirectly against any aided person on grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Duty to act impartially, avoid discrimination or harassment.

(2) An accredited legal aid provider shall treat an aided person fairly and reasonably.

(3) An accredited legal aid provider shall not decline to act for an aided person on account of the nature of the claim or accusation, or due to the provider's personal views or convictions on the matter.

(4) An accredited legal aid provider shall not engage in sexual or other forms of harassment of an aided person, a colleague or a member of staff of the Service.

7. (1) An accredited legal aid provider shall —

Confidentiality.

- (a) take all necessary steps to ensure respect for an aided person's right to privacy under Article 31 (c) and (d) of the Constitution; and
- (b) comply with obligations relating access to information and the protection of the privacy of an aided person under the Access to Information Act, 2016.

No. 31 of 2016.

(2) Despite sub-paragraph (1), confidentiality shall not apply to information that gets into the public domain with the consent of the aided person.

(3) An accredited legal aid provider shall keep all information relating to an aided person and acquired in the course of the professional relationship confidential.

(4) An accredited legal aid provider shall not disclose the information relating to an aided person unless the disclosure is—

- (a) expressly or impliedly authorised by the aided person;
- (b) required by law or by an order of a court or tribunal; or
- (c) otherwise permitted by this Code.

(5) An accredited legal aid provider may disclose confidential information relating to an aided person to a relevant authority—

- (a) if the accredited legal aid provider believes, on reasonable grounds, that there is an imminent risk of death or serious bodily harm and that such disclosure is necessary to prevent the death or harm;

- (b) if the accredited legal aid provider believes, on reasonable grounds, that failure to disclose would be prejudicial to the mandate of the Service;
- (c) in order to defend an allegation that the accredited legal aid provider or their employee —
 - (i) has committed a criminal offence;
 - (ii) is liable with respect to a matter involving an aided person's affairs;
 - (iii) has committed an act of professional negligence; or
 - (iv) has engaged in an act of professional misconduct or conduct;
- (d) in order to enforce recovery of their fees from the Service; or
- (e) in order to secure legal advice from an advocate or another accredited legal aid provider about the proposed conduct of the matter in question.

(7) An aided person who voluntarily allows information to get into the public domain shall be presumed to have waived confidentiality in that regard.

(8) An accredited legal aid provider shall not issue statements to the media or address matters of public interest on behalf of the Service.

(9) The duty of confidentiality shall continue indefinitely despite the accredited legal aid provider ceasing to act for the aided person.

8. (1) An accredited legal aid provider shall not, except as permitted under this paragraph, act for an aided person if to do so would—

Duty to avoid conflict of interest.

- (a) give rise to a conflict of interest; or
- (b) compromise the independence of the accredited legal aid provider in relation to the matter in which the provider is engaged.

(2) Conflict of interest arises when the duty of an accredited legal aid provider to act in the best interest of an aided person conflicts with the interests of —

- (a) the accredited legal aid provider;
- (b) an existing or previous client of the accredited legal aid provider;
- (c) a partner or employee of the accredited legal aid provider;
- (d) another aided person; or
- (e) any third party whose relationship with the accredited legal aid provider or employee of the accredited legal aid provider would reasonably cause the aided person to believe that the legal aid lawyer may not act in that aided person's best interests.

(4) An accredited legal aid provider shall not act for an opposing party in a dispute in which the aided person is a party.

(5) An accredited legal aid provider shall not offer legal aid to more than one aided person in a matter.

(6) Subject to sub-paragraph (7), where an accredited legal aid provider provides legal aid to several aided persons, and a conflict of interest arises between the interests of the initial aided person and any other subsequent aided person, the accredited legal aid provider shall cease to act for all the aided persons and immediately notify the Service.

(7) An accredited legal aid provider may represent an aided person in a matter where there is a conflict of interest under sub paragraph (6) if—

- (a) the accredited legal aid provider obtains informed and voluntary consent of all the aided persons; and
- (b) the accredited legal aid provider reasonably believes that they are able to act for each aided person without having a material adverse effect on the representation of acting for or loyalty to the other aided person.

(8) A legal aid provider shall not act for an aided person if the legal aid provider has any form of relationship, including a family relationship, with the aided person or an opposing party which compromises, or which might reasonably be expected to compromise the independence of the accredited legal aid provider.

(9) An accredited legal aid provider shall not act for an aided person against the former client of the accredited legal aid provider—

- (a) in the same matter;
- (b) in any related matter; or
- (c) in any matter, if the accredited legal aid provider has relevant confidential information arising from acting for the former aided person that may prejudice the former client,

9. (1) An accredited legal aid provider shall not offer or accept any fee, commission, service, inducement, gratuity, gift, benefit or other form of compensation, whether direct or indirect, from an aided person in the course of performing their duty under the Act, other than fees payable to the accredited legal aid provider by the Service on account of a matter which the accredited legal aid provider is engaged in.

Duty not to offer or accept payment.

(2) An accredited legal aid provider shall declare to the Service any fee, commission, service, inducement, gratuity, gift, benefit or other form of compensation received from an aided person, whether directly or indirectly, in relation to a matter in which they are engaged under the Act,

(3) An accredited legal aid provider shall not personally guarantee or provide security or other financial arrangements for any indebtedness in respect of an aided person who is a borrower or lender.

(4) An accredited legal aid provider shall not, in respect of an aided person for whom they act in any criminal proceeding —

- (a) act as a surety for the aided person;
- (b) deposit in a court their own money or that of any firm or organisation in which the accredited legal aid provider is a partner or employee, to secure the aided person's release; or
- (c) deposit any valuable security in a court to secure the release of an aided person.

(5) An accredited legal aid provider may personally guarantee or provide security or other financial arrangement for any indebtedness in respect of an aided person who is a borrower or lender, if the aided person is related to the accredited legal aid provider and the aided person is represented by the accredited legal aid provider's associate, partner or employee.

10. (1) An accredited legal aid provider shall exercise such due care for an aided person's property as a careful and prudent owner would when dealing with their property.

Duty in relation to aided person's property.

(2) An accredited legal aid provider shall, if entrusted with the property of an aided person, comply with all relevant laws relating to the preservation of property that is entrusted to a person who has a fiduciary duty over property.

(3) An accredited legal aid provider shall promptly notify an aided person of the receipt of any money or other property of the aided person.

(4) An accredited legal aid provider shall clearly label and identify the aided person's property and place it in safe custody in a separate location from the property of the accredited legal aid provider.

(5) An accredited legal aid provider shall maintain such records as are necessary to identify an aided person's property that is in the custody of the accredited legal aid provider.

(6) An accredited legal aid provider shall account promptly for an aided person's property that is in the custody of the accredited legal aid provider and shall, upon request, deliver the property to the aided person at the conclusion of the matter that the accredited legal aid provider is engaged in.

11. (1) An accredited legal aid provider shall not deceive or knowingly mislead the court.

Duty to court, the legal profession and law enforcement agencies.

(2) Subject to the provisions of this Code and any other rules of professional conduct, an accredited legal aid provider shall discharge their duties in a way that is consistent with the proper and efficient administration of justice.

(3) An accredited legal aid provider shall maintain a relationship based on courtesy, mutual respect and professionalism with the members of the legal profession, the judiciary and law enforcement agencies.

PART III — MISCELLANEOUS

12. If an aided person intends to be represented by a person other than the appointed accredited legal aid provider, the accredited legal aid provider shall advise the aided person on the relevant procedure, including the applicable rules in that regard.

Change of representation.

13. (1) An accredited legal aid provider shall cease to act for an aided person if —

Termination of legal representation.

- (a) a conflict or a significant risk of conflict of interest, or breach of confidentiality arises;
- (b) a conflict or a significant risk of conflict arises between the interests of an aided person and the accredited legal aid provider's duty to the court;
- (c) the aided person withdraws instructions;
- (d) the accredited legal aid provider ceases to be accredited by the Service; or
- (e) continuing to act for the aided person would embarrass the accredited legal aid provider or the Service.

(2) An accredited legal aid provider may withdraw from acting for an aided person if —

- (a) the behaviour or conduct of the aided person towards the accredited legal aid provider, the accredited legal aid provider's partner, associate or employee, is violent, threatening, abusive or otherwise disrespectful;
- (b) the aided person deceives the accredited legal aid provider;
- (c) the aided person does not accept and act upon the advice of the accredited legal aid provider on any significant issue;
- (d) the aided person instructs the accredited legal aid provider to act contrary to any written law;
- (e) there is a breach of trust and confidence between the accredited legal aid provider and the aided person;
- (f) the accredited legal aid provider reasonably believes that he is not competent to continue to act in the matter;
- (g) the Service fails or neglects to pay to the accredited legal aid provider any sum due on account of the accredited legal aid provider's fees and disbursements;
- (h) there exists other substantial reason for withdrawal, with the approval of the Director or otherwise sanctioned by the professional code of conduct that binds the accredited legal aid provider; or
- (i) the accredited legal aid provider ceases to be accredited by the Service.

(3) If an accredited legal aid provider withdraws from acting for an aided person, the accredited legal aid provider shall —

- (a) in writing, notify the aided person and the Service; and
- (b) state the reasons for the withdrawal.

(4) A notice issued to the aided person under paragraph (3) shall not be required if the aided person voluntarily withdraws instructions and discharges the accredited legal aid provider from their duties under the Act.

14. (1) If an accredited legal aid provider believes that they are required by the Service to act in a way that — Matters against public interest.

- (a) is improper, unethical or contrary to any written law;
- (b) is in breach of professional rules of conduct that binds the accredited legal aid provider;
- (c) involves or results in maladministration, fraud or misappropriation of public funds; or
- (d) is otherwise inconsistent with this Code or the aided person's services charter,

the accredited legal aid provider shall report the conduct to the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act, 2011, with written notice to the Director, who shall take appropriate administrative action in that regard. No. 22 of 2011

(2) An accredited legal aid provider may rely on the grounds mentioned in sub paragraph (1) to withdraw from acting for an aided person.

15. An accredited legal aid provider may decline to take instructions to act for an aided person if the accredited legal aid provider is of the view that accepting such instructions would result in an excessive caseload and inadequacy in representation. Excessive caseload.

16. (1) Subject to the provisions of this Code and any other rules of professional conduct, an accredited legal aid provider shall not do anything that is likely to bring the Service into disrepute in the course of performing their duties under the Act. Standards of conduct.

(2) An accredited legal aid provider shall not misuse his position or information acquired in the course of providing legal aid to further the accredited legal aid provider's own interest or the interests of others.

17. (1) An aided person who is dissatisfied with the conduct of an accredited legal aid provider under this Code may file a complaint against the accredited legal aid provider to the Director. Complaints.

(2) The Director shall, upon receiving a complaint under sub paragraph (1), investigate the complaint and make recommendations to the Board.

(3) On receipt of the recommendations from the Director, the Board may —

- (a) direct that the accredited legal aid provider be retained in the Register;
- (b) direct that the accredited legal aid provider's accreditation be suspended on such terms as the Board may direct; or
- (c) direct that the accreditation of the accredited legal aid provider be cancelled and their name struck off the Register.

18. The Legal Aid Code of Conduct for Accredited Legal Aid Providers, 2021 is hereby revoked.

Revocation.
L.N. 186/2021.

Made on the 4th May, 2022.



FLORA BIDALI,
*Secretary and Chief Executive Officer,
National Legal Aid Services.*

LEGAL NOTICE No. 86

THE LEGAL AID ACT

(No. 6 of 2016)

THE LEGAL AID (GENERAL) REGULATIONS, 2022

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY


- 1—Citation
- 2—Interpretation

PART II—CRITERIA FOR ELIGIBILITY

- 3—Persons eligible for legal aid
- 4—Means test
- 5—Amounts to be considered in the means test

PART III—APPLICATION FOR LEGAL AID

- 6—Interpretation: Part III
- 7—Procedure for application
- 8—Services for which application may be made
- 9—Interested persons may apply for legal aid
- 10—Service may grant legal aid on an interim basis
- 11—Determination of applications for legal aid in civil matters
- 12—Application by or on behalf of a child
- 13—Application by person with mental disorder
- 14—Application by refugees, victims of human trafficking, internally displaced persons or stateless persons
- 15—Application for legal aid in constitutional matters and matters of public interest
- 16—Limitation and exclusion of legal aid in certain civil matters
- 17—Limitation on number of civil cases
- 18—Cessation and exclusion of legal aid in certain civil matters
- 18—Right to legal aid in certain criminal matters

 THE NATIONAL ASSEMBLY PAPERS & ID	
DATE: 04 OCT 2022	
BY: Deputy Speaker	
CLERK-AT-THE-TABLE: H. Sukimwa	

- 19—Eligibility for legal aid in criminal matters
- 20—Application by persons in lawful custody
- 21—Applications relating to criminal appeals or reviews
- 22—Certificate of Grant
- 23—Duty to deliver and to acknowledge delivery of certificate
- 24—Refusal of application
- 25—Withdrawal of legal aid
- 26—Termination of legal aid in certain cases
- 27—Review of the decisions of the Service
- 28—Appeals against decisions of the Service
- 29—Eligibility criteria for accreditation

PART III—ACCREDITATION OF LEGAL AID PROVIDERS

- 30—Application for accreditation
- 31—Renewal of accreditation
- 32—Exemption from accreditation
- 33—Provision of legal aid by universities and tertiary institutions
- 34—Voluntary withdrawal from accreditation
- 35—Duty of legal aid provider on suspension or cancellation of accreditation
- 36—Engagement of experts or consultants by legal aid providers

PART IV—ENFORCEMENT OF CONDITIONS FOR GRANT OF LEGAL AID

- 37—Financial contribution by an aided person
- 38—Recovery of costs
- 39—Settlement where contribution is not made

PART IV—PAYMENT FOR LEGAL AID SERVICES

- 40—Fees payable to a legal aid provider
- 41—Submission of accounts and supporting documents
- 42—Limitation of time for submission accounts
- 43—Advance for disbursements
- 44—Exclusion of lien in favour of legal aid provider
- 45—Revocation

SCHEDULES

First Schedule—	Forms
Second Schedule—	Fees
Third Schedule—	Accreditation Agreement for An Accredited Legal Aid Provider
Fourth Schedule—	Limit of Fees
Fifth Schedule—	Certificate of Compliance

THE LEGAL AID ACT

(No. 6 of 2016)

IN EXERCISE of the powers conferred by section 86 of the Legal Aid Act, 2016, the Attorney-General makes the following Regulations—

THE LEGAL AID (GENERAL) REGULATIONS, 2022

PART I—PRELIMINARY

1. These Regulations may be cited as the Legal Aid (General) Regulations, 2022. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“asset” means—

- (a) any movable or immovable property;
- (b) any corporeal or intellectual rights to property; or
- (c) any item, property or money that an applicant or the applicant’s spouse receives, or is entitled to receive at a future date, from the estate of any deceased person;

“costs” means the fees payable to an accredited legal aid provider, calculated by reference to scales of fees determined by the Service in consultation with relevant professional bodies in accordance with section 75 (1) of the Act, and includes—

- (a) advocate’s fees;
- (b) disbursements; and
- (c) any fees payable at an enhanced rate but does not include Value Added Tax chargeable under any written law.

“dependant” means—

- (a) an applicant’s child or step-child who is under eighteen years of age; Cap 248.
- (b) the applicant’s child above the age of eighteen years who is pursuing a full-time formal education or vocational training in an institution recognized in Kenya; or Cap 168.
- (c) a relative or other person who permanently resides with the applicant and relies on the applicant for financial support; No. 1 of 2011.

“disposable capital” means a person’s total assets after deducting the amount of any debts secured against those assets and after deducting the amount of the value of the person’s household furniture, household appliances, personal clothing and tools of trade;

“household” means individuals who comprise a nuclear family unit and who live together in the same house;

“intermediary” means a person who is—

- (a) aware of the facts giving rise to the legal redress being sought; and

(b) able to assist the applicant to communicate with the Service;

"person suffering from mental disorder" has the meaning assigned to it under section 2 of the Mental Health Act;

"Public Trustee" has the meaning assigned to it under section 2 of the Public Trustee Act;

"probability of success" means the likelihood that an applicant for legal aid will obtain a successful outcome at a trial or other final hearing in the proceeding to which the application relates; and

"Registrar" means a judicial officer appointed as such in accordance with the Judicial Service Act, 2011.

PART II—CRITERIA FOR ELIGIBILITY

3. Legal aid shall only be available to natural persons for advice, legal assistance or legal representation in a court, tribunal or any other dispute resolution forum to which the application for legal aid relates. Persons eligible for legal aid.

4. (1) A person qualifies for legal aid in relation to a criminal case or civil case in which he is a party if the person— Means test.

(a) has a net monthly income, after deduction of income tax, not exceeding thirty thousand shillings;

(b) has a spouse whose aggregate monthly income, after deduction of income tax, does not exceed thirty thousand shillings; or

(c) is a member of a household whose aggregate monthly income, after deduction of income tax does not exceed thirty thousand shillings.

(2) An applicant who is not a member of a household may qualify for legal aid in relation to a civil or criminal case, if the applicant—

(a) satisfies the requirements of sub-regulation (1);

(b) has disposable capital of a value not exceeding thirty thousand shillings; or

(c) is the proprietor of immovable property whose rental income or other mesne profits does not exceed thirty thousand shillings.

5. (1) In assessing the means of an applicant for legal aid—

(a) any income tax paid or payable on income treated for the purpose of granting legal aid under the Act as the income of the applicant shall not be taken into account; and

(b) fifteen thousand shillings in respect of the applicant's living expenses and outgoings shall not be taken into account.

Amounts to be considered in the means test.

(2) In determining the applicant's net monthly income for the purposes of the means test, any amount paid to an applicant under a pension scheme or a super annuity fund shall not be taken into account.

(3) In determining the applicant's net monthly income for the purposes of the means test, any amount received by an applicant on account of spousal maintenance or child support shall be taken into account.

(4) Any property, asset or investment held under a trust, settlement or other arrangement and administered by the applicant or any other person for the direct or indirect benefit of the applicant, the applicant's spouse, dependant or nominee shall be deemed to be the property of the applicant for the purpose of determining the applicant's net monthly income.

(5) In determining the applicant's net monthly income under sub-regulation (4) the percentage of the benefits accruing to the applicant under the trust, settlement or arrangement shall be taken into account.

