

Monitoring and Evaluating Legal Aid Service Provisions: Gaps, Challenges and Opportunities

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ABSTRACT

The Constitution of Kenya 2010 guarantees everyone the right to access to justice. Legal aid services enable indigents to access justice through legal advice, representation and education at no cost. Monitoring and evaluation (M&E) of legal aid services is important to ensure the indigent access quality legal services. M&E entails collection of information from legal service providers by measuring objectives, impact on the community and efficiency of the service in assessing performance. It ensures services become accessible, efficient and credible. Although the Legal Aid Act mandates the National Legal Aid Service (NLAS) to monitor and evaluate the activities of legal service providers. NLAS launched the regulation and code of conduct for legal aid providers in July 2020. The framework though recent is deficient in elaborate framework and guideline for NLAS to observe and analyze critically the programs of the legal service providers that are useful to legal aid providers, donors and relevant stakeholders in creating stable and efficient programs. This paper interrogates challenges in M&E of legal aid service against the backdrop of the existing frameworks and how Egerton University Faculty of Law Legal Aid Project has worked around it. It examines other jurisdictions M&E frameworks, to ensure services provided across the country are harmonized. Through this, opportunities and lessons are identified that Kenya can learn from and borrow to strengthen the M&E frameworks. It probes mechanisms adopted by NLAS in developing an M&E framework for legal aid service provision. M&E gauges legal aid providers' performance, efficacy, efficiency and quality of access to justice. The regulations for M&E encourage legal aid providers in agenda setting, measuring outcomes and impact of services.

Key Words: Access to justice, indigent, legal aid service providers, quality service, M &E frameworks and legal aid, challenges and opportunities.

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INTRODUCTION

Legal aid is an essential measure for access to justice.¹ The justice system is complex and poses challenges to many people in the society, more so to the poor and marginalized group. Justice remains a mere spectre in absence of knowledge and resources.² Through Legal Aid, the intricacies of the justice system are simplified to the society making it easier to navigate the system by all and sundry. Every individual has a right to receive legal assistance that is effective and of the highest quality whether proffered for free or not.³ Access to quality justice by the indigent persons is impossible. It is for this reason that states must have a legal aid system with adequate legislation on the same, sufficient financial and human resources.⁴

Many countries have embraced legal aid in their jurisdictions.⁵ Some of them have gone ahead to have specific legislation addressing legal aid, and those that do not have legislations have constitutional provisions that promote access to justice and encourage states to provide legal aid to those unable to afford legal counsel, especially in capital offenses.⁶ With time, a number of actors both private and public have joined the race for promoting access to justice for the poor and the marginalized.⁷ Some of them are regulated by the statutes and others have internal regulations. A practice in service delivery is only effective where those who benefit from the service

¹ United Nations development programme, *Access to justice practice Note* (2004); United Nations Office on Drugs Crimes *Access to Justice: Legal Defense and Legal Aid* (2006).

² United Nations Office on Drugs and Crime: *Global Study on Legal Aid; Global Report*, 5.

³ African Commission on Human and People's Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003.

⁴ United Nations Office on Drugs and Crime, *Handbook on ensuring quality of legal aid services in criminal justice processes: Practical guidance and promising practices*, 2019.

⁵ The United Nations Office on Drugs and Crime (UNODC) and United Nations Development Programme (UNDP) published the '*Global Study on Legal Aid-Country Profile, 2016*' to provide the current state of legal aid in 49 countries around the World. In Sub-Saharan Africa, the Publication looked at 10 countries including Kenya and South Africa. This is a clear indicator of recognition of legal aid all around the world. .

⁶ Global Study on Legal Aid, Country Profiles. Available <https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA-Country_Profiles.pdf> accessed on 17 April 2021.

⁷ Legal Aid Systems and Supporting NGOs around the World. Available at <http://defensewiki.ibj.org/index.php/Legal_Aid_Systems_and_Supporting_NGOs_around_the_world> accessed on 17 April 2021.

can divulge whether the service has impacted their lives or not. Consequently, monitoring and evaluation becomes imperative in gauging the services offered.

A relevant, effective, timely, and credible monitoring and evaluation mechanism ensures access to justice for marginalized persons in the society by enabling governments, legal service providers and funders to assess whether their legal programs have achieved intended objectives; whether they have a sustainable impact on the society; whether the resources provided for the running of the programmes have been used efficiently to provide results, and the changes the stakeholders can implement in order to provide the most efficient and sustainable legal aid services.⁸

This article first identifies the role of monitoring and evaluation to all stake holders in the legal aid sector—the clients, legal aid providers, funders and government agencies. These include quality assurance, efficient use of limited resources and securing funding from private sources to boost impact in service delivery.

