
Kenya

Law & policies

Article 48 of the Kenyan Constitution of 2010 mandates the state to “ensure access to justice for all persons.”¹ That provision is the background against which the Legal Aid Act of 2016 recognizes paralegals as persons who meet two conditions namely - employment by the National Legal Aid Service² or an accredited legal aid provider; and completion of a training course in an institution accredited by the Council of Legal Education.³

Ratio of Lawyers to Paralegals

The Law Society of Kenya counts “over 20,000” lawyers as members.⁴ The Paralegals Support Network (PASUNE) is a network of leading human rights organizations involved in training paralegals.⁵ Regrettably, neither PASUNE nor any other organization has a reliable number of paralegals in Kenya. Kituo is a legal advice centre in Kenya running a comprehensive paralegal programme. All of the programmes are aimed at empowerment of the poor and marginalised to enable them to access justice through formal and informal platforms.

Sources of funding

The Legal Aid Act establishes a Legal Aid Fund⁶ which is potentially available to paralegals in that it could defray the expenses incurred by legal aid providers and even pay for the remuneration of those legal aid providers.⁷ Legal aid providers include paralegals.⁸ The challenge lies in operationalizing the fund and making the resources available to institutions and individuals that require it.

¹ <https://www.constituteproject.org/constitution/Kenya_2010.pdf> accessed 8 May 2023.

² Section 5(1) of the Legal Aid Act of 2016 establishes a National Legal Aid Service with a mandate to “establish and administer a national legal aid scheme that is affordable, accessible, sustainable credible and accountable.” <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct_No._6_of_2016.pdf> accessed 8 May 2023.

³ Section 2

⁴ See <<https://lsk.or.ke/about-lsk/>> accessed 19 May 2023.

⁵ PASUNE has produced a paralegals handbook for training purposes. See <https://namati.org/wp-content/uploads/2017/07/Paralegal_Handbook-PASUNE-Kenya.pdf> accessed 19 May 2023.

⁶ Section 29(1)

⁷ Section 30

⁸ Section 2

Legal recognition

As indicated in section 3.2.1, paralegals are legally recognized under the Legal Aid Act of 2016 – specifically section 2.

Challenges of paralegals

Paralegals have to contend with several challenges including the lack of clarity regarding their roles;⁹ difficult relationships with local authorities leading to mutual suspicion;¹⁰ lack of coordination, oversight and systems of accountability for paralegals;¹¹ and the challenge of clan and tribal loyalties.¹²

Concerning lack of clarity, paralegals with limited knowledge of the law may sometimes be tempted to advise and therefore mislead clients. That could be potentially problematic for the paralegal movement. As for the difficult relationship with local authorities, paralegals tend to take on some of the roles assigned to political, traditional or religious leaders eg mediation and reconciliation. Consequently, some of these leaders are wont to consider paralegals as potential threats to their authority and relevance in the communities.

The fact that paralegals are not necessarily coordinated across the country and therefore the systems of oversight and accountability are often non-existent or severely limited means that paralegals can overstep their mandates. Finally, clan and tribal loyalties sometimes becloud paralegals' sense of judgment. If unchecked, this could inflame passion and hurt the movement.

Opportunities for collaboration

As highlighted in section 3.2.2, the Legal Aid Fund is a potential avenue for funding paralegal work. However, it is still unclear how the fund will deliver the goods. The lack of clarity provides an opportunity for civil society – particularly the paralegal movement - to engage with the relevant authorities on the imperative of ensuring paralegals get some resources from the fund.

The somewhat difficult relationship between paralegals and community leaders presents another opportunity for collaboration. Establishing open lines of dialogue and making clear the

⁹ H. Abigail Moy, “Kenya’s community-based paralegals: A tradition of grassroots legal actions in: Vivek Maru & Varun Gauri (eds) *Community Paralegals & the Pursuit of Justice* (Cambridge: Cambridge University Press, 2018), chapter 5, p. 184 <<https://www.cambridge.org/core/books/community-paralegals-and-the-pursuit-of-justice/kenyas-communitybased-paralegals/564986EF9694059DFB7C0C0DA7656A72>> accessed 10 May 2023.

¹⁰ Ibid, p. 185.

¹¹ Ibid, p. 194.

¹² Ibid, p. 200.

lines of distinction between paralegal work and work traditionally reserved for these leaders might help calm frayed nerves.

Recommendations

The first recommendation is for the government of Kenya to operationalize the Legal Aid Fund like Sierra Leone has done so that paralegal organizations can get the financial resources they require to train, deploy and oversight paralegals across the country. The second relates to the sometimes-difficult relationship between paralegals and traditional authorities. It might help to spell out the work of paralegals in writing and with that engage those authorities on how to foster collaboration rather than needless competition. Related to this is the need to design clear accountability and oversight mechanisms so that when paralegals cross the lines, community members and leaders know what to do.