(6) Where an application for legal aid relates to a suit against a member of the applicant's family, the applicant's net monthly income shall be assessed as if the applicant is not a member of that family.

(7) In determining the financial means of an applicant, the net monthly income of a spouse from whom the applicant is separated shall not be taken into account.

(8) An applicant who disposes of any movable or immovable assets, whether directly or indirectly, in order to become eligible for legal aid or to reduce or avoid repayment or contribution to the Service shall be disqualified from the grant of legal aid.

(9) The Service may include the assets referred to in sub-regulation (8) when calculating the applicant's net monthly income or disposable capital for the purposes of the means test or determining the contribution payable by the applicant to the Service as a pre-condition for the grant.

(10) The movable or immovable assets referred to in sub-regulation (8) include—

- (a) any assets that the applicant has transferred to another person; or
- (b) any assets that the applicant has converted into financial resources that would be wholly or partly disregarded under the Act.

PART III—APPLICATION FOR LEGAL AID

6. In this Part, "civil matter" includes civil proceedings for the review or appeal of the court decisions arising from the civil proceedings.

Interpretation:
Part III.

7. (1) An application for legal aid shall be made to the Service in Form NLAS 1 set out in the First Schedule.

Procedure for
application.

(2) Where an application is made to the Service in relation to advisory or legal services, other than legal representation in judicial proceedings, the applicant shall make the application in the county in which the applicant resides or carries on business.

(3) Where an application is made for legal representation relating to civil or criminal proceedings, the applicant shall apply to the Service at its nearest office within the jurisdiction of the court in which the proceedings are to be conducted.

(4) An application for legal aid shall be accompanied by—

- (a) a list of and the estimated value of the applicant's assets, if any;
- (b) documentary evidence of the applicant's monthly income accruing from the assets;
- (c) documentary evidence of the applicant's monthly salary for the three months preceding the application; and
- (d) the applicant's tax returns for the financial year preceding the application.

(5) In the absence of the documents required under sub-regulation (4), the Director may, at his discretion, require the applicant to make a statutory declaration, under oath, of the applicant's net monthly income.

(6) In addition to the formal application made under this Part, the Director may require an applicant to attend an oral interview for the purpose of—

- (a) clarifying any information contained in the application; or
- (b) providing such additional information as may assist the Director or officer of the Service in making the decision to grant or refuse the application.

8. A person may apply for legal aid services under the Act seeking—

- (a) legal advice concerning any issue;
- (b) legal assistance in—
 - (i) the resolution of a dispute by means of alternative dispute resolution mechanisms;
 - (ii) drafting of relevant documents and effecting service incidental to any legal proceedings; and
 - (iii) reaching or giving effect to any out-of-court settlement; or
- (c) legal representation in civil or criminal proceedings.

Services for which application may be made.

9. A person who has an interest in any civil or criminal proceedings, including a witness, may apply for legal aid in accordance with these Regulations.

Interested persons may apply for legal aid.

10. (1) The Service may grant legal aid on an interim basis limited to legal advice, legal assistance or other services that are necessary to protect or preserve the rights of the applicant pending determination of the formal application in accordance with these Regulations.

Service may grant legal aid on an interim basis.

(2) Where the Service grants legal aid on an interim basis, it shall issue a provisional certificate of grant in Form NLAS 2 set out in the First Schedule.

(3) Where the Service issues a provisional certificate of grant under this regulation, civil proceedings shall not be commenced under the certificate until the Director is satisfied that it is reasonable under all the circumstances to commence, defend or continue with the proceedings.

(4) Where legal action is required to be taken immediately under any written law in order to preserve the rights of the applicant, the Director may authorise the taking of such action in the proceeding but shall not take a further action pending final determination of the application.

(5) The Service or legal aid provider, as the case may be, shall at all times keep the applicant informed and advised of the decisions and steps taken pursuant to the legal action taken under sub-regulation (4).

(6) On the final determination of the application, the Service may—

- (a) extend the term of the provisional certificate for a period not exceeding six months;

Provided that the Service shall not extend the term of the provisional certificate for a cumulative period exceeding twelve months;

- (b) cancel the provisional certificate and refuse to grant further legal aid to the applicant; or
- (c) grant legal aid, with or without conditions, and issue the applicant with a certificate of grant.

11. (1) The Service may grant legal aid to a litigant in a civil matter pursuant to section 35(2) (a) of the Act if, in the opinion of the Service—

- (a) the matter has a high probability of success;
- (b) the Service has the necessary resources available;
- (c) the pecuniary value or benefits of the probable outcome of the proceedings justify the estimated costs of the proceedings, having regard to the circumstances of the case; and
- (d) the outcome, decree or consequential orders of the court are capable of enforcement.

(2) The Service shall take appropriate steps to prevent—

- (a) default judgment against the applicant;
- (b) the presumption of waiver of any right accruing to the applicant under any written law;
- (c) adverse possession in relation to any property the subject matter of the claim; or

Determination of applications for legal aid in civil matters.

- (d) limitation of the action to which the application relates, to the detriment of the applicant.

(3) Where legal aid is granted to a party to civil proceedings in any court within Kenya, and evidence is to be heard on commission, the Service may extend legal aid to the hearing of such evidence outside Kenya if—

- (a) the Service has sufficient funds to meet the costs of such hearing; and
- (b) the Service is of the opinion that good reasons exist to justify extension of legal aid in that regard.

(4) The Service shall not provide legal aid to any person for the purpose of civil proceedings in any court outside Kenya.

12. (1) An application for legal aid in respect of a civil matter in which a child is a party shall be made by—

Application by or on behalf of a child.

- (a) any of the child's parents;
- (b) the child's next friend or guardian *ad litem*; or
- (c) the person for the time being having legal custody of or exercising parental responsibility over the child.

(2) If the proceedings to which the application relates are in the name of the next friend, guardian *ad litem* or other person in their representative capacity, the certificate of grant shall be issued in the name of the next friend, guardian *ad litem* or representative.

(3) Legal aid in respect of a child offender shall be provided at all stages of the criminal justice process, including arrest, trial, sentencing and appeal.

(4) A child offender shall not be subjected to the means test for purposes of determining the child's eligibility for legal aid.

13. (1) An application for legal aid in respect of a civil or criminal matter in which a person suffering from mental disorder is a party may be made on behalf of the person by the manager of the estate of that person, guardian or the Public Trustee, appointed by the court in accordance with the Mental Health Act.

Application by person with mental disorder.

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(2) An application made on behalf of a person suffering from mental disorder under this regulation shall be accompanied by an order of the court issued under section 26 of the Mental Health Act for the custody, guardianship or management of the estate of that person and shall be subjected to the means test.

14. (1) An application for legal aid by a refugee, victim of human trafficking, internally displaced person or stateless person, in civil or criminal proceedings may be made by any person authorised by the applicant.

Application by refugee, victim of human trafficking, internally displaced person or stateless person.

(2) An application made under paragraph (1) shall be signed by the applicant.

(3) If for any reason the applicant is unable to personally sign the application, the person by whom the application is made shall make a written declaration disclosing the reasons why the person on whose behalf the application is made is unable to sign the application.

(4) The applicant shall be subjected to the means test.

15. (1) In determining whether or not to grant legal aid in constitutional matters or other matters of significant public interest pursuant to section 35 (2) (d), (e) and (f) of the Act, the Service shall consider—

Application for legal aid in constitutional matters and matters of public interest

- (a) the impact of the decision not to grant the application, and whether it would be in the public interest that legal aid be granted;
- (b) the complexity of the relevant law and procedure;
- (c) the ability of the applicant to represent himself effectively in the absence of legal assistance or representation;
- (d) the financial means of the applicant;
- (e) the probability of success of the case in relation to which the application is made; and
- (f) whether the applicant is substantially disadvantaged in comparison with the other party to the proceeding.

(2) Despite paragraph (1), an applicant for legal aid in a civil or criminal matter of public interest shall not be subjected to the means test.

(3) A case is of significant public interest if the Director is satisfied that the case is appropriate for the realization of—

- (a) benefits for an identifiable class of applicants, other than members of the applicant's family or the applicant to whom legal aid may be provided in a civil matter; or
- (b) the protection of the rights of the child, the rights of persons with disabilities, minority and marginalised groups, and the advancement or enforcement of the constitutional rights of marginalised communities.

16. (1) The Service shall not grant legal aid in any civil matter where, in its view—

Limitation and exclusion of legal aid in certain civil matters.

- (a) the claim in respect of which the application relates is vexatious; or
- (b) there is no real or substantial material benefit likely to accrue to the applicant.

(2) The Service shall grant only legal advice, in relation to any action or claim which falls within the pecuniary jurisdiction of the Small Claims Court in accordance with the Small Claims Court Act, 2016.

(3) Legal aid shall not be granted for the purpose of instituting or defending an action in a burial dispute.

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(4) The Service may grant legal aid to an applicant who is an opposing party to a person who has been granted legal aid.

17. The Service may grant legal aid to an applicant in relation to only one civil matter at any one time, unless the Service is of the opinion that—

Limitation on number of civil cases.

- (a) there is a probability of success in respect of all the matters for which legal aid is sought;
- (b) the cost of legal aid in relation to the cases is justifiable by the anticipated benefits to the applicant; and
- (c) the grant of legal aid to an applicant in two or more cases at any one time does not, having regard to the available resources, prejudice the right of others to access legal aid.

18. (1) An accused person has the right to legal aid in a criminal matter and to have an advocate assigned to him pursuant to Article 50 (2) (h) of the Constitution if substantial injustice would otherwise result.

Right to legal aid in certain criminal matters.

(2) For the purposes of paragraph (1), it is immaterial that the applicant has been sentenced, remanded in custody or is otherwise detained or imprisoned.

19. (1) To qualify for legal aid in a criminal matter, the applicant shall show to the satisfaction of the Service that he meets the requirements of section 36 (4) of the Act.

Eligibility for legal aid in criminal matters.

(2) Without prejudice to the generality of paragraph (1), the Service shall grant legal aid under this regulation regardless of the applicant's financial means if the interest of justice so requires, taking into account—

- (a) the urgency or complexity of the case; and
- (b) the severity of the potential penalty.

(3) In determining the applicant's financial resources under this regulation, the Service shall apply the means test prescribed in regulation 4.

(4) The Service shall be satisfied on a balance of probabilities that there is a probability of success before granting legal aid in any of the following matters—

- (a) bail appeals;
- (b) reviews and revisions;
- (c) interlocutory applications to a court other than the trial court; or
- (d) applications to recall a witness or adduce further evidence in the proceedings.

20. (1) An officer-in-charge of a prison, police station, children remand home or other place of lawful custody shall, in consultation with the Service, keep and maintain a record of—

Application by persons in lawful custody.

- (a) the nearest branch of the Service;

- (b) accredited legal aid providers in the county specifying the particulars specified in section 60 (1) (a) to (c) and (e) of the Act; and
 - (c) entries of referrals made to the Service and to accredited legal aid providers in favour of persons in their custody and in need of legal aid.
- (2) On admitting a person into custody, the officer-in-charge shall—
- (a) inform the person of his basic rights, including the right to legal aid; and
 - (b) inquire whether the person is in need of legal aid and record the person's response in the register maintained in accordance with section 42(1)(b) of the Act.
- (3) If the person is in need of legal aid, the officer-in-charge shall, within twenty-four hours, facilitate completion of an application for legal aid and submit it to the Service and make an entry in the register stating the steps taken by the officer to facilitate access by that person to legal aid.
- (4) The Service or an accredited legal aid provider shall have access to an applicant or aided person held in custody as contemplated in section 24 (3) of the Persons Deprived of Liberty Act, 2014, for the purpose of undertaking any inquiry in relation to an application, providing legal assistance or representation under the Act.
- (5) Consultations between the Service or an accredited legal aid provider and an applicant or aided person pursuant to paragraph (4) shall be carried out in private.
- (6) A person who contravenes the provisions of this section shall be liable, on conviction, to the penalty specified in section 85 (2).
21. (1) The Service may provide legal aid to an applicant for an intended criminal appeal if—
- (a) the applicant is eligible for legal aid under the Act and these Regulations;
 - (b) the Service is satisfied that the intended appeal has a probability of success;
 - (c) the applicant is convicted and sentenced to a term of imprisonment with an unsuspended portion of more than three months, or if given the option of a fine, that fine is unpaid for a period exceeding two weeks after the date of sentence;
 - (d) an application for leave to appeal is made within the prescribed period or within a period of less than one year from the date of sentence;
 - (e) the applicant is not granted leave to appeal or seek revision of any order or judgment of the court; and

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Applications relating to criminal appeals or reviews.

(f) the Service is of the opinion that there is a probability of success in further proceeding with the appeal.

(2) Legal aid may be granted under paragraph (1) whether the services sought relate to a substantive appeal or to an application for leave to appeal.

(3) Notwithstanding paragraph (1), an accused person who is convicted of a criminal offence punishable by a term of imprisonment or the death penalty is, subject to the eligibility criteria, entitled to legal aid at all stages of the criminal justice system.

(4) A beneficiary of legal aid in a criminal trial is entitled to legal aid on appeal.

(5) Nothing in this regulation prevents a person whose application for legal aid in respect of a criminal trial was previously denied by the Service from making a fresh application for legal aid in relation to an appeal or application for leave to appeal the outcome of the trial.

22. (1) Where the Service grants legal aid, it shall issue the applicant with a certificate of grant in Form NLAS 3 set out in the First Schedule. Certificate of grant.

(2) Where an application for legal aid is made in a representative capacity, the certificate of grant shall be issued in the name of the applicant, stating the name of the representative who made the application.

(3) The Service shall not issue a certificate of grant to the applicant or a representative of the applicant unless the applicant has given a written undertaking to pay to the Service any contribution on the condition of which legal aid is granted.

(4) A person who makes an application for legal aid in a representative capacity shall at all times be treated as an agent of the aided person.

23. (1) On granting legal aid, whether limited or unlimited, the Service shall deliver a provisional certificate of grant or certificate of grant, as the case may be, to the aided person and the legal aid provider to whom the aided person is assigned— Duty to deliver, and to acknowledge delivery of certificate.

(a) physically to the legal aid provider or to the registered office of the legal aid provider;

(b) physically, to the aided person at his principal place of business or residence; or

(c) by registered mail to the last known address of the legal aid provider and aided person.

(2) Upon delivery of a provisional certificate of grant or certificate of grant under sub-regulation (1) the legal aid provider shall, within seven days, acknowledge receipt of the certificate in writing and either—

(a) accept to render the type of legal aid to which the grant relates; or

(b) refuse to take up the matter and issue a written notice of the refusal to the Service and to the aided person.

(3) Where the legal aid provider declines to take up the matter or fails to acknowledge receipt of the certificate within the period prescribed in paragraph (2), the certificate shall lapse.

(4) Where a provisional certificate of grant or a certificate of grant lapses under sub-regulation (3), the Service shall notify the aided person and issue a fresh certificate appointing an alternative legal aid provider.

24. (1) The Service may, pursuant to section 44 (1) (c) of the Act, refuse an application for legal aid if—

Refusal of application.

(a) the matter in respect of which legal aid is sought is expressly excluded under the Act or these Regulations; or

(b) the applicant does not meet the eligibility criteria prescribed in these Regulations.

(2) Where the Service refuses an application for legal aid in respect of a civil or criminal matter, the Service shall notify the applicant of its decision in writing stating—

(a) the reasons for refusal to grant legal aid;

(b) the right to seek review of the decision of the Service and of appeal to the High Court; and

(c) in relation to a civil matter, the applicant's right to sue as a pauper under Order 33 of the Civil Procedure Rules, 2010.

(3) Refusal of an application for legal aid in a civil matter does not defeat the applicant's right to sue as a pauper in accordance with Order 33 of the Civil Procedure Rules, 2010.

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25. (1) The Service may, at any time, withdraw legal aid in respect of an aided person in accordance with section 52 (1) of the Act if the aided person—

Withdrawal of legal aid.

(a) wilfully fails to comply with any requirement with regard to the information required to be given by the aided person;

(b) knowingly makes a false statement in support of his application;

(c) ceases to qualify for legal aid under the means test or other eligibility criteria;

(d) fails to notify the Service of a change in the circumstances specified in section 46 (1) of the Act;

(e) without reasonable cause, fails to appear in court in criminal proceedings, and a warrant for arrest is issued against him;

(f) unreasonably refuses to submit to an alternative dispute resolution process or to accept a settlement;

- (g) fails to make a contribution specified as a condition for which legal aid is granted;
- (h) unreasonably or without lawful justification, terminates the services of the legal aid provider instructed on his behalf by the Service;
- (i) conducts himself in such a way as to frustrate or render the delivery of legal aid services impossible; or
- (j) wilfully fails to do anything reasonably required to be done by the aided person under the Act or these Regulations.

(2) In addition to the consequences of withdrawal of legal aid specified in section 53 of the Act, the aided person—

- (a) shall not be entitled to recover any contribution or portion thereof paid by him to the Service; and
- (b) shall be liable to pay to the Service the balance of any contribution outstanding at the time of withdrawal of legal aid.

(3) Sub-regulation (2) shall also apply where the aided person voluntarily withdraws from the legal aid scheme.

(4) Where the Service withdraws legal aid in accordance with section 52 of the Act, or where the aided person voluntarily withdraws from the legal aid scheme, the retainer payable to any paralegal or legal practitioner instructed by the Service on behalf of an aided person shall, except where the Director otherwise decides, immediately determine.

(5) The Service shall withdraw legal aid in relation to any matter for which legal aid ceases to be available by reason of change of national policy or legislation.

26. (1) The Service may terminate the services of a legal aid provider if—

- (a) the instructed legal aid provider withdraws legal aid services;
- (b) where the legal aid provider engages in professional misconduct;
- (c) if the legal aid provider ceases to be accredited under the Act or these Regulations;
- (d) the legal aid provider ceases to practice by reason of ill-health or other reasons that make it impossible for the legal aid provider to carry out their obligations as a legal aid provider; or
- (e) the legal aid provider fails to effectively discharge professional responsibilities in relation to the matter for which the provider was instructed.

(2) Where the Service terminates the services of a legal aid provider on any of the grounds specified in paragraph (1), the Service shall—

Termination of
legal aid in certain
cases.

- (a) issue a notice of termination of legal aid in Form NLAS 4 set out in the First Schedule;
- (b) appoint another legal aid provider to offer legal aid to the aided person; and
- (c) notify the aided person, in writing, of the change.