Legal Aid programme funders rely on monitoring and evaluation to ensure proper use of funds advanced to legal aid providers and to gauge the impact of legal services being offered. The paper discusses steps that a stakeholder can take to conduct an effective monitoring and evaluation of legal aid service programmes, that is, from the planning stage, undertaking a baseline study, implementation of the evaluation plan and submission of the monitoring and evaluation report.

In 2016, Parliament enacted the Legal Aid Act, No. 6 of 2016 to give effect to Articles 19 (2), 48 and 50 (2) (g) and (h) of the Constitution of Kenya, 2010 on access to justice. The Legal Aid Act established the National Legal Aid Service to establish and administer a national legal aid scheme that is among others, accessible, sustainable, credible and accountable.⁹ Further, the National Legal Aid Service was established to coordinate, monitor and evaluate legal aid service providers in Kenya.¹⁰ Besides the Legal Aid Act, there is also the National Action Plan on Legal Aid 2017-2022 (NAP) that

⁸ Gregg G. Van Ryzin and Marianne Engelman Lado, *Evaluating Systems for Delivering Legal Service to the Poor: Conceptual and Methodological Considerations* (67 Fordham L. Rev. 2553 1999).

⁹ Legal Aid Act No. 6 of 2016, sec 7 (1) (a).

¹⁰ Legal Aid Act 2016.

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helps in guiding the government in rolling out the planned activities for legal aid as stipulated in the Legal Aid Act. NAP provides the activities to be undertaken, the responsible actors as well as the means of verifying the output that provide useful tools for measuring level of compliance or achievements.

The Legal Aid Act makes provisions on Regulations to be made to better effect the provisions of the Act.¹¹ The Regulations play a crucial role in monitoring and evaluating legal aid service providers.¹² The Legal Aid Act was enacted in 2016 while the Legal Aid (General) Regulations and Code of Conduct for Accredited Legal Aid Providers were made in 2020 and 2019 respectively. These regulations were introduced long after legal aid service providers were in operation and guided by their own rules and regulations, including, monitoring and regulation frameworks. This paper, therefore, seeks to interrogate the strengths and weaknesses of the monitoring and evaluation framework of Kenya's legal aid system. It looks at Egerton University Faculty of Law Legal Aid Project's (FOLLAP) monitoring and evaluation program and draw lessons from monitoring and evaluation systems in other jurisdictions.

It appraises the Standards for the Monitoring and Evaluation of Providers of Legal Aid Services for the Poor adopted in 1991 by the American Bar Association House of Delegates. These Standards provide guidelines for organizations that provide free legal services to use while conducting monitoring and evaluation. The paper relies on the OECD principles for evaluation of development assistance which provide important principles that should guide stakeholders in conducting monitoring and evaluation. Additionally, it provides for criteria to be used while evaluating legal aid programmes such as effectiveness, relevance, credibility, efficiency and sustainability. It is further guided by the National Action Plan on Legal Aid in principles on monitoring and evaluation planning.¹³

It also examines South Africa's, Sierra Leone's and Lithuania's state guaranteed legal monitoring and evaluation framework. The paper sums up by identifying opportunities available that Kenya can take to develop

¹¹ Legal Aid Act 2016, s 86.

¹² For instance, Section 57 (1) of the Legal Aid Act 2016 provides that the Service, through regulation, shall develop and adopt a criteria for accreditation of legal aid service providers.

¹³ National Action Plan Legal Aid 2017-2022 Kenya, *Towards Access to Justice for All*. Office of the Attorney General and Department of Justice, pg 39-41.

monitoring and evaluation guidelines relevant not only to the National Legal Aid Service, but also to other legal aid service providers, funders and other stakeholders that wish to conduct monitoring and evaluation of legal aid services. It concludes that effective monitoring and evaluation framework is important for legal service delivery.

This paper takes a textual analytical research approach. It relies on primary and secondary sources of information through desktop research. This is embodied in policy frameworks, legislations, reports, books, journals and articles and online resources. It also takes an experiential approach to research based on the work that FOLLAP does in context of monitoring and evaluation. FOLLAP has been in operation for one year and conducts monitoring and evaluation of its project to ensure efficient, effective, and sustainable delivery of legal aid services to the indigent. Therefore, data from the experiences of FOLLAP is a useful source of information for this paper.

Theoretical Framework

Every project sets a goal that it wants to achieve. For the goals to be achieved and project to remain focused on the goals you need parameters to ensure that things go as planned and this is where Monitoring and evaluation comes in.¹⁴ Monitoring and evaluation enhances protection of the rights of individuals by ensuring that they receive quality legal services. It enhances accountability