(3) In terminating the services of a legal aid provider under this regulation, the Service shall apply, with necessary modifications, the procedure set out in section 54 (2), (3), (4) and (5) of the Act.

27. (1) The Service may, of its own motion, review its decision—

Review of the decisions of the Service.

- (a) to grant legal aid;
- (b) on the conditions on which legal aid is granted;
- (c) to withdraw the grant of legal aid; or
- (d) to terminate the services of a legal aid provider.

(2) In exercise of its discretion under this regulation, the Service may—

- (a) assess the net monthly income and disposable capital of the aided person; and
- (b) if the aided person's net monthly income or disposable capital have increased, the Service may require the aided person to make a higher contribution to the Fund:

Provided that the total payment required to be made by the aided person to the Service shall not exceed the cost to the Service in respect of the matter to which the cost relates.

(3) Upon review, the Service may—

- (a) uphold its decision; or
- (b) grant legal aid on such terms and conditions as the Service may think fit.

28. An appeal made under section 55 of the Act shall be by a formal application made in accordance with the rules of procedure governing appeals, as prescribed under Order 42 of the Civil Procedure Rules, 2010.

Appeals against decisions of the Service.
L.N. 151/2010

PART III—ACCREDITATION OF LEGAL AID PROVIDERS

29. (1) A person is eligible for accreditation as a paralegal if the person—

Eligibility criteria for accreditation.

- (a) has completed a training course for paralegals that is approved by the Council of Legal Education;
- (b) is employed or supervised by an advocate or accredited legal aid provider; and
- (c) is a member of a duly registered association of paralegals.

(2) An advocate is eligible for accreditation as a legal aid provider if the advocate—

- (a) is an advocate of the High Court of Kenya; and
 - (b) holds a valid annual practicing certificate.
- (3) A firm of advocates is eligible for accreditation as a legal aid provider if the firm is—
- (a) duly registered as a sole proprietorship or as a general or limited liability partnership; and
 - (b) comprised of one or more advocates qualified for accreditation as a legal aid provider under sub-regulation (2).
- (4) A public benefit organization, Non-Governmental Organization or faith-based organisation, is eligible for accreditation as a legal aid provider if the organization—
- (a) is duly registered as a public benefit organisation under the Public Benefit Organisations Act, 2013, a Non-Governmental Organization under the Non-Governmental Organizations Co-ordination Act, 1990, or a society under the Societies Act;
 - (b) has adequate office facilities and relevant qualified personnel within the area in which it seeks to provide legal aid services; and
 - (c) has in its employment at least one paralegal and one advocate qualified for accreditation as legal aid providers under these Regulations. No. 28 of 2013
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- (5) A university or other institution is eligible for accreditation as a legal aid provider if the university or institution—
- (a) is accredited by the Council of Legal Education under the Legal Education Act, 2012 to provide legal education or training; and No. 27 of 2012
 - (b) has a full-time member of the law faculty who is an advocate of the High Court of at least seven years standing, in charge of the legal aid clinic.
- (6) A State agency is eligible for accreditation as a legal aid provider if the agency has in its employment one or more paralegals or advocates eligible for accreditation as legal aid providers under these Regulations.
30. (1) A person who is eligible for accreditation as a legal aid provider under regulation 29 may apply to the Service for accreditation in Form NLAS 5 set out in the First Schedule. Application for
accreditation.
- (2) An application under paragraph (1) may be submitted to the Service at the branch of the Service nearest to the area in which the applicant is employed or has an established practice or place of business.
- (3) An application for accreditation made by an advocate or paralegal under this regulation shall be accompanied by—

- (a) a written undertaking by the applicant to comply with these Regulations or other administrative procedures prescribed by the Service;
- (b) a valid tax compliance certificate;
- (c) an up-to-date curriculum vitae containing contact details of at least two character referees;
- (d) in the case of an advocate—
 - (i) a valid practising certificate; and
 - (ii) a certificate of good standing issued by the Law Society of Kenya;
- (e) in the case of a paralegal, proof of membership of a duly registered association of paralegals; and
- (f) the fees set out in the Second Schedule.

(4) An application for accreditation made by a public benefit organisation, faith-based organisation, university or State agency under this regulation shall be accompanied by—

- (a) a duly authenticated certificate of registration or instrument under which the applicant is established;
- (b) a written undertaking by the applicant to comply with these Regulations and any other administrative procedures prescribed by the Service;
- (c) a valid tax compliance certificate or certificate of exemption, as the case may be;
- (d) the applicant's profile containing—
 - (i) an outline of its governance structure; and
 - (ii) a brief biographical data of the paralegals, advocates or other qualified personnel who shall provide legal aid once the legal aid provider is accredited; and
- (e) the prescribed fee set out in the Second Schedule.

(5) On receipt of the application, the Service shall—

- (a) reject the application and notify the applicant of its decision in that regard stating—
 - (i) the grounds for rejection of the application;
 - (ii) the right to review pursuant to section 49 of the Act; and
 - (iii) the right of appeal pursuant to section 55 of the Act; or
- (b) grant the application and accredit the applicant as a legal aid provider whereupon the Service shall—
 - (i) enter the particulars of the legal aid provider in the register of accredited legal aid providers; and

(ii) issue the applicant with a Certificate of Accreditation.

(6) The accreditation of a legal aid provider shall take effect on the date on which the legal aid provider and the Service execute the accreditation agreement set out in the Third Schedule.

31. (1) A legal aid provider may apply to the Service for renewal of accreditation at least one month before the accreditation expires in Form NLAS 5 set out in the First Schedule. Renewal of accreditation.

(2) On receipt of an application for renewal of accreditation, the Service shall—

- (a) assess whether the legal aid provider is able to offer legal aid in a proper manner; and
- (b) either renew the accreditation for a further period of one year or notify the legal aid provider, in writing, that his application is rejected.

32. (1) The Director may, in writing, request an advocate who is not registered as an accredited legal aid provider to provide legal aid in a matter that requires expertise that is not possessed by any of the accredited legal aid providers. Exemption from accreditation.

(2) Upon receiving a request to provide legal aid under paragraph (1), the advocate shall, within forty-eight hours, inform the Director in writing of his acceptance or refusal of the request, as the case may be.

33. (1) Subject to regulation 29 (5), the Service shall provide the necessary technical assistance for the establishment and supervision of the operations of legal aid clinics in universities and institutions. Provision of legal aid by universities and tertiary institutions.

(2) A law student in the final year of study may render legal aid in a legal aid clinic under the supervision of a qualified faculty member of the university or institution, provided that all legal documents shall bear the name and signature of the supervisor.

(3) The faculty member under whose supervision a law student offers legal aid shall bear personal professional responsibility for any act or omission of the student in the provision of legal aid.

34. (1) A legal aid provider may withdraw from the legal aid scheme by issuing a notice in writing to the Service. Voluntary withdrawal from accreditation.

(2) On receipt of the notice of withdrawal under sub-regulation (1), the Service and the legal aid provider shall settle accounts in respect of fees and expenses due and payable to, or recoverable from, the legal aid provider as at the date of the notice.

(3) Upon withdrawal from the legal aid scheme, the legal aid provider shall, within seven days of withdrawal—

- (a) deliver the legal aid file in his possession to the Service; and
- (b) submit to the Director a report on the status of all incomplete work assigned to the legal aid provider.

(4) Upon withdrawal from the legal aid scheme under this regulation, the Service shall strike out the name of the legal aid provider from the register of accredited legal aid providers.

35. (1) Where the Service suspends the accreditation of a legal aid provider on any of the grounds specified in section 66 (1) of the Act, the legal aid provider shall, within seven days of receipt of the notice of suspension issued under section 66 (2) of the Act—

Duty of legal aid provider on suspension or cancellation of accreditation.

- (a) deliver any legal aid file in their possession to the Service when required so to do;
- (b) report to the Director on the status of all incomplete work assigned to the legal aid provider; and
- (c) render an account for the fees and disbursements, if any, paid to or by the legal aid provider on account of the matters assigned to them.

(2) Where the Service suspends the accreditation of a legal aid provider, it shall make an entry in the register of accredited legal aid providers stating—

- (a) the date of suspension;
- (b) the period for which the accreditation of the legal aid provider shall remain suspended;
- (c) the conditions, if any, to be met by the legal aid provider before reinstatement to the register of accredited legal aid providers; and
- (d) any other relevant matter relating to the suspension.

(3) The provisions of paragraph (1) shall apply, with necessary modifications, where the Service cancels the accreditation of a legal aid provider under section 67 of the Act.

(4) Where the Service cancels the accreditation of a legal aid provider, the Service shall, subject to a decision made on review pursuant to section 67 (4) of the Act, strike out the name of the legal aid provider from the register of accredited legal aid providers.

36. (1) A legal aid provider may, with the written approval of the Director, employ the services of an expert, private investigator or consultant, whose services are required for the effective discharge of legal aid services for which the legal aid provider is tasked.

Engagement of experts or consultants by legal aid providers.

(2) A request by a legal aid provider to employ the services of an expert, private investigator or consultant shall be made to the Director in writing and shall state—

- (a) the name, contact address and other particulars of the expert, private investigator or consultant;
- (b) the nature of the services required;
- (c) the estimated maximum cost of the service; and

(d) the reason for requiring the service.

(3) The expenses incurred in retaining the services of an expert, private investigator or under sub-regulation (1) shall be paid out of the Legal Aid Fund.

PART IV—ENFORCEMENT OF CONDITIONS FOR GRANT OF LEGAL AID

37. (1) Where the Service grants legal aid on condition that the aided person shall make a financial contribution to the Fund pursuant to sections 69 (1) (b) and 79 (2) (b) of the Act, the aided person shall pay into the Fund such amounts as are agreed and stated in the certificate of grant, subject to the limit set out in the Fourth Schedule.

Financial contribution by an aided person.

(2) An aided person shall not be granted legal aid unless he complies with the condition specified in paragraph (1).

(3) If legal aid is granted on condition that the aided person makes a financial contribution to the Fund, the amount stated in the grant may be paid in equal monthly instalments in advance and on such terms as the Service directs, until—

- (a) the amount of contribution is paid in full;
- (b) the termination of the trial or other proceeding; or
- (c) in a criminal case, the accused is convicted and sentenced to a term of imprisonment in consequence of which no further payment shall become due and payable.

(4) Where legal aid is granted for a maximum amount stated in the certificate of grant, the aided person shall be liable to the Service for any costs incurred in excess of the stated amount.

38. Where the aided person is awarded costs in civil proceedings, the legal aid provider shall—

Recovery of costs.

- (a) notify the aided person of the award;
- (b) deliver to the Service the certificate of costs issued under the hand and seal of the Registrar; and
- (c) deliver to the party from whom such costs are recoverable, or to his advocate, the certificate of costs referred to in paragraph (b).

39. Where an aided person is entitled to recover pecuniary damages or other property under a judgment, decree, order or settlement, the legal aid provider shall, unless the aided person has paid into the Fund the contribution specified in sections 69 (1) (b) and 79 (2) (b) of the Act —

Settlement where contribution is not made.

- (a) before payment to the aided person of any money recovered for the aided person, pay to the Fund an amount not exceeding the contribution due and payable by the aided person under the grant; or
- (b) before delivery to the aided person of any property or the title relating to the property, other than money recovered for

the aided person, and subject to the approval of the Director—

- (i) ensure that the aided person charges the property in favour of the Service for the costs incurred in the proceedings or contribution due and payable by the aided person under the grant; and
- (ii) register the instrument of charge in the Register of Charges and submit the duplicate with notations of registration to the Director.

PART IV—PAYMENT FOR LEGAL AID SERVICES

40. (1) The fees payable to a legal aid provider shall be limited to those specified in the scale of fees prescribed by the Service in consultation with relevant professional bodies pursuant to section 75 (1) of the Act.

Fees payable to a legal aid provider.

(2) A legal aid provider shall not receive or accept a fee, gratuity or other compensation with respect to legal aid that exceeds the fees provided by the Service in accordance with paragraph (1).

(3) The fees and disbursements payable to a legal aid provider in a civil matter shall not exceed the amount awarded under a Certificate of Costs, if any, on account of party-to-party costs in favour of a successful aided person, or of the opposing party.

41. (1) A legal aid provider who completes the work assigned to the provider by the Service, or who ceases to act shall submit to the Director—

Submission of accounts and supporting documents.

- (a) an account of the fees and disbursements, in duplicate, showing the date upon which, each item of service was performed and certified in accordance with the certificate set out in the Fifth Schedule;
- (b) a copy of the certificate of grant issued by the Service to the aided person;
- (c) a written authorization to engage an expert, consultant or private investigator, if any, or of other relevant disbursements;
- (d) the accounts of an expert, consultant or private investigator, if any, engaged in the matter, and certified in accordance with the certificate of compliance set out in the Fifth Schedule;
- (e) a certified copy of the judgment, order or administrative decision given in determination of the matter in which the legal aid provider was engaged;
- (f) where, before the issue of the certificate of grant, the legal aid provider was engaged by the aided person to perform services with respect to the same matter—
 - (i) a detailed statement of the services rendered by the legal aid provider;

- (ii) an account of disbursements made by the legal aid provider before the issue of the certificate of grant;
- (iii) a statement of payments, if any, made by the aided person to the legal aid provider on account of their fees and disbursements; and
- (g) other supporting documents that may be required by the Director.

(2) An account submitted under paragraph (1) shall set out in reasonable detail the services rendered and, where appropriate, detail the time actually spent, together with the fees and disbursements sought in accordance with the appropriate schedules of fees and disbursements, for each item of work.

(3) The disbursements referred to in paragraph (2) shall be limited to—

- (a) court disbursements, including filing fees on account of pleadings, applications or other court process;
- (b) out-of-pocket expenses incurred on account of day-to-day attendances and services, including transport expenses, postage and courier charges, reasonably incurred;
- (c) fees and expenses incurred on account of expert opinion or evidence with the prior approval, in writing, of the Service;
- (d) witness expenses incurred with prior approval, in writing, of the Service;
- (e) fees payable for transcription of evidence by a third party engaged by the legal aid provider in accordance with regulation 36 with the prior approval, in writing, of the Service;
- (f) court fees on account of the proceedings supplied by the Registrar to the legal aid provider; and
- (g) any other fees or out-of-pocket expenses properly and reasonably incurred with the written approval of the Director in furtherance of the proceedings or matter in which the legal aid provider is engaged.

(4) Nothing in this regulation prevents a legal aid provider from incurring out-of-pocket expenses on account of any matter or proceeding without prior approval of the Director in emergency cases.

42. (1) A legal aid provider shall submit an account to the Director pursuant to regulation 41 within six calendar months of completion of the services to which the account relates.

Limitation of time
for submission
accounts.

(2) The Service shall not be liable for an account that is submitted after the time specified in paragraph (1) and the account shall not be taxed but shall be returned to the legal aid provider.

(3) Notwithstanding paragraph (2), the Director may, for good cause, extend, in writing, the time within which a legal aid provider may submit an account under regulation 41.

43. (1) A legal aid provider who incurs out-of-pocket disbursements in excess of ten thousand shillings may apply to the Director for reimbursement in Form NLAS 6 set out in the First Schedule, before the submission of an account under regulation 41.

Advance for disbursements.

(2) The application under paragraph (1) shall set out the details of the disbursements for which reimbursement is sought.

(3) The Director shall reimburse the amount claimed by the legal aid provider under sub-regulation (1) if satisfied that—

- (a) the disbursements were paid by the legal aid provider;
- (b) the disbursements were necessary and proper; and
- (c) the legal aid provider has not received any reimbursement for the disbursements.

44. (1) A legal aid provider has no right of lien for his fees, charges or expenses on account of legal aid upon the property or legal documents in his possession belonging to an aided person.

Exclusion of lien in favour of legal aid provider.

(2) Nothing in these Regulations shall be considered to deprive a legal aid provider of his lien on the property or legal documents in his possession for the fees, charges and expenses that the aided person was liable to pay to him for professional services rendered before the issuing of a certificate of grant and not covered in the certificate of grant.

45. The Legal Aid (General) Regulations, 2022, are hereby revoked.

Revocation.
L.N. 187/2021.

FIRST SCHEDULE
FORMS

Form NLAS 1 r. 7(1)

APPLICATION FOR LEGAL AID

Section 1: Applicants Personal Information

County

Date:.....

Name: Ref:

Sex: ☐Female ☐Male

ID NO.....

Age:..... Date of Birth.....Email Address.....

Postal Address:..... Telephone

Residence:.....Other No.....

Level of Education: ☐Primary ☐Secondary ☐Certificate
☐Diploma ☐Degree

Language: ☐English ☐Kiswahili ☐Local

Proficiency level: ☐Written ☐Spoken

Employment Status: ☐Casual ☐ Permanent ☐Contract
☐Unemployed

Occupation.....

Applicant's income per month: Kshs.....

Applicant's income Per day Kshs.....

Marital Status: ☐Single ☐Married ☐Divorced ☐Widowed ☐Separated

Vulnerability: ☐Orphaned ☐Divorced ☐Child ☐Woman ☐Disability

Household income per month: Kshs.....

Household income Per day Kshs.....

Section 2: Nature of case:

<i>Abuse of office (Administrative)</i>	<i>Criminal</i>	<i>Civil</i>
<input type="checkbox"/> Intimidation <input type="checkbox"/> Threats. <input type="checkbox"/> Disappearance. <input type="checkbox"/> Wrongful detention <input type="checkbox"/> Corruption by formal government authorities <input type="checkbox"/> Access to legal documents. <input type="checkbox"/> Appeals of judicial review nature <i>Others (specify)</i>	<input type="checkbox"/> Robbery with violence <input type="checkbox"/> Theft <input type="checkbox"/> Assault <input type="checkbox"/> Domestic violence. <i>Sexual offences:</i> <input type="checkbox"/> rape, <input type="checkbox"/> sexual harassment <input type="checkbox"/> defilement <i>Others (specify)</i>	<input type="checkbox"/> Child abandonment/neglect <input type="checkbox"/> Wife neglect <input type="checkbox"/> Maintenance <input type="checkbox"/> Marital problems <input type="checkbox"/> Child custody/access <input type="checkbox"/> Divorce <input type="checkbox"/> Succession <input type="checkbox"/> Burial dispute <input type="checkbox"/> Employment <input type="checkbox"/> Unpaid wages <input type="checkbox"/> Breach of contract <input type="checkbox"/> Debt <input type="checkbox"/> Housing <input type="checkbox"/> Land/property disputes <input type="checkbox"/> Eviction <input type="checkbox"/> Accident claims <input type="checkbox"/> Migrant (IDPs) <i>Others(specify).....</i>

Has legal aid been sought on the same matter:(If, yes), state the number and the institution from which it was sought and the understanding of the client on the nature of assistance given

If a case was filed,

- (a) When case was filed.....
- (b) In which court..... Case Number.....
- (c) Status: ☐ Part-heard ☐ Fresh ☐ Finalized ☐ Don't know
- (d) Number of times applicant attended court
- (e) Representation: ☐ pro se ☐ pro bono ☐ paid-up advocate
- (f) Results: ☐ Judgment ☐ Stood Over Generally
☐ Dismissed ☐ Acquittal ☐ Don't know

SUMMARY OF CASE:

Tell us about your legal problem and include, for example:

- (a) What the legal problem is
- (b) Who is involved and how they are involved
- (c) How and when the legal problem started
- (d) What has happened since then
- (e) Financial details (Whether you have any income)

(f) Any special circumstances that apply to your situation

.....

.....

.....

.....

.....

.....

.....

.....

Section 3: Declaration

Are you making this application for yourself? Yes ☐ No ☐

What authority do you have to make this application for someone else? (e.g. power of attorney, parent, guardian)

.....

.....

.....

.....

I acknowledge it is an offence to:

- (a) make a false or misleading statement when applying for legal aid;
- (b) give a false or misleading statement when applying for legal aid; or
- (c) refuse to give information requested by the legal aid provider with the intent to deceive or mislead the legal aid provider.

I declare that all the information I have given is true and correct.

Applicant's or authorized person's signature.....

Date

Section 4: For Official Use Only

Application approved without conditions

.....

.....

.....

.....

Application approved with conditions

.....

.....

.....

.....

 Application not approved

Name of authorising officer Signature.....

Date.....

Form NLAS 2

r. 10(2)

CERTIFICATE OF PROVISIONAL GRANT OF LEGAL AID

Date:

To:

This is to notify you that your application for legal aid has been provisionally approved by the National Legal Aid Service and is subject to you fulfilling the conditions for eligibility for grant of legal aid under Part II and III of the Legal Aid (Application and Accreditation) Regulations, 2019.

Legal aid shall be granted by _____ (Name of legal aid provider) in relation to Civil/Criminal case number _____ filed at _____.

The legal aid shall include (give details of nature of legal aid)

 -

This certificate is valid for a period of six (6) months from the date of issue.

Note that the Legal Aid Provider reserves the right to terminate provision of legal aid to you upon notice.

Authorised officer.....Signature.....

Date.....

Form NLAS 3

r. 22(1)

CERTIFICATE OF GRANT OF LEGAL AID

To:

This is to notify you that your application for legal aid has been approved by the National Legal Aid Service.

Legal aid shall be granted by _____ (name of legal aid provider) in relation to Civil/Criminal case number _____ filed at _____.

The legal aid shall include (give details of nature of legal aid)

Note: The legal aid provider reserves the right to terminate provision of legal aid to you upon notice.

Authorised officer.....Signature.....

Date.....

Form NLAS 4

r. 26(2)(a)

NOTICE OF TERMINATION OF LEGAL AID

To:

This is to notify you that the National Legal Aid Service has terminated provision of legal aid services to you in relation to Civil/Criminal case number _____ filed at _____.

The legal aid has been terminated due to (give details)

Authorised officer.....Signature.....

Date.....

Form NLAS 5

r. 30(1), 31(1)

APPLICATION FOR ACCREDITATION OF LEGAL AID SERVICE PROVIDERS

Section 1: Applicant's Registration Data	
Name of Organisation	
Date of Registration	
Registration Certificate Number (attach Registration Certificate)	
Nature of Business of the Organisation	
Tax Registration Status (attach tax compliance certificate)	
Section 2: Applicant's Contacts	
Physical Address	
Postal Address	
Telephone	
Email	
Section 3: Applicant's Personnel	
Number of Employees	
Number of Advocates (attach current practicing certificates of all Advocates)	

Number of paralegals (attach academic certificates of all paralegals)

Section 4: Legal Services Offered by the Organisation in the last year

Number of Civil matters handled and completed

Number of Criminal matters handled and completed

Locations where the organisation offered most legal services

Matters the organisation would wish to provide legal aid services

Provide details of experience handling the above stated matters

Any further details in support of the application

Section 5: Declaration

Authorised person

--

I acknowledge it is an offence to:

- (a) make a false or misleading statement when applying for accreditation to provide legal aid services;
- (b) give a false or misleading statement when applying for accreditation to provide legal aid services; and
- (c) refuse to give information requested by the legal aid service with the intent to deceive or mislead the legal aid service.

I declare that all the information I have given is true and correct.

Authorised person's signature

--

Date

--

Section 6: For Official Use Only

Application approved without conditions

--

Application approved with conditions

--

Application not approved

--

Name and signature of authorising officer

--

Date

--

r. 43(1)

CLAIM FORM FOR REIMBURSEMENT INCURRED BY ACCREDITED LEGAL
AID SERVICE PROVIDERS

Section 1: Details of legal aid provider

Physical Address

Postal Address

Telephone _____

Email

Section 2: Period of Claim

From:

To: _____

Section 3: Itemised Legal Aid Matters Handled and Completed/Terminated

Date of completion/ Terminated	Case Number	Parties	Outcome

Add further details to support the claim

Section 6: Declaration

Authorised person

I acknowledge it is an offence to:

- (a) make a false or misleading statement when making claims to the Legal Aid Service;
- (b) give a false or misleading statement when making claims to the legal aid service ; or
- (c) refuse to give information requested by the Legal Aid Service with the intent to deceive or mislead the Legal Aid Service.

I declare that all the information I have given is true and correct.

Authorised person's signature

Date

Section 6: For Official Use Only

Claim approved without conditions

Claim approved with conditions

Claim not approved

Name and signature of authorising officer	
<div style="border: 1px solid black; height: 20px;"></div>	
Date	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>

SECOND SCHEDULE

FEES

r.30(3) (f), (4)(d))

Provider	Accreditation	Renewal
Advocate		
0-3 years	1,000	1,000
3-5 years	3,000	1,500
5-10 years	5,000	2,000
Above 10 years	7,000	2,500
Law Firm	10,000	5,000
Paralegal Organisation	10,000	5,000
Civil Society or Public Benefit Organisation	10,000	5,000
University or other institution operating legal aid clinics	10,000	5,000
Government Agency	10,000	5,000

THIRD SCHEDULE

r. 30(6)

ACCREDITATION AGREEMENT FOR AN ACCREDITED LEGAL AID PROVIDER

Entered into between

 (The accredited legal aid provider)

and

The National Legal Aid Service

Whereas:

A. the National Legal Aid Service has appointed the accredited legal aid provider to its register of accredited legal aid providers; and

B. the National Legal Aid Service is willing to instruct the accredited legal aid provider to render legal services on behalf of a successful applicant for legal aid;

Now therefore the parties agree that the following terms and conditions will apply to the relationship between the accredited legal aid provider and the National Legal Aid Service:

1. OBJECTS OF THE ACCREDITATION

The parties acknowledge:

- (a) the need to exercise a high sense of responsibility with regard to their respective roles.
- (b) the need to provide legal services in the most efficient and economic manner.
- (c) the need to ensure that quality legal services are provided to aided persons.
- (d) the need, as far as possible, to match appointed legal aid provider's qualifications, skills, experience and expertise with the types and complexity of the cases for which such provider is appointed.

2. WARRANTIES

The accredited legal aid provider warrants:

- (a) to accept appointment by the Service only where the matter in question falls within the special field of expertise of the legal aid provider;
- (b) that once appointed in a particular matter the legal aid provider will deal with the matter expeditiously;
- (c) that the legal aid provider is a member of a professional body; and
- (d) that the legal aid provider has a valid tax clearance certificate from the Kenya Revenue Authority.

3. INFRASTRUCTURE

The Legal Aid provider undertakes to ensure that:

- (a) there is adequate secretarial or reception facilities available to ensure telephone contact during office hours;
- (b) fax facilities are available;
- (c) there is internet services and an email system that can receive all documentation including instructions from the National Legal Aid Service;
- (d) provision will be made for typed accounts and reports;
- (e) there is reasonable and ready access for clients and provision exists for consultations and meetings;
- (f) a proper file management system is in place combined with an efficient diary system, which will enable files to be dealt with expeditiously and without unreasonable delay;
- (g) legal aid instructions sent by Short Message Service (SMS) will be responded

to by SMS within the deadline specified in the SMS enquiring about the legal aid provider's availability.

4. UNDERTAKING TO COMPLY WITH THE NATIONAL LEGAL AID SERVICE REQUIREMENTS

The legal aid provider undertakes and agrees to comply with the Legal Aid Act and any regulations made thereunder, and Circulars issued by the National Legal Aid Service from time to time. In particular, the legal aid provider undertakes and agrees:

- (a) that in the event of a decision not to accept legal aid instruction or if the instruction is accepted the legal aid provider shall without delay sign and return the acceptance or rejection of the instruction to the National legal aid Service;
- (b) to submit timely and regular reports to the National Legal Aid Service;
- (c) that upon withdrawal of legal aid, the legal aid provider shall furnish proper and adequate reasons for withdrawal and to notify the client in writing;
- (d) to furnish the National legal aid Service with the outcome of the matter including Judgments together with copies of Orders of Court and Settlements as soon as the same become available;
- (e) to investigate on a regular basis the qualification of the client in terms of the means test and inform the Service in the event that a client no longer qualifies for legal aid;
- (f) to inform the service of any abuse by applicants to obtain legal aid by fraudulent or other means;
- (g) to ensure that the legal aid provider's mandate is not exceeded without the prior consent of the service;
- (h) to ensure the use of the prescribed Legal Aid Service documentation as contained in the Regulations, as applicable;
- (i) to ensure the protection of the client's rights and to prevent default judgment;
- (j) not to give any information regarding any legal aid matter to any media representative, without the written approval of the Service; and
- (k) to render an account in accordance with the provisions of the Regulations of the finalization of any matter, failing which the right to payment prescribes.

5. MONITORING, QUALITY CONTROL AND FEEDBACK

The legal aid provider agrees that:

- (a) where applicable, the provider's services will be monitored by a legal professional body and at the request of the service and the body may report on the quality of the services rendered by the legal aid provider;
- (b) the quality of the services rendered by the legal aid provider may be evaluated by the staff of the Service from time to time and that the legal aid provider shall permit such staff access to the files of aided persons;

- (c) an aided person represented by the legal aid provider shall be entitled to report to the Service on the quality of service rendered to him.
6. REMOVAL OF A LEGAL AID PROVIDER'S NAME FROM THE REGISTER OF ACCREDITED LEGAL AID PROVIDERS

The legal aid provider acknowledges that he has read the Legal Aid (General) Regulations and acknowledges that the National Legal Aid Service shall be entitled to remove his name from the register of accredited legal aid providers in appropriate circumstances in accordance with the procedure set out in the Regulations.

7. DAMAGES CLAIMS AGAINST ACCREDITED LEGAL AID PROVIDERS

- (a) The legal aid provider warrants that:
- (i) he has read the Legal Aid (General) Regulations and agrees to be bound by the terms and provisions thereof; and
 - (ii) failure to comply with the Regulations may render the legal aid provider liable for damages in addition to any other remedy the service may enjoy in law.
- (b) the provisions of the Legal Aid Act and the regulations made thereunder shall apply to every legal aid instruction received by the accredited legal aid provider and all rights and obligations and any disputes arising there from;
- (c) in case of any dispute between the National Legal Aid Service and the accredited legal aid provider, the parties shall consider arbitration as a dispute resolution mechanism; and
- (d) the National Legal Aid Service will not effect payment of any account unless the accredited legal aid provider is in possession of and provides the National Legal Aid Service with a valid tax clearance certificate from the Kenya Revenue Authority.

SIGNED BY THE ACCREDITED LEGAL AID PROVIDER

NAME/NAME OF AUTHORISED OFFICER _____ SIGNATURE _____

DATE _____

WITNESSED BY:

1. NAME _____ SIGNATURE _____

DATE _____

2. NAME _____ SIGNATURE _____

DATE _____

SIGNED BY THE NATIONAL LEGAL AID SERVICE

NAME OF AUTHORISED OFFICER _____ SIGNATURE _____

DATE _____

WITNESSED BY:

1. NAME _____ SIGNATURE _____

DATE _____

2. NAME _____ SIGNATURE _____

DATE _____

FOURTH SCHEDULE

LIMIT OF CONTRIBUTION

r. 37 (1)

1. If the applicant's disposable income is Kshs. 300,000 per annum or less, the maximum income contribution payable to the Fund is Kshs. 5,000.
2. If the applicant's disposable income exceeds Kshs. 300,000 per annum, but does not exceed Kshs. 360,000 per annum, the maximum contribution payable to the Fund is Kshs. 12,000.
3. If the applicant's capital resources exceed Kshs 250,000, the contribution payable to the Fund is Kshs 10,000 plus ten per cent of the amount in excess of Kshs 250,000

FIFTH SCHEDULE

CERTIFICATE OF COMPLIANCE

r. 41 (1) (a), (d)

I certify that the disbursements set out in the accounts annexed hereto have been paid and that they were necessary and proper, and I have not received a reimbursement for any of them.

Signed by

Accredited legal aid provider

Made on the 11th May, 2022.


P. KIHARA KARIUKI,

LEGAL NOTICE NO. XX

THE LEGAL AID ACT, 2016

(No. 6 of 2016)

THE LEGAL AID CODE OF CONDUCT FOR ACCREDITED
LEGAL AID PROVIDERS, 2022

ARRANGEMENT OF PARAGRAPHS

Paragraph

PART I — PRELIMINARY

- 1— Citation.
- 2— Objectives of the Code.
- 3— Application of the Code.

PART II — DUTIES OF AN ACCREDITED LEGAL AID
PROVIDER

- 4— Skill, competence and diligence.
- 5— Honesty and good faith.
- 6— Duty to act impartially, avoid discrimination or harassment.
- 7— Confidentiality.
- 8— Duty to avoid conflict of interest.
- 9— Duty not to offer or accept payment.
- 10— Duty in relation to aided person's property.
- 11— Duty to court, the legal profession and law enforcement agencies.

PART III — MISCELLANEOUS

- 12— Change of representation.
- 13— Termination of legal representation.
- 14— Matters against public interest.
- 15— Excessive caseload.
- 16— Standards of conduct.
- 17— Complaints.

LEGAL NOTICE No. 87

THE LEGAL AID ACT, 2016

(No. 6 of 2016)

IN EXERCISE of the powers conferred by section 61(2) of the Legal Aid Act, 2016, the National Legal Aid Service makes the following Code of Conduct—

THE LEGAL AID CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS, 2022

PART I — PRELIMINARY

1. This Code may be cited as the Legal Aid Code of Conduct for Accredited Legal Aid Providers, 2019.

Citation.

2. The objectives of this Code are to—

Objectives of the Code.

- (a) set standards of conduct for accredited legal aid providers;
- (b) facilitate access to justice; and
- (c) promote integrity, respect, confidentiality, accountability, public responsibility and competence of accredited legal providers.

3. This Code shall apply to an accredited legal aid provider in addition to any other code of conduct prescribed by the regulatory body, the employer of an accredited legal aid provider or by the professional body that the accredited legal aid provider is a member.

Application of the Code.

PART II — DUTIES OF AN ACCREDITED LEGAL AID PROVIDER

4. (1) An accredited legal aid provider shall have sufficient experience, skill, knowledge and competence to provide quality representation to an aided person and shall exercise diligence in the provision of legal aid.


Skill, competence and diligence.

(2) An accredited legal aid provider shall have knowledge of general legal principles and procedures, the substantive law and procedures for the legal services they provide.

(3) An accredited legal aid provider shall not undertake a matter if the accredited legal aid provider is not competent to handle the matter.

(4) If an accredited legal aid provider lacks the skills or competence to act in a matter in which they are instructed, the accredited legal aid provider shall—

- (a) decline to act;
- (b) if the accredited legal aid provider had commenced action, cease to act; or
- (c) obtain the consent, in writing, of the Service to retain, consult or collaborate with another accredited legal aid provider or expert who is competent and licensed to undertake that matter.

 THE NATIONAL ASSEMBLY PAPER & AID	
DATE: 04 OCT 2022	
DAY:	
TABLED	BY:
CLERK-AI	DATE:

- (5) An accredited legal aid provider shall—
- (a) investigate facts, identify issues, ascertain the objectives of a matter, consider possible options and advise an aided person on the appropriate course of action;
 - (b) implement the chosen course of action by applying appropriate skills, including —
 - (i) legal research;
 - (ii) analysis;
 - (iii) application of the law to the relevant facts;
 - (iv) legal writing;
 - (v) negotiation;
 - (vi) mediation or any other alternative dispute resolution; and
 - (vii) advocacy.
 - (c) advise, assist or represent an aided person in a diligent and cost-effective manner;
 - (d) communicate to an aided person at all relevant stages of the matter in a timely and effective manner;
 - (e) respond to a reasonable inquiry by the aided person in a timely and effective manner;
 - (f) ensure that all applicable deadlines are met;
 - (g) manage their own practice or services effectively;
 - (h) pursue appropriate training and development to maintain and enhance knowledge and skills;
 - (i) adapt to changing requirements, standards, techniques and practices;
 - (j) if the accredited legal aid provider is an advocate, comply with, in letter and spirit, all the requirements and standards of legal practice prescribed by the Law Society of Kenya and any other written law;
 - (k) comply with any relevant standards of practice prescribed by the respective professional or regulatory body; and
 - (l) maintain up-to-date records of the legal aid services.
5. (1) An accredited legal aid provider shall be honest and candid when conducting any matter on behalf of an aided person. Honesty and good faith.
- (2) An accredited legal aid provider shall not knowingly or recklessly give false information.
- (3) An accredited legal aid provider shall not—
- (a) knowingly aid or encourage any dishonesty, fraud, crime or illegal conduct;

- (b) do or omit to do anything that the accredited legal aid provider knows will assist, encourage or facilitate any dishonesty, fraud, crime or illegal conduct by an aided person or any other person; or
- (c) advise an aided person or any other person on how to violate the law or avoid punishment.

6. (1) An accredited legal aid provider shall not discriminate directly or indirectly against any aided person on grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Duty to act impartially, avoid discrimination or harassment.

(2) An accredited legal aid provider shall treat an aided person fairly and reasonably.

(3) An accredited legal aid provider shall not decline to act for an aided person on account of the nature of the claim or accusation, or due to the provider's personal views or convictions on the matter.

(4) An accredited legal aid provider shall not engage in sexual or other forms of harassment of an aided person, a colleague or a member of staff of the Service.

7. (1) An accredited legal aid provider shall —

Confidentiality.

- (a) take all necessary steps to ensure respect for an aided person's right to privacy under Article 31 (c) and (d) of the Constitution; and
- (b) comply with obligations relating access to information and the protection of the privacy of an aided person under the Access to Information Act, 2016.

No. 31 of 2016.

(2) Despite sub-paragraph (1), confidentiality shall not apply to information that gets into the public domain with the consent of the aided person.

(3) An accredited legal aid provider shall keep all information relating to an aided person and acquired in the course of the professional relationship confidential.

(4) An accredited legal aid provider shall not disclose the information relating to an aided person unless the disclosure is—

- (a) expressly or impliedly authorised by the aided person;
- (b) required by law or by an order of a court or tribunal; or
- (c) otherwise permitted by this Code.

(5) An accredited legal aid provider may disclose confidential information relating to an aided person to a relevant authority—

- (a) if the accredited legal aid provider believes, on reasonable grounds, that there is an imminent risk of death or serious bodily harm and that such disclosure is necessary to prevent the death or harm;

- (b) if the accredited legal aid provider believes, on reasonable grounds, that failure to disclose would be prejudicial to the mandate of the Service;
 - (c) in order to defend an allegation that the accredited legal aid provider or their employee —
 - (i) has committed a criminal offence;
 - (ii) is liable with respect to a matter involving an aided person's affairs;
 - (iii) has committed an act of professional negligence; or
 - (iv) has engaged in an act of professional misconduct or conduct;
 - (d) in order to enforce recovery of their fees from the Service; or
 - (e) in order to secure legal advice from an advocate or another accredited legal aid provider about the proposed conduct of the matter in question.
- (7) An aided person who voluntarily allows information to get into the public domain shall be presumed to have waived confidentiality in that regard.
- (8) An accredited legal aid provider shall not issue statements to the media or address matters of public interest on behalf of the Service.
- (9) The duty of confidentiality shall continue indefinitely despite the accredited legal aid provider ceasing to act for the aided person.
8. (1) An accredited legal aid provider shall not, except as permitted under this paragraph, act for an aided person if to do so would—
- (a) give rise to a conflict of interest; or
 - (b) compromise the independence of the accredited legal aid provider in relation to the matter in which the provider is engaged.
- (2) Conflict of interest arises when the duty of an accredited legal aid provider to act in the best interest of an aided person conflicts with the interests of —
- (a) the accredited legal aid provider;
 - (b) an existing or previous client of the accredited legal aid provider;
 - (c) a partner or employee of the accredited legal aid provider;
 - (d) another aided person; or
 - (e) any third party whose relationship with the accredited legal aid provider or employee of the accredited legal aid provider would reasonably cause the aided person to believe that the legal aid lawyer may not act in that aided person's best interests.

Duty to avoid
conflict of interest.

(4) An accredited legal aid provider shall not act for an opposing party in a dispute in which the aided person is a party.

(5) An accredited legal aid provider shall not offer legal aid to more than one aided person in a matter.

(6) Subject to sub-paragraph (7), where an accredited legal aid provider provides legal aid to several aided persons, and a conflict of interest arises between the interests of the initial aided person and any other subsequent aided person, the accredited legal aid provider shall cease to act for all the aided persons and immediately notify the Service.

(7) An accredited legal aid provider may represent an aided person in a matter where there is a conflict of interest under sub paragraph (6) if—

- (a) the accredited legal aid provider obtains informed and voluntary consent of all the aided persons; and
- (b) the accredited legal aid provider reasonably believes that they are able to act for each aided person without having a material adverse effect on the representation of acting for or loyalty to the other aided person.

(8) A legal aid provider shall not act for an aided person if the legal aid provider has any form of relationship, including a family relationship, with the aided person or an opposing party which compromises, or which might reasonably be expected to compromise the independence of the accredited legal aid provider.

(9) An accredited legal aid provider shall not act for an aided person against the former client of the accredited legal aid provider—

- (a) in the same matter;
- (b) in any related matter; or
- (c) in any matter, if the accredited legal aid provider has relevant confidential information arising from acting for the former aided person that may prejudice the former client,

9. (1) An accredited legal aid provider shall not offer or accept any fee, commission, service, inducement, gratuity, gift, benefit or other form of compensation, whether direct or indirect, from an aided person in the course of performing their duty under the Act, other than fees payable to the accredited legal aid provider by the Service on account of a matter which the accredited legal aid provider is engaged in.

Duty not to offer or accept payment.

(2) An accredited legal aid provider shall declare to the Service any fee, commission, service, inducement, gratuity, gift, benefit or other form of compensation received from an aided person, whether directly or indirectly, in relation to a matter in which they are engaged under the Act,

(3) An accredited legal aid provider shall not personally guarantee or provide security or other financial arrangements for any indebtedness in respect of an aided person who is a borrower or lender.

(4) An accredited legal aid provider shall not, in respect of an aided person for whom they act in any criminal proceeding —

- (a) act as a surety for the aided person;
- (b) deposit in a court their own money or that of any firm or organisation in which the accredited legal aid provider is a partner or employee, to secure the aided person's release; or
- (c) deposit any valuable security in a court to secure the release of an aided person.

(5) An accredited legal aid provider may personally guarantee or provide security or other financial arrangement for any indebtedness in respect of an aided person who is a borrower or lender, if the aided person is related to the accredited legal aid provider and the aided person is represented by the accredited legal aid provider's associate, partner or employee.

10. (1) An accredited legal aid provider shall exercise such due care for an aided person's property as a careful and prudent owner would when dealing with their property.

Duty in relation to aided person's property.

(2) An accredited legal aid provider shall, if entrusted with the property of an aided person, comply with all relevant laws relating to the preservation of property that is entrusted to a person who has a fiduciary duty over property.

(3) An accredited legal aid provider shall promptly notify an aided person of the receipt of any money or other property of the aided person.

(4) An accredited legal aid provider shall clearly label and identify the aided person's property and place it in safe custody in a separate location from the property of the accredited legal aid provider.

(5) An accredited legal aid provider shall maintain such records as are necessary to identify an aided person's property that is in the custody of the accredited legal aid provider.

(6) An accredited legal aid provider shall account promptly for an aided person's property that is in the custody of the accredited legal aid provider and shall, upon request, deliver the property to the aided person at the conclusion of the matter that the accredited legal aid provider is engaged in.

11. (1) An accredited legal aid provider shall not deceive or knowingly mislead the court.

Duty to court, the legal profession and law enforcement agencies.

(2) Subject to the provisions of this Code and any other rules of professional conduct, an accredited legal aid provider shall discharge their duties in a way that is consistent with the proper and efficient administration of justice.

(3) An accredited legal aid provider shall maintain a relationship based on courtesy, mutual respect and professionalism with the members of the legal profession, the judiciary and law enforcement agencies.

PART III — MISCELLANEOUS

12. If an aided person intends to be represented by a person other than the appointed accredited legal aid provider, the accredited legal aid provider shall advise the aided person on the relevant procedure, including the applicable rules in that regard.

Change of
representation.

13. (1) An accredited legal aid provider shall cease to act for an aided person if —

Termination of legal
representation.

- (a) a conflict or a significant risk of conflict of interest, or breach of confidentiality arises;
- (b) a conflict or a significant risk of conflict arises between the interests of an aided person and the accredited legal aid provider's duty to the court;
- (c) the aided person withdraws instructions;
- (d) the accredited legal aid provider ceases to be accredited by the Service; or
- (e) continuing to act for the aided person would embarrass the accredited legal aid provider or the Service.

(2) An accredited legal aid provider may withdraw from acting for an aided person if—

- (a) the behaviour or conduct of the aided person towards the accredited legal aid provider, the accredited legal aid provider's partner, associate or employee, is violent, threatening, abusive or otherwise disrespectful;
- (b) the aided person deceives the accredited legal aid provider;
- (c) the aided person does not accept and act upon the advice of the accredited legal aid provider on any significant issue;
- (d) the aided person instructs the accredited legal aid provider to act contrary to any written law;
- (e) there is a breach of trust and confidence between the accredited legal aid provider and the aided person;
- (f) the accredited legal aid provider reasonably believes that he is not competent to continue to act in the matter;
- (g) the Service fails or neglects to pay to the accredited legal aid provider any sum due on account of the accredited legal aid provider's fees and disbursements;
- (h) there exists other substantial reason for withdrawal, with the approval of the Director or otherwise sanctioned by the professional code of conduct that binds the accredited legal aid provider; or
- (i) the accredited legal aid provider ceases to be accredited by the Service.

(3) If an accredited legal aid provider withdraws from acting for an aided person, the accredited legal aid provider shall—

- (a) in writing, notify the aided person and the Service; and
- (b) state the reasons for the withdrawal.

(4) A notice issued to the aided person under paragraph (3) shall not be required if the aided person voluntarily withdraws instructions and discharges the accredited legal aid provider from their duties under the Act.

14. (1) If an accredited legal aid provider believes that they are required by the Service to act in a way that —

Matters against public interest.

- (a) is improper, unethical or contrary to any written law;
- (b) is in breach of professional rules of conduct that binds the accredited legal aid provider;
- (c) involves or results in maladministration, fraud or misappropriation of public funds; or
- (d) is otherwise inconsistent with this Code or the aided person's services charter,

the accredited legal aid provider shall report the conduct to the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act, 2011, with written notice to the Director, who shall take appropriate administrative action in that regard.

No. 22 of 2011

(2) An accredited legal aid provider may rely on the grounds mentioned in sub paragraph (1) to withdraw from acting for an aided person.

15. An accredited legal aid provider may decline to take instructions to act for an aided person if the accredited legal aid provider is of the view that accepting such instructions would result in an excessive caseload and inadequacy in representation.

Excessive caseload.

16. (1) Subject to the provisions of this Code and any other rules of professional conduct, an accredited legal aid provider shall not do anything that is likely to bring the Service into disrepute in the course of performing their duties under the Act.

Standards of conduct.

(2) An accredited legal aid provider shall not misuse his position or information acquired in the course of providing legal aid to further the accredited legal aid provider's own interest or the interests of others.

17. (1) An aided person who is dissatisfied with the conduct of an accredited legal aid provider under this Code may file a complaint against the accredited legal aid provider to the Director.

Complaints.

(2) The Director shall, upon receiving a complaint under sub paragraph (1), investigate the complaint and make recommendations to the Board.

(3) On receipt of the recommendations from the Director, the Board may —

- (a) direct that the accredited legal aid provider be retained in the Register;
- (b) direct that the accredited legal aid provider's accreditation be suspended on such terms as the Board may direct; or
- (c) direct that the accreditation of the accredited legal aid provider be cancelled and their name struck off the Register.

18. The Legal Aid Code of Conduct for Accredited Legal Aid Providers, 2021 is hereby revoked.

Revocation.
L.N. 186/2021.

Made on the 4th May, 2022.



FLORA BIDALI,
*Secretary and Chief Executive Officer,
National Legal Aid Services.*



OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE
NATIONAL LEGAL AID SERVICE

INTERNAL MEMO
REF: NLAS/ADM/2/10

To : SENIOR PARLIAMENTARY COUNSEL

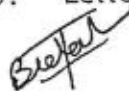
Date : 13th May 2020

SUBJECT : RECORD OF PUBLIC PARTICIPATION FOR THE LEGAL
AID(GENERAL) REGULATIONS, 2019, AND THE LEGAL AID
CODE OF CONDCUT FOR ACCREDITED LEGAL AID
PROVIDERS, 2019.

Letter dated 21st Feb 2020 on the above subject matter refer.

Attached herein please find the following;

- i. Final Consultancy report highlighting relevant sections proving that public participation took place.
- ii. Report on public participation.
- iii. Participant list.
- iv. Letters of invitation.


Flora Bidali.

Ag. Chief Executive Officer

Encl



**THE NATIONAL LEGAL AID SERVICE (NLAS)
THROUGH:
OFFICE OF THE ATTORNEY-GENERAL AND THE STATE
DEPARTMENT OF JUSTICE (OAG AND DOJ) (THE CLIENTS)
THE OFFICE OF THE ATTORNEY-GENERAL
SHERIA HOUSE-HARAMBEE AVENUE
P. O. BOX 56057 00200 NAIROBI**

AND

**INTERNATIONAL DEVELOPMENT LAW ORGANISATION
(IDLO)
3RD FLOOR-SENTEU PLAZA
LENANA/GALANA ROAD
NAIROBI**

FINAL REPORT

**ON
SHORT-TERM CONSULTANCY ON THE DEVELOPMENT OF LEGAL
AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND THE
CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS
UNDER THE LEGAL AID ACT, 2016**

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DATED 12th OCTOBER 2018

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List of Acronyms

CIC	Commission for the Implementation of the Constitution
IDLO	International Development Law Organisation
KNCHR	Kenya National Commission on Human Rights
MoDP	Ministry of Devolution and Planning
NALEAP	National Legal Aid and Awareness Programme
NGEC	National Gender and Equality Commission
NLAS	National Legal Aid Service
OAG & DoJ	Office of the Attorney General and Department of Justice
ToRs	Terms of Reference

"It is not every man who has the ability to defend himself on his own ... He may be tongue tied or nervous, confused or wanting intelligence ... if justice is to be done, he ought to have the help of someone to speak for him."

Denning, M.R. (as he then was) In *Pett v. Greyhound Racing Association Ltd* [1969], Q.B.125

1 Background

1.1 The Constitutional Right of Access to Justice

The promulgation on 27th August 2010 of the Constitution of Kenya ushered in a new era of fundamental rights and freedoms of the individual modelled on an ambitious Bill of Rights, which rekindles the enduring hope and the renewed aspirations of every person. Indeed, the 2010 Constitution provides a firm foundation for the legitimate expectation of every person, including the indigent, vulnerable and minority groups, to access judicial services and alternative dispute resolution mechanisms on an equal basis with others.

The concept of access to justice may be defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. The constitutional right of access to justice is a critical pillar for poverty reduction and sustainable development in Kenya.

Access to justice is one of the constitutional rights to which all aspire. It constitutes the golden thread that runs through the Constitution. In essence, the right of access to justice in civil and criminal cases presupposes the fundamental right of every person, regardless of their social status or financial means, to access judicial services, legal assistance and representation on an equal basis. In effect, the Constitution guarantees equality of opportunity to approach the courts and national tribunals for fair and just determination of their disputes and trial in criminal cases, i.e., the fundamental right to fair trial from which the State cannot derogate.

To this end, article 48 of the Constitution guarantees the right of access to justice. It imposes a positive duty on the State to ensure "... access to justice for all persons" In any case where any fee is required, "... it shall be reasonable and shall not impede access to justice." Yet court fees and the high cost of legal representation have continued to put judicial services beyond the reach of the majority of Kenyans, which underscores the need for a state-administered legal aid scheme.

To guarantee this fundamental right, article 48 imposes an obligation on the State to facilitate access to justice for all. However, the successful implementation of article 48 of the Constitution requires a legal framework that facilitates effective realisation of the right of access to justice by all on an equal basis. This constitutional guarantee (i.e., the right of access to justice) is one of the flagship projects of Vision 2030 under the Political Pillar.

Article 19(2) of the Constitution recognises the need for a legal framework suitably designed to protect human rights and fundamental freedoms with a view of preserving the dignity of individuals and communities, and to promote social justice and the realisation of the potential of all human beings. In effect, the preservation of our personal dignity and the realisation of our basic rights and fundamental freedoms depend on the extent to which each one of us is able to access the legal assistance and representation that make these rights real. Yet those of lesser financial means stand to be disadvantaged and excluded from access to these services.

Article 50 of the Constitution mandates the State to guarantee fair hearing and provide legal aid in certain criminal cases. According to article 50(2), "... [e]very accused person has the right to a fair trial, which includes the right ...

(g) to choose, and be represented by, an advocate, and to be informed of this right promptly;

(h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly; ..."

1.2 The Pressing Need for Legal Aid

The pressing need for a legal aid scheme is premised on the pervasive challenges that many court users face in their quest for judicial services. These include (a) high court fees and the exorbitant cost of legal representation; (b) the geographically inaccessible judicial institutions and court stations attributable to their remote location; (c) the complexity of the rules of procedure; and (d) the solemnity of court

proceedings, not to mention the conventional use of legalese. These challenges compound the disadvantage experienced by the indigent, vulnerable and minority groups. Hence the need for a legal aid scheme that guarantees access to legal assistance and representation at the expense of the State in certain cases for which legal aid is available to those eligible under the Act and the proposed Regulations.



The Former Attorney General Githu Muigai and the Chair, National Legal Aid Service Ms. Nazim Malik during the launch of the National Action Plan 2017 – 2022 on 18th December, 2017

1.3 The Legal Aid Act, 2016

In 2016, Parliament enacted the Legal Aid Act to give effect to the constitutional guarantees of the right to fair trial and access to justice. The National Legal Aid Service (NLAS) is established under Sections 5 of the 2016 Act with the main function of establishing and administering a national legal aid scheme that is, among other things, affordable, accessible, sustainable, credible and accountable. Section 9 of the Act establishes a Board of the NLAS, which is responsible for, among other tasks, formulating and reviewing the policies of the Service.

The Legal Aid Act, 2016 is designed to (a) give effect to Articles 19 (2), 48, 50 (2) (g) and (h) of the Constitution; (b) facilitate access to justice and social justice; (c) establish the National Legal Aid Service; and (d) make provision for the

administration of, and financial provisions for, legal aid services. In particular, the Act establishes and makes provision for the administration of the Legal Aid Fund by which the scheme is financed.

The 2016 Act provides for broad policy, legal and institutional frameworks on access to justice. It establishes collaborative and coordinated institutional and administrative frameworks suitably designed to facilitate effective delivery of legal aid services by state and non-state agencies in the justice sector. Among other things, the Act establishes the National Legal Aid Service (NLAS), which is a successor to NALEAP, to facilitate and administer the legal aid scheme. NLAS aims to attain this by focusing on the implementation of a broad-based legal services intended to impact on access to justice in Kenya.

In addition to the foregoing, the Act establishes a governance Board to oversee the delivery by the Service and service providers of legal aid services. The Board has the statutory mandate to oversee the operations of the NLAS and regulate accredited service providers. To this end, the Act makes provision for accreditation of service providers and prescribes the criteria for eligibility for legal aid, all of which require a regulatory framework to operationalise the Act.

2 *The Consultancy*

2.1 Legal Aid Regulations

While the Legal Aid Act, 2016 contains substantive provisions under which the Legal Aid Service, the governing Board and the Legal Aid Fund are established, there is need for administrative procedures in the nature of Regulations to bring the legal aid scheme into operation. Section 86(1) of the Act empowers the Cabinet Secretary to make Regulations for the better carrying into effect the provisions of the Act and ensure effective administration of the legal aid scheme. In addition, section 61(2) of the Act mandates the Service to develop a code of conduct for legal aid providers. It is to this end that in September 2017 the Attorney-General requested IDLO's technical support for the provision of an expert to (a) support the National Legal Aid Service in the finalization of the requisite Regulations under the Act to govern

eligibility for legal aid and accreditation of legal aid providers; and (b) formulate a code of conduct for legal aid providers.

2.2 Office of the Attorney-General and the State Department of Justice

The Office of the Attorney-General and the State Department of Justice are established under the Executive Order No.2 of 2013 read together with Article 156 of the Constitution, and the Office of the Attorney-General Act, 2012. The Office of the Attorney-General and the State Department of Justice are mandated to, among other things to

- (a) promote the rule of law and the requisite public participation;
- (b) support Government's investment in socio-economic development;
- (c) promote transparency, accountability, ethics and integrity;
- (d) spearhead policy, legal and institutional reforms;
- (e) promote economic governance and empowerment;
- (f) facilitate the promotion, fulfillment and protection of human rights;
- (g) undertake administrative management and capacity building; and
- (h) enhance access to justice.

2.3 The International Development Law Organization (IDLO)

IDLO is the only intergovernmental organization exclusively devoted to promoting the rule of law. The organisation works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. Its programs, research and policy advocacy cover the spectrum of rule of law from peace and institution building to social development and economic recovery in countries emerging from conflict and striving towards democracy.

IDLO has its headquarters in Rome, Italy and is pleased to count Kenya among its Member States. IDLO Kenya provided assistance to the Committee of Experts in Constitutional Review during the process to design the Constitution of Kenya, 2010 and subsequently to the Commission of the Implementation of the Constitution

(CIC) in constitutional implementation monitoring and oversight. Currently, IDLO is providing technical support to, among other state agencies, (a) the Office of the Attorney-General and the Department of Justice; (b) the Kenya Law Reform Commission; (c) the Judiciary; (d) the Ministry of Devolution and Planning (MoDP); (e) the Council of Governors; (f) the Kenya National Commission on Human Rights (KNCHR); (g) the National Gender and Equality Commission (NGEC); (h) the State Department of Gender; and (i) the Ministry of Mining, in implementing the Constitution of Kenya 2010 by way of strategic policy development, critical legislative review, expert technical advice, institutional strengthening and capacity building.

Following the enactment in 2016 of the Legal Aid Act, IDLO has engaged the services of a legislative counsel to provide consultancy services in the development of Regulations for the better carrying into effect the provisions of the Legal Aid Act.

3 Objective, scope and output

3.1 Objective

The main objective of the consultancy was to (a) undertake review of the existing national policy, legislation, and institutional frameworks for the administration of legal aid, and the promotion of fair trial and access to justice; (b) prepare and submit an interim and final consultancy reports with appropriate recommendations for the promulgation of the proposed Regulations; (c) prepare and submit proposals to facilitate the promulgation of subsidiary legislation and administrative procedures to back statute law; and (d) formulate the requisite draft eligibility and accreditation rules, and the code of conduct for legal aid providers (i.e., paralegals, advocates, law firms, legal aid clinics, civil society organisations, public benefit and faith-based organisations) accredited under the Act.

In execution of the consultancy, the consultant has ensured that the draft subsidiary legislation and code of ethics (a) are in conformity with the Constitution of Kenya, 2010; (b) meet international standards and best practices for the administration of

legal aid in civil and criminal matters; and (c) provide a regulatory framework for the promotion and protection of the fundamental right to fair trial and access to justice, and the effective administration of civil and criminal justice for the benefit of the indigent, vulnerable and minority groups. Likewise, the draft Code meets the international standards for the conduct of legal aid services under the Scheme.

3.2 Scope of the Consultancy

According to the TORs with reference to which the consultant was engaged, the specific Duties and Responsibilities for this assignment were to:

- (a) participate in necessary meetings and forums, including inception meeting with NLAS;
- (b) formulate a detailed work plan with timelines on the process of finalization of the Regulations;
- (c) carry out a desk review of the draft Regulations and give recommendations where necessary;
- (d) undertake review of relevant studies and literature from comparative jurisdictions and, where necessary, give recommendations on best practices that can be incorporated into the Regulations;
- (e) in consultation with the Office of the Attorney General and the Department of Justice, circulate the draft Regulations with necessary recommendations among stakeholders for feedback and comment;
- (f) provide regular updates throughout the course of the project to the agreed lines;
- (g) incorporate stakeholders' views and feedback into the draft Regulations, and facilitate validation forum(s) with key stakeholders;
- (h) prepare the final draft National Legal Aid Service Regulations incorporating feedback from stakeholders at validation forums; and
- (i) in liaison with IDLO, the Office of the Attorney-General and the Department of Justice, undertake any other necessary task related to fulfilling the main objective of the consultancy.

In line with the terms of reference, the consultant held an inception meeting with chief officers of NLAS on 10th April 2018. Thereafter, he prepared the Inception Report dated 26th April 2018 containing, among other things, a detailed work plan with timelines on the process of finalization of the proposed Regulations and Code. In accord with the agreed timelines, the consultant carried out desk review of the legislative proposals supplied by NLAS containing the raw draft of their eligibility and accreditation regulations together with a draft code of conduct for legal aid providers. As required, the consultant undertook review of relevant studies and

literature from comparative jurisdictions to inform the process, which culminated in the draft Regulations and Code submitted with the Interim Report dated 21st May 2018. These include Australia, Botswana, Canada, England, New Zealand, Sierra Leone, South Africa, Tanzania, Uganda and Zambia.

On 11th May 2016, the consultant shared the first draft Regulations with NLAS and IDLO for their initial comment before circulation for technical review and stakeholder consultation at the public forum convened on 15th August 2018 at the Stanley Sarova Hotel in Nairobi.

Following the public participation forum convened on 15th August 2018, the consultant incorporated the participants' recommendations into the draft Regulations and Code submitted to IDLO and NLAS in preparation for validation. The draft Regulations and Code were circulated among key stakeholders for technical review and comment ahead of the validation workshop convened on 11th October 2018 at the Four Points Sheraton Hotel in Nairobi.

The consultant facilitated the validation workshop attended by forty participants, who included the IDLO Country Director, the Access to Justice Adviser – Kenya Country Office, the Vice-Chair – NLAS, the Ag. Director – NLAS, NLAS secretariat, the Kenya Law Reform Commission, representatives of state and non-state agencies in the justice sector, public benefit organisations, court user committees, legal aid clinics, and other legal aid providers. The consultant incorporated valuable proposals from the validation forum and prepared the attached final drafts.

In preparation of the draft Regulations ahead of the stakeholder and validation forums convened on 15th August and 11th October 2018 respectively, the consultant conducted a desk-based review of various international and regional treaty instruments, domestic statutory instruments and documents availed to him by the NLAS and sourced from numerous online and other platforms on the promotion and protection of the right to fair trial and access to justice. Accordingly, the annexed

draft Regulations were informed by the following, among other reports and instruments that set standards for access to justice and legal aid services.

Table1-Summary of Treaty and Statutory Instruments

International Treaties, Conventions and Declarations	<ol style="list-style-type: none"> 1. The Universal Declaration on Human Rights 2. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015; 3. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 2013 4. Convention on the Rights of Persons with Disabilities,2007 5. Convention on the Rights of the Child,1989 6. The African Charter on the Rights and Welfare of the Child,1990 7. Kyiv Declaration on the Right to Legal Aid, 2007; 8. African Charter on Human and Peoples Rights, 1992; 9. African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2010; 10. Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, 2004; 11. Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2014; and 12. African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 1999. 13. Statute on the Establishment of the Legal Aid Fund of Human Rights Organs of the African Union, 2016
Laws of Kenya	<ol style="list-style-type: none"> 14. The Constitution of Kenya, 2010 15. The Legal Aid Act, 2016 16. The Children Act, 2001 17. The Penal Code, Revised 1995 (1948) 18. The Criminal Procedure Code, Revised 1956 (1948) 19. The Civil Procedure Rules, 2010 20. The Victim Protection Act,2014 21. The Refugees Act ,2006 22. The Fair Administrative Action Act, 2015 23. The Person with Disability Act, 2003

	24. The Persons Deprived of Liberty Act, 2014
Statutes and Regulations from Comparable Jurisdictions	<p>25. Legal Aid, Sentencing and Punishment of Offenders Act, 2012 - UK</p> <p>26. The Legal Aid Act, 2012 - Sierra Leone</p> <p>27. The Legal Aid Act, 2017 - Tanzania</p> <p>28. The Poor Persons Defence Act, 1998 - Uganda</p> <p>29. Consolidated Newfoundland and Labrador Regulations, 1996 - Canada</p> <p>30. Legal Aid South Africa Regulations, 2014</p> <p>31. Legal Services Regulations, 2011 - New Zealand</p> <p>32. Legal Aid (Quality Assurance) Regulations, 2011 - New Zealand</p> <p>33. The Civil Legal Aid (Procedure) (Amendment) (No 2) Regulations, 2017 - UK</p> <p>34. The Civil Legal Aid (Costs) Regulations, 2013 - England and Wales</p> <p>35. The Legal Aid Commission Rules, 1990 - Western Australia</p> <p>36. Legal Aid (General) Regulations, 1994 - Zambia</p> <p>37. Legal Aid Regulations, 2015 - Botswana</p> <p>38. Advocates (Legal Aid to Indigent Persons) Regulations, 2007 - Uganda</p>
Guidelines and reports	<p>39. UN treaty Monitoring Concluding Observations and Recommendations on Legal Aid, 2018</p> <p>40. Access to Justice and Legal Aid in East Africa, The Danish Institute for Human Rights, 2011</p> <p>41. Guidelines lawyers applying for approval as legal aid providers - New Zealand</p> <p>42. National Action Plan for Legal Aid 2017-2022 Kenya: Towards Access to Justice for All</p> <p>43. Practice Directions Relating to Pauper Brief Schemes and <i>Pro Bono</i> Services, 2016; Kenya</p> <p>44. Model Law on Legal Aid in Criminal Justice Systems, 2017</p> <p>45. Criminal Justice System in Kenya: An Audit</p>

In line with section 86(2) of the Act, the annexed draft Regulations cover the following main areas summarized in Table 2 below:

- (a) accreditation of legal aid providers;
- (b) the criteria for eligibility for legal aid;

- (c) the procedures for the provision of legal aid to persons detained at police stations, or in remand, prison or other places of lawful custody;
- (d) procedures and terms and conditions of accreditation of service providers;
- (e) the records to be kept by legal aid providers in relation to legal aid assignments and the reports to be submitted to the Service;
- (f) the manner of applying for legal aid under the Act;
- (g) the manner of assessing the financial resources of applicants and the eligibility of applicants for legal aid;
- (h) the amount or amounts payable by an aided person by way of contribution to the scheme;
- (i) the method or methods for calculating what maximum grant, if any, should be set under a grant of legal aid in respect of proceedings;
- (j) the manner in which applications for, and grants of, legal aid in respect of a child, and other persons with special requirements, are to be dealt with;
- (k) the class or classes of defendants to whom priority shall be given, or for whom services may be limited;
- (l) the conditions relating to the delivery of services under any scheme;
- (m) the methods for calculating the cost of legal aid services;
- (n) the payment of interest in respect of costs of service; and
- (o) the circumstances and terms of refusal, variation and withdrawal of legal aid.

Table 2-Summary of the contents of the proposed Regulations

PART 1 -Contains Preliminary provisions
PART II- (Clauses 3 - 5) Provides for the eligibility criteria and the means test
PART III -(Clauses 6 -30) Contains general provisions for the Application and Grant of Legal Aid
PART IV -(Clauses 31- 36) Contains general provisions on Refusal, Withdrawal and Termination of a Grant
PART V - (Clauses 37 - 44) Contains general provisions on Accreditation of Legal Aid Providers
PART V- (Clauses 45 - 47) Contains general provisions regarding enforcement of conditions for grant of legal aid
PART VI - (Clauses 48 - 52) Provides for payment of Legal Aid Providers

In addition to the foregoing, the annexed draft Code of Conduct for Accredited Legal Aid providers was informed by, among others, the documents set out in Table 3 below.

Table 3-Summary of International and National Instruments Setting Standards of Conduct for Legal Aid Providers

International Standards of Conduct	<ol style="list-style-type: none"> 1. Law Society of Ontario, Paralegal Rules of Conduct 2. Legal Services Society, UK, Standards of Conduct 3. American Bar Association, Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor. 4. Practice Standards of Practice for Legal Aid Providers, New Zealand 5. Legal Aid Reformers Network, Model Code of Conduct for Legal Aid Lawyers in Criminal Cases & Model Practice Standards for Criminal Defence, 2014
National Standards of Conduct	<ol style="list-style-type: none"> 6. The Law Society of Kenya, Codes of Standard and Professional Practice and Ethical Conduct. 7. The Nairobi Code, Model Rules of Ethics for Legal Advisors in Refugee Cases.
Laws of Kenya	<ol style="list-style-type: none"> 8. The Constitution of Kenya, 2010 9. The Legal Aid Act, 2016 10. The Access to Information Act, 2016 11. The Law Society Act, 1980 12. Advocates Act, 1989 13. The Leadership and Integrity Act, 2012

The Code of Conduct for Legal Aid Providers developed by the National Legal Aid Service as mandated by section 46(1) of the Act covers the matters set out in the Table below.

Table 4-Contents of the Proposed Code of Conduct

Clauses	Citation Application Interpretation Relationship with other Professional Codes Duties of a Legal Aid Provider <ul style="list-style-type: none"> Duty of Skill and Diligence Duty of Honesty and Good Faith Duty to Act Impartially and to Avoid Discrimination Duty of Confidentiality Duty to avoid Conflict of Interest Duty not to Offer or Accept Payment Duty in Relation to Aided Persons Property Change of Representation Withdrawal of Legal Representation Disclosure of Public Interest Excessive Caseload Standards of Conduct Complaints
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Under the coordination of NLAS, the consultant worked closely with, and obtain views from, various state and non-state agencies, which included (a) The Office of the Attorney-General and the State Department of Justice; (b) the Judiciary; (c) the Law Reform Commission; (d) the National Council on the Administration of Justice; (e) the Law Society of Kenya; (f) public and private law schools; (g) state agencies concerned with the administration of justice; and (h) consultative forums of stakeholders, including civil Society Organisations, public benefit organisations and faith-based organisations committed to legal aid, the promotion and protection of the right to fair trial, and access to justice. These key stakeholders were instrumental in providing feedback and, ultimately, validation of the draft Regulations and Code of conduct on 11th October 2018.

3.3 Commencement and Duration of the Consultancy

The consultancy commenced on 4th April 2018 when the consultant was contracted by IDLO to undertake the specified tasks. An inception meeting was held on 9th April 2018 between the consultant, a representative of IDLO and the technical team from

the National Legal Aid Service. At the meeting, the TORs were clarified. In addition, the consultant was in agreement with the instructing client on matters relating to, among other things, (a) the nature and scope of the consultancy; (b) the proposed work-plan and timelines; (c) the approach and methodology; and (d) the outputs and deliverables.

The duration of the consultancy is ninety days ending on the 30th day of June 2018 subject, however, to extension of time (if necessary) to accommodate technical review and stakeholder consultation to be organized by NLAS. The term of the consultancy was subsequently extended to allow time to collect technical views and undertake validation of the draft Rules and Code.

3.4 Output

In line with the duties and responsibilities outlined in the Terms of Reference, the consultant has delivered the following outputs:

- (a) the Inception Report dated 26th April 2018 detailing the understanding of the terms of reference, the proposed plan of action containing the proposed milestones and timelines, the proposed methodology for the delivery of the assignment;
- (b) draft National Legal Aid Service Regulations submitted on 14th May 2018 and draft Code of Conduct for Legal Aid Providers submitted on 18th May 2018, both of which incorporate recommendations made at various technical consultative meetings and stakeholder forums convened by NLAS prior to this assignment;
- (c) the draft Legal Aid Regulations and Code of Conduct for Legal Aid Providers incorporating recommendations made at the public participation forum convened on 15th August 2018; and
- (d) this Final Report and the attached final draft Legal Aid Regulations and Code of Conduct for Legal Aid providers incorporating recommendations made at the validation forum held on 11th October 2018.

4 *Methodology and Approach*

The consultant undertook desk-based review of existing legislation, including the Constitution, the Legal Aid Act, relevant subsidiary legislation relating to civil and criminal procedure, treaty instruments, policy documents, and other materials relating to legal aid, the concepts of fair trial and access to justice, as summarized in

Table 1 above. In addition to domestic statutory instruments, the consultant undertook a study of statute law, subsidiary legislation and codes of procedure relating to legal aid and access to justice, and in force in comparable common law jurisdictions, including Australia, Botswana, Canada, Malawi, New Zealand, Sierra Leone, the Republic of South Africa, Tanzania, Uganda, the United Kingdom and Zambia.

The desk review informed and facilitated preparation of the annexed draft Regulations, Forms, Code of Conduct and the consultancy report. In addition to the treaty and statutory instruments, and the materials aforesaid, the consultant was guided by recommendations of the NLAS supplied to him at the commencement of the assignment. In addition to the foregoing, the consultant was guided by the views of NLAS and feedback from the Office of the Attorney-General, the State Department of Justice, the Judiciary, and key stakeholders comprised of both state and non-state agencies in the justice sector concerned with the promotion and protection of the right to fair trial and access to justice. The consultant was also guided by recommendations generated from stakeholder consultative forums and views gathered through direct and indirect public participation and validation forum held on 11th October 2018.

In addition to the foregoing, the consultant held consultative meetings with select experts in matters relating to access to justice and legal aid to discuss key issues and challenges faced by individuals and agencies concerned with legal aid services. These meetings and communications were undertaken soon after technical review of the first draft Regulations and Code by NLAS. The deliberations and recommendations made in these meetings informed the formulation of the final draft Regulations and Code of Conduct validated as aforesaid.

5 Conclusion

This report and the accompanying draft Regulations and Code mark the end of the consultancy. The draft Regulation and Code are formulated in a simple and easy-to-follow style, which enables end users to understand the process and interact with

the legal aid scheme with appreciable ease. What remains is the submission of the draft Regulations and Code for approval by the Hon. The Attorney-General before tabling in Parliament and gazettelement.

Allow me to conclude this report with this inspiring quotation.

"Equal justice under the law.... it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists ... it is fundamental that justice should be the same, in substance and availability, without regard to economic status."

U. S Supreme Court Justice Lewis Powell, Jr

Annexure 1: Draft Legal Aid Regulations, 2018

Annexure 2: Draft Code of Conduct for Accredited Legal Aid Providers



PUBLIC PARTICIPATION IN THE REVIEW OF THE DRAFT THE LEGAL AID REGULATIONS AND THE CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS REPORT

August 2018

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LIST OF ACRONYMS

IDLO.....	International Development Law organization
LRF.....	Legal Resources Foundation
LSK.....	Law Society of Kenya
NLAS.....	National Legal Aid Service
PASUNE.....	Paralegal Support Network

1. INTRODUCTION

The National Legal Aid Service through the support of the International Development Law organization which is an international intergovernmental organization with the mandate to promote the rule of law and good governance, undertook to support the Cabinet Secretary responsible for matters of legal aid, i.e. the Attorney General, through the NLAS to give effect to Section 86 of the legal Aid Act 2016 which provides for the various regulations to be developed in order to implement the Legal Aid Act 2016. A technical expert - Dr. Kibaya Imaana Laibuta (the consultant) was engaged after a competitive interview process that took place on 13th March 2018.

The Board of NLAS which comprises of a Chairperson appointed by the President and representatives from State and non State agencies (Law Society of Kenya, Kenya National Commission on Human Rights, Public Benefit Organization, National Council for Persons with Disabilities, Council for Legal Education, Director of Public Prosecution, Judiciary, National Treasury, Office of Attorney General & Department of Justice and a Director) recommended (in line with the provisions of the Constitution of Kenya 2010) for the draft legal aid regulations (eligibility and accreditation) as well as a draft code of conduct for legal aid providers developed, to be subjected to public participation.

On 15th August 2018, the aforementioned documents were subjected to public participation. The activity took place at the Sarova Stanley hotel in Nairobi.

The objective of the public participation in the review of the draft legal aid regulations (eligibility and accreditation) as well as a draft code of conduct for legal aid providers was; to provide an opportunity for the public to review the regulations and enrich them in order to ultimately guarantee effective legal aid service provision by qualified legal aid providers to eligible persons.

A total 50 of participants attended. The participants were drawn from the key representatives of the various stakeholders in the Justice sector (governmental and non-governmental organizations), development partner (IDLO), pro bono advocates and a representative of NLAS clients.

This report contains the activities that took place on 15th August 2018, the issues and resolutions made to the draft regulations and code of conduct for legal aid providers, challenges experienced by legal aid providers as well as the way forward towards the finalization of the regulations and the creation of viable legal aid networks.

2. REMARKS

The moderator of the day's programme Mr. Lenson Njogu from Legal Resources Foundation began by welcoming all the participants. He took them through the day's program and what was expected at the end of the day. He thereafter welcomed the acting Director of NLAS, Madam Caroline Amondi to give her remarks. The Director gave a brief overview of what is to be discussed, covering issues such as; *tragedy of the commons; need to check importunity; need to effectively manage resources; and mentorship programmes.*

She then welcomed, the Deputy Chairperson of the NLAS board Mr. Robert Kibor who read the welcoming remarks on behalf of the chairperson. In her welcome remarks, Ms. Nazima Malik appreciated the participants whom were drawn from *key representatives of the various stakeholders in the Justice sector, development partners and "Wanjiku" to participate in the enrichment of the draft legal aid (Eligibility and Accreditation) Regulations and the code of conduct for accredited legal aid providers.* She then informed the participants that the Legal Aid act provided for *a mixed delivery model of legal aid services through advocates, civil societies, paralegals and universities operating legal aid clinics.* She stressed on the need to put in place guidelines in order to regulate the services *in order to create a collaborative, efficient and effective Legal aid service.* She invited the participants *to boldly critique the draft regulations so that eventually the enriched document would guide in effective service delivery.* Ms. Nazima informed the participants that in the afternoon session they would be expected to share their experiences about the legal aid work they have been leading on the ground and asked them *to share their ideas for the creation of a viable legal aid networks as well as the commitments they were prepared to make.*

Ms. Barbara Kawira was thereafter invited to give remarks on behalf of the Country Director of IDLO. She began by giving a brief history of IDLO which she said *has the exclusive mandate to promote the Rule of Law and was established in the year 2011 under the invitation of the Government of Kenya to support in the implementation of the Constitution of Kenya 2010*. The beneficiaries of IDLO included; the Office of the Attorney General and Department of Justice, Judiciary, Council of Governors and the Academia. Ms. Barbara informed the participants of the previous technical support they provided the office of the Attorney General through NLAS which culminated in the development of the National Action Plan 2017-2022 and that they were currently supporting them in the development of the Legal Aid Regulations which would assist in the implementation of the Legal Aid Act 2016. In concluding her remarks, she *called upon the participants to share the capacity needs for legal aid networks in order to build up on the Regional Conference proposed to take place in November 2018*.

3. DRAFT REGULATIONS (ELIGIBILITY AND ACCREDITATION)

Dr. K.I. Laibuta, the consultant, then addressed the meeting. He began by sharing his 31 years of experience of legal aid work in Kenya and the challenges encountered. Thereafter he gave an overview of the Draft Legal Aid Regulations which were divided into VII parts as follows:

- a) PART I-interpretation;
- b) PART II- criteria for eligibility;
- c) PART III-procedure for application;
- d) PART IV-withdrawal, refusal, review, termination and appeal;
- e) PART V-accreditation of legal aid providers ;
- f) PART VI- enforcement of conditions of grant of legal aid; and
- g) PART VII-payment of legal aid providers.

The participants were thereafter invited for a plenary session and the following issues and resolutions regarding the Regulations were made:

ISSUES

- Issue 1: Regulation 2
The definition of the word 'household'
- Issue 2: Regulation 2
Definition of the word indigent.
- Issue 3: Regulation 4
The means test employed to determine who is in need of legal aid assistance.
- Issue 4: Regulation 5(3)
The provisions of rule 5(3) that require taking into account the spousal maintenance and child support.
- Issue 5: Regulation 5(7)
The couching of rule 5(7) in mandatory terms hence likely to deny a needy person legal aid if the documentation required is not presented.
- Issue 6: Regulation 5(9)
The need to use a strict language in the provisions of rule 5(9) in line with best practices from other jurisdictions.
- Issue 7: Regulation Sec 17(d)
The need to restrict provision of legal aid on matters of public interest to the indigent.
- Issue 8: Regulation 32(1) (ii) and 32(1) (iv)
 - Duplication of provisions in Regulation 32(1) (ii) and 32(1) (iv)
 - Cases where advocate ceases to practice due to health issues
- Issue 9: Regulation 37(2)
The provision regarding qualifications (3year practicing period) of advocates
- Issues 10: Regulation 37(1)
The provision regarding qualifications of paralegals
- Issue 11: PART IV (heading)
Rearrangement.
- Issue 12: Regulation 34
Meaning of the term "the service"

RESOLUTIONS

The following resolutions to the issues raised were made:

- ✓ Resolution to Issue 1:

Define the term 'household'.

✓ Resolution to Issue 2:

Qualifying the word indigent in the regulation by adding "as defined by the Legal Aid Act 2016".

✓ Resolution to Issue 3:

✓ Frame the provisions touching on the means test to determine who is in need of legal aid assistance to allow for discretion by the assessing person for cases where the applicants earn more than the set ceiling.

✓ Resolution to Issue 4:

Expunge provisions of Regulation 5(3) since the amount is not income due to the fact that it is intended for specific purposes that is; the spousal maintenance and child support.

✓ Resolution to Issue 5:

Frame the provision of Regulation 5(7) in such a way that it does not connote being mandatory for the application to be accompanied by all the specified documents.

✓ Resolution to Issue 6:

Replace the term 'query' with a stronger term e.g. 'forensic' in the provisions of Regulation 5(9) in line with best practices from other jurisdictions such as South Africa.

✓ Resolution to Issue 7:

The regulation to limit matters of public interest too indigent persons to avoid abuse of services.

✓ Resolution to Issue 8:

- Delete one of the provisions.
- Include instances where an advocate ceases to practice due to health issues.

✓ Resolution to Issue 9:

Provisions regarding qualifications, remove the requirement of 3 years of practice for advocates applying for accreditation.

✓ Resolution to Issues 10:

Add a provisions to allow for phased implementation of the paralegals' qualifications essential for accreditation

✓ Resolution to Issue 11:

Rearrangement of the heading to start with Refusal then the rest follow.

✓ Resolution to Issue 12:

Narrow the term service to either the Board or Director.

4. CODE OF CONDUCT FOR LEGAL AID PROVIDERS

The consultant took the participants through the Code of Conduct for legal aid providers and invited them for a plenary session. The following issues and resolutions regarding the code of conduct for legal aid providers were made:

ISSUES

- Issue 1: Section 6 subsection 6.2
Duty not to exploit clients
- Issue 2: Section 6 subsection 6.4 (5)
Need to specify to whom the disclosure is to be made to in rule 6.5
- Issue 3: Section 6 subsection 6.6
Reporting of gifts offered to legal aid providers by aided persons.

RESOLUTIONS

The following resolutions to the issues raised were made:

- ✓ Resolution to Issue 1:
Add a section stating that a legal aid provider has a duty not to exploit clients
- ✓ Resolution to Issue 2:
Add that a legal aid provider may disclose *to the relevant authority* confidential information.
- ✓ Resolution to Issue 3:
Include a provision for the legal aid providers to report gifts offered to them by aided persons.

5. BRAIN STORMING SESSION ON THE CAPACITY NEEDS FOR LEGAL AID NETWORKS:

The consultant guided the participants on this session, he asked them to share the experiences and challenges they encounter while offering legal aid and which affect the capacity needs for legal aid networks and the way forward towards the establishment of a sustainable legal aid network.

The following challenges were identified by the participants as reasons why the capacity of legal aid in Kenya is affected.

- Inadequate resources:- facilities, materials, and equipment
- Infrastructure limitations.
- Limited training of paralegals.
- Limited communication and networking between the players offering legal aid such as paralegals, universities, advocates.
- Safety and security of persons offering legal aid at community level was life threatening.
- Limited funding of legal aid activities.
- Slow adoption of technology.
- Unpaid bills to advocates who offer pro bono services.

In response to the above issues, the consultant said that:

- ✓ There is to create measures of accountability for the funds provided to the service.
- ✓ Bureaucracies and administrative issues need to be addressed.
- ✓ Minimize costs of activities by legal aid providers.
- ✓ Need to tailor legal aid to fit the particular community.

6. WAY FORWARD:

The moderator invited Ms. Sylvia Kooke who works for LRF which is the coordinating body for PASUNE to make a presentation on the way forward.

The following suggestions on the way forward were made:

- i. Need to embrace technology on legal aid issues.

- ii. Proposed publication of a newsletter for paralegals.
- iii. Ensure safety and security of legal aid service providers.
- iv. Legal aid providers to actively participate in periodic meetings to share experience, best practice and debriefing sessions for legal aid providers. e.g. PASUNE monthly meetings.
- v. The service to engage universities to host legal aid conferences.
- vi. Sensitize the community on matters pertaining to their rights.
- vii. Bring on board to the network more institutions dealing with legal aid so as to ensure representation to a wider public.
- viii. Air Legal Aid and Awareness programs in radios stations as a way of enlightening the masses
- ix. Mentor university students in order to create a wide group of pro bono lawyers.
- x. Develop support for the field and technological resources.
- xi. Find a way of pairing students with practicing advocates.
- xii. Assess on the need for capacity training prior to offering it to the legal aid providers.

ANNEXURE

a) Programme

PUBLIC PARTICIPATION IN THE REVIEW OF THE DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND THE CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS AT THE SAROVA STANLEY HOTEL , NAIROBI ON 15TH AUGUST 2018

TIME	ACTIVITY
9:00 am - 9:30 am	Arrival and Registration <ul style="list-style-type: none">• NLAS/IDLO
9:30 am - 9:40 am	Introductions and Welcome Remarks <ul style="list-style-type: none">• Ag. Director NLAS
9:40 am - 10:00 am	Remarks by <ul style="list-style-type: none">• Country Director –IDLO• Chairperson NLAS Board
10:00 am- 10:30am	Presentation – Draft Regulations <ul style="list-style-type: none">• Consultant
10:30 am - 11:00am	Tea Break
11:00 am -11:30 am	Presentation – Code of Conduct for accredited legal aid Providers. <ul style="list-style-type: none">• Consultant
11:30 am - 12:30 am	Plenary <ul style="list-style-type: none">• Consultant
12:30 pm - 1:00 pm	Way forward <ul style="list-style-type: none">• IDLO
1:00 pm - 2:00 pm	Lunch Break
2:00 pm - 3:00 pm	Brain storming session on the capacity needs for legal aid networks. <ul style="list-style-type: none">• Consultant
3:00 pm - 3:50 pm	Plenary and way forward <ul style="list-style-type: none">• PASUNE
3:50pm - 4:00pm	Vote of thanks. <ul style="list-style-type: none">• NLAS Board Member
4:00pm - 4:30pm	Tea break and Departure

- b) Participant list
- c) Comments from FIDA Kenya and CRADLE
- d) Final Consultancy report incorporating comments during public participation



16th July, 2018

Ann Wainaina
Senior State Counsel
National Legal Aid Service
Office of the Attorney General and Department of Justice.

Dear Madam,

**RE: FIDA KENYA COMMENTS ON NATIONAL LEGAL AID SERVICE DRAFT
REGULATIONS (ELIGIBILITY AND ACCREDITATIONS.)**

Greetings from the Federation of Women Lawyers (FIDA Kenya).

The Federation of Women Lawyers, Kenya otherwise popularly known as **FIDA Kenya** which is a non-governmental, non-political and non-profit making organization whose main objective *inter alia* is the enhancement and protection of women's rights through the provision of legal aid, advice, education, advocacy, representation in Court and referral.

We write to submit our views on the National Legal Aid Service Draft Regulations (Eligibility and Accreditations) and address you as hereunder;

First and foremost we take this opportunity to congratulate you on the work done thus far. This is a good piece of legislation and a step in the right direction. We further note the gender friendly terms used in both documents.

FIDA Kenya has a mandate to provide access to justice to the vulnerable and indigent women in society and for the past 33 years has actively participated in, and provided legal aid services throughout the country and still continues to do so.

We have perused the proposed Code of Conduct and Regulations for the NLAS and wish to contribute as follows;

Generally, there needs to be included provisions to cater for institutions within the clauses. More specifically in matters concerning cancellation of accreditation as well as professional entry requirements within the regulations and in duties of legal aid providers in the code of conduct. As they are the regulations and code of conduct are drafted to read as if applicable only to individuals rather than institutions as well.

Within the Code of Conduct we suggest the following amendments:

i. Interpretation

- 4.1 : "*aided person*" - use the phrase "*client*" for the sake of professionalism. We note it is the same word used in the Act, it discriminates, other words like "*beneficiary*" or "*client*" are user-friendly.
- "*conflict of interest*" should be interpreted in this paragraph for ease of reference.

ii. Duties of a legal aid provider

- 6.1 (3) .."*retained*" - replace with "*instructed*" the services are free thus, do not attract a retainer's fee.
- 6.5 (5) ... "*collect their fees*"- this should be deleted as its not applicable in
- 8 (2) (f) the entire paragraph should be deleted. It refers to clients paying for the services. The services are free and thus the paragraph is not applicable.

Within the Regulations we suggest the following amendments:

i. Interpretations

- Regulation 3 - Inclusion of interpretation of legal aid and legal aid provider

ii. Professional entry requirements

- Regulation 4 (1) (i) on paralegals specific requirements to be edited to include "*...in addition to the requirements under regulation 4(1)(a)-(f) the applicant must also....*"
- Interpretation of Legal Aid Provider in Section 2 of the Legal Aid Act No. 6 of 2016 includes six major categories i.e, an advocate operating under the pro bono programme of the Law Society of Kenya or any other civil society organization or public benefit organization; a paralegal; a firm of advocates; public benefit organization or faith based organization; a university or other institution operating legal aid clinics; or a government agency, accredited under this Act to provide legal aid. All these categories should have entry requirements stipulated for each of them.

We support the above legislation and look forward to its gazette and implementation.

Sincerely,

Teresa Omondi -Adeitan
Executive Director

ANN WAIRIMU <wainaina.ann@gmail.com> Wed, Jul 25, 2018, 11:48 AM

to K, Laibuta, Brian, Christine, Lynnet, Caroline, Fresiah

Dear Dr. Laibuta,

I hope that this mail finds you well.

I hereby wish to share with you comments on the draft Regulations from the CRADLE and FIDA-K for your kind input.

Comments from the CRADLE

Dear Ann,

Greetings from the CRADLE-The Children Foundation. I hope this email finds you well. We have looked at the draft provisions and we are amiable to the provisions. One concern that we have is that it does not address sufficiently institutions that provide legal aid. We have different provisions scattered through the document that might be confusing... will the advocates who work for these institutions have to apply individually? What is the role and guidelines for these institutions vis-a-vis individual advocates.. We wish you all the best in finalizing the guidelines

Warm Regards
Lavina Oluoch
Advocate of the High Court of Kenya
Program Manager - Access to justice
The CRADLE-The Children Foundation

Comments from FIDA-K

See as attached.

Kind regards,

Ann Wainaina
Deputy Registrar- Legal Aid
National Legal Aid Service

Attachments area



FORUM TO COLLECT VIEWS ON DRAFT LEGAL AID REGULATIONS AT SAROVA STANLEY NAIROBI

WEDNESDAY 15TH AUGUST 2018

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Division of Justice
Kenya

FORUM TO COLLECT VIEWS ON DRAFT LEGAL AID REGULATIONS AT SAROVA STANLEY NAIROBI

WEDNESDAY 15TH AUGUST 2018

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FORUM TO COLLECT VIEWS ON DRAFT LEGAL AID REGULATIONS AT SAROVA STANLEY NAIROBI

WEDNESDAY 15TH AUGUST 2013

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15.				



FORUM TO COLLECT VIEWS ON DRAFT LEGAL AID REGULATIONS AT SAROVA STANLEY NAIROBI

WEDNESDAY 15TH AUGUST 2018

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REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

EXPLANATORY MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE LEGAL
AID (GENERAL) REGULATIONS, 2022 LEGAL AID CODE OF CONDUCT FOR
ACCREDITED LEGAL AID PROVIDERS, 2022

(L.N. Nos. 87 and 88 of 2022)

PART I

Name of the Statutory Instrument: The Legal Aid (General) Regulations, 2022
and Legal Aid Code of Conduct for Accredited Legal Aid Providers
Name of the Principal Act: The Legal Aid Act, 2016
Enacted Pursuant to: Sections 86 and 61(2) of the Legal Aid Act,
2016
Name of the Ministry/Department: Office of the Attorney-General and
Department of Justice
Gazetted on: 24th May, 2022
Tabled on: 3rd June, 2022

PART II

1. The purpose of the Statutory Instrument

- 1.1. The purpose of the Legal Aid (General) Regulations, 2021, and Legal Aid Code of Conduct for Accredited Legal Aid Providers is to give effect to sections 86 and 61 (2) of the Legal Aid Act (No. 6 of 2016)
- 1.2. The Legal Aid (General) Regulations, 2022 and Legal Aid Code of Conduct for Accredited Legal Aid Providers are intended to give effect to the provisions of the Legal Aid Act, 2016, by providing procedures, terms and conditions for the accreditation of legal aid providers; and criteria for eligibility for legal aid by indigent, marginalized and vulnerable persons.

2. Legislative Context

- 2.1. Section 86 of the Legal Aid Act, 2016, empowers the Attorney General to approve and publish Legal Aid (General) Regulations, 2021 in the *Gazette* while section 61(2) of the Act authorises him to issue Legal Aid Code of Conduct for Accredited Legal Aid Providers.

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



3. Policy Background

- 3.1. The primary objective of the Regulations is to provide a legal framework to enable the National Legal Aid Service Board to effectively discharge its functions.
- 3.2. The Legal Aid (General) Regulations, 2022 and Legal Aid Code of Conduct for Accredited Legal Aid Providers are intended to give effect to the provisions of the Legal Aid Act, 2016, by providing procedures, terms and conditions for the accreditation of legal aid providers; and criteria for eligibility for legal aid by indigent, marginalized and vulnerable persons.

4. Public Consultations and outcome

- 4.1. The National Legal Aid Service Board convened a public stakeholders' consultation on the 15th August, 2018. The public consultations were in the nature of correspondence and an interactive meeting held at the Sarova Stanley Hotel. A report on this process was duly prepared.
- 4.2. The consultations and negotiations resulted in the proposed Legal Aid (General) Regulations, 2022 and Legal Aid Code of Conduct for Accredited Legal Aid Providers after compromises were made.

5. Financial implications

- 5.1. The National Legal Aid Service being a state-funded legal aid scheme will require budgetary allocation from the Government to implement the Legal Aid (General) Regulations, 2022 and Legal Aid Code of Conduct for Accredited Legal Aid Providers.
- 5.2. Despite the financial implications, it is expected that legal aid services, when delivered effectively, is both budget-neutral and creates net benefits for the economy through a carefully documented cost/benefit analysis.

6. Impact

- 6.1. Impact on Fundamental Rights and Freedoms: The Legal Aid (General) Regulations, 2022 and Legal Aid Code of Conduct for Accredited Legal Aid Providers are key in the implementation of the Legal Aid Act, 2016, which gives effect to Articles 19 (2), 48, and 50 (2) (g) and (h) of the Constitution. The implementation of the Regulations and Code of Conduct will create an avenue to enforce the right to equality before the law by indigent, marginalized and vulnerable persons and increase public trust in the justice system.
- 6.2. Impact on achievement of sustainable development goals: Sustainable Development Goal 16 on building peace, just and inclusive societies includes a dedicated target on the rule of law and access to justice, which is considered an important accelerator of progress across the entire Vision 2030 Agenda.

Through the implementation of the Regulations and Code of Conduct, access to justice, especially for disadvantaged groups such as indigent, marginalized and vulnerable persons, will be increased and this will strengthen the rule of law in Kenya and have a direct impact on an individual's quality of life since it contributes to the achievement of poverty eradication (SDG 1), gender equality (SDG 5), decent work (SDG 8) and reduced inequality (SDG 10), among others.

- 6.3. Impact on Private and Public Sector: The Legal Aid (General) Regulations, 2022 and Code of Conduct, shall ensure that there is co-ordination and collaboration in the delivery of legal aid services in Kenya between State and non-state actors. The National Legal Aid Service shall accredit legal aid service providers including civil society organisations, faith-based organisations, advocates, law firms, paralegals and State agencies. Accredited legal aid service providers shall provide specialised legal aid services on behalf of the Service to aided persons in all 47 counties.

7. Guidance

- 7.1. The Office of the Attorney-General and Department of Justice, through the National Legal Aid Service Board, shall sensitize key stakeholders including legal aid service providers such as civil society organisations, faith-based organisations, advocates, law firms, paralegals and State agencies that play a key role in the provision of legal aid services as per the Legal Aid (General) Regulations, 2022.

- 7.2. The National Legal Aid Service Board shall also sensitise indigent, marginalized and vulnerable persons in Kenya who are beneficiaries of legal aid as provided under the Regulations.

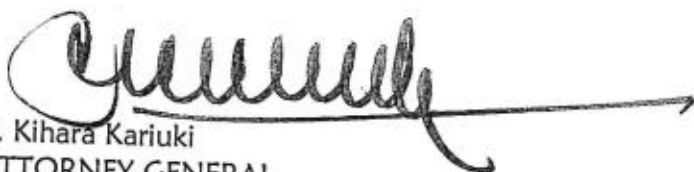
8. Monitoring and review

- 8.1. The Office of the Attorney-General and Department of Justice, through the National Legal Aid Service Board, shall monitor and evaluate the activities and quality of legal aid provided by legal aid service providers during the implementation of the Legal Aid (General) Regulations, 2022 and Legal Aid Code of Conduct for Accredited Legal Aid Providers. This shall be done through reports submitted by the legal aid service providers as guided by the Board.

9. Request to the National Assembly

9.1. The National Assembly is invited to:

- (a) note the contents of this Memorandum; and
- (b) adopt the Legal Aid (General) regulations, 2012 and Legal Aid Code of Conduct for Accredited Legal Aid Providers.



P. Kihara Kariuki
ATTORNEY GENERAL





NATIONAL LEGAL AID SERVICE

Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobi.legalaid@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (101)

Your ref: TBA

Date: 6th August, 2018

Mose Felistus.
Mutuerandu Kaimenyi & Co. Advocates
SixEighty Hotel Building, 4th Floor, Suite 403
Kenyatta Avenue,
NAIROBI.



Dear *Felistus*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

The National Legal Aid Service (NLAS) with the support of the International Development Law Organization (IDLO) the only intergovernmental organization exclusively devoted to promoting the rule of law. IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. NLAS through IDLO's technical support has developed draft Legal Aid (Accreditation and Eligibility) Regulations and a Code of Conduct for accredited legal aid providers pursuant to Section 86 of the Legal Aid Act 2016.

In recognition of your key role in the justice sector, this is to invite you to a public participation forum to review the said draft Regulations and Code, and to a brainstorming session on the role and position of legal aid networks under the Legal Aid Act. The forum and session will be held on the 15th August 2018 from 9:00am at the Sarova Stanley Hotel Nairobi, as per the attached programme.

Kindly confirm your attendance with Ms. Fresiah Githumbi on telephone number 0725-717505, email fgithumbi@gmail.com or Ann Wainaina on telephone number 0722-919249, email wainaina.ann@gmail.com.

We look forward to a very constructive engagement.

Yours

Sincerely,

Caroline Amondi

Ag. National Coordinator

"Access to justice for all"



REPUBLIC OF KENYA
Office of the Attorney General
and Department of Justice



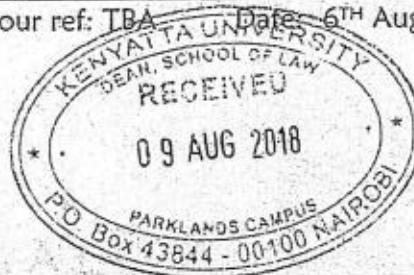
NATIONAL LEGAL AID SERVICE

Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinaleap@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (100)

Your ref: TBA Date: 6th August, 2018

Lyna Nafula Sarapai,
Kenyatta University (Parklands Campus),
P.O. Box 43844-00100,
NAIROBI.



Dear *Lyna,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

The National Legal Aid Service (NLAS) with the support of the International Development Law Organization (IDLO) the only intergovernmental organization exclusively devoted to promoting the rule of law. IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. NLAS through IDLO's technical support has developed draft Legal Aid (Accreditation and Eligibility) Regulations and a Code of Conduct for accredited legal aid providers pursuant to Section 36 of the Legal Aid Act 2016.

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We look forward to a very constructive engagement.

Yours *Sincerely,*

[Signature]
Caroline Amondi
Ag. National Coordinator

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Office of the Attorney General
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Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinaleap@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (97)

Your ref: TBA

Date: 6th August, 2018

Chair PASUNE,
P.O. Box 59743, 00200,
NAIROBI.

INTERNATIONAL COMMISSION OF
JURISTS (KENYA SECTION)

08 AUG 2018

P.O. Box 59743, NAIROBI - KENYA
TEL: 254 - 020 - 2084836 / 3

Dear *Mr. Mwachira,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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We look forward to a very constructive engagement.

Yours *Sincerely,*

Caroline Amondi
Ag. National Coordinator

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Office of the Attorney General
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Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinalcap@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (96)

Your ref: TBA

Date: 6th August, 2018

Executive Director,
Inter-Religious Council of Kenya,
Mararo Road off Gitanga Road, Nairobi,
P. O. Box 6352-00200,
NAIROBI.

Dear *Sir,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

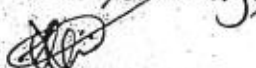
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Yours *Sincerely,*


Caroline Amondi
Ag. National Coordinator

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9th floor, Mama Ngina Street
P.O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinalaep@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (95)

Your ref: TBA

Date: 6th August, 2018

Joash Dache, MBS,
Secretary,
Kenya Law Reform Commission,
NAIROBI.

Dear *Joash,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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Yours *Sincerely,*

[Signature]
Caroline Amondi
Ag. National Coordinator

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9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinaleap@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (94)

Your ref: TBA

Date: 6th August, 2018

Eunice Ndonga-Githinji,
Executive Director,
Refugee Consortium of Kenya,
Haki house Ndemi Road,
NAIROBI.

Dear *Madam,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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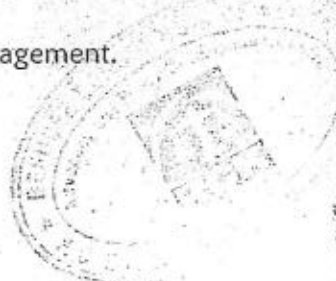
Yours

Sincerely,

Caroline Amondi

Ag. National Coordinator

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Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinaleap@gmail.com

Our ref: NLAS/ADM/2/2 VOL1 (92)

Your ref: TBA

Date: 6th August, 2018

Dr. Julius Jwaan,
Kenya Institute of Curriculum Development,
Desai Road, off Muranga road,
PO BOX 30231-00100,
NAIROBI.

Received at Directors office
KICD on 9/8/2018 Mkw
Markus Kahi

Dear Dr. Jwaan,

call 0729-327331 ask
the C.E.O

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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Yours sincerely

Received at 0

Caroline Amondi

Ag. National Coordinator

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Office of the Attorney General
and Department of Justice



NATIONAL LEGAL AID SERVICE

Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinaleap@gmail.com

Our ref: NLAS/ADM/2/2 VOL1 (91)

Your ref: TBA

Date: 6th August, 2018

Legal Officer,
Center for Rights Education and Awareness,
Elgeyo Marakwet Close off Elgeyo Marakwet Road,
House No.1 (left side) Kilimani,
NAIROBI.

Dear *Counsel,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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Yours *Sincerely,*

Caroline Amondi
Ag. National Coordinator

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REPUBLIC OF KENYA
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Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: +254-20-2215627/0776070366
Email: nairobinalap@gmail.com

Our ref: NLAS/ADM/2/2 VOL1 (90)

Your ref: TBA

Date: 6th August, 2018

Dr. J. K. Gakeri,
Chief Executive Officer,
Council for Legal Education,
P.O. Box 829-00502,
NAIROBI.

Dear Dr. Gakeri,

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

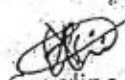
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We look forward to a very constructive engagement.

Yours *Sincerely,*


Caroline Amondi

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Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P.O. Box 45597 - 00100 Nairobi
Tel: +254-20-2215627/0776070866
Email: nairobinalaep@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (89)

Your ref: TBA

Date: 6th August, 2018

Chief Executive Officer
Christian Lawyers Fellowship,
Nyaku House (left Wing),
P.O. Box 67065-00100,
NAIROBI.

Dear *Jaya,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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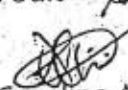
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We look forward to a very constructive engagement.

Yours

Sincerely,


Caroline Amondi

Ag. National Coordinator

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REPUBLIC OF KENYA
Office of the Attorney General
and Department of Justice

Received on 7th Aug. 2018



NATIONAL LEGAL AID SERVICE

Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinalcap@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (88)

Your ref: TBA

Date: 6th August, 2018

The Director,
Kituo Cha Sheria,
Ole Odume Rd, Off Argwings-Kodhek Rd.
P.O. Box 7483-00300 Nairobi,
NAIROBI



Dear *Gekunda,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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Yours *Sincerely,*

[Signature]
Caroline Amondli
Ag. National Coordinator

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Tel: + 254-20-2215627/0776070366
Email: nairobinaleap@gmail.com

Our ref: NLAS/ADM/2/2 VOL1 (87)

Your ref: TBA

Date: 6th August, 2018

Teresa Omondi,
Executive Director,
Federation of Women Lawyers-FIDA-K,
P. o. Box 46324-00100,
NAIROBI.

Dear *Teresa,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

The National Legal Aid Service (NLAS) with the support of the International Development Law Organization (IDLO) the only intergovernmental organization exclusively devoted to promoting the rule of law, IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. NLAS through IDLO's technical support has developed draft Legal Aid (Accreditation and Eligibility) Regulations and a Code of Conduct for accredited legal aid providers pursuant to Section 86 of the Legal Aid Act 2016.

In recognition of your key role in the justice sector, this is to invite you to a public participation forum to review the said draft Regulations and Code, and to a brainstorming session on the role and position of legal aid networks under the Legal Aid Act. The forum and session will be held on the 15th August 2018 from 9:00am at the Sarova Stanley Hotel Nairobi, as per the attached programme.

Kindly confirm your attendance with Ms. Fresiah Githumbi on telephone number 0725-717505, email fgithumbi@gmail.com or Ann Wainaina on telephone number 0722-919249, email wainaina.ann@gmail.com.

We look forward to a very constructive engagement.

Yours

Caroline Amondi

Caroline Amondi

Ag. National Coordinator

"Access to justice for all"





NATIONAL LEGAL AID SERVICE

Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinalcap@gmail.com

Our ref: NLAS/ADM/2/2 VOL1 (85)

Your ref: TBA

Date: 6th August, 2018

Chief Executive Officer,
Council of Governors,
Delta Corner, 2nd Floor,
P.O Box 40401 - 00100,
NAIROBI.

Dear *Jacqueline*,

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

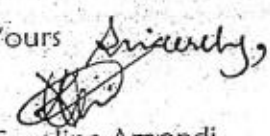
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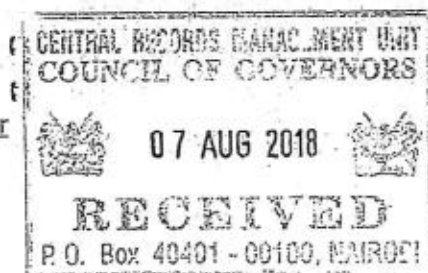
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Yours

Sincerely,

Caroline Amondi
Ag. National Coordinator

"Access to justice for all"





Received at legal
Office: 07 AUG 2018
Sent: 07/08/18

NATIONAL LEGAL AID SERVICE

Kenya Charity Sweepstake Building
9th floor, Mama Ngina Street
P.O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobi.legal@gmail.com

Our ref: NLAS/ADM/2/2 VOL1 (84)

Your ref: T8A

Date: 6th August, 2018

Elizabeth Marube,
National Police Service,
P.O. BOX 3083-00100,
NAIROBI.

Dear *K. Wanjau*,

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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Caroline Amondi

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REPUBLIC OF KENYA
Office of the Attorney General
and Department of Justice



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9th floor, Mama Ngina Street
P. O. Box 45597 - 00100 Nairobi
Tel: + 254-20-2215627/0776070366
Email: nairobinalcap@gmail.com

Our ref: NLAS/ADM/2/2 VOL.1 (102)

Your ref: TBA

Date: 6th August. 2018.

Mr. Samuel Mohochi,
Executive Director,
International Commission of Jurists,
P.O. Box 59743, 00200,
NAIROBI.

INTERNATIONAL COMMISSION OF
JURISTS (KENYA SECTION)

08 AUG 2018

P. O. Box 59743, NAIROBI - KENYA
TEL: 254 - 020 - 2084836 / 3

Dear *Samuel,*

RE: PUBLIC PARTICIPATION IN THE REVIEW OF DRAFT LEGAL AID (ELIGIBILITY AND ACCREDITATION) REGULATIONS AND CODE OF CONDUCT FOR ACCREDITED LEGAL AID PROVIDERS.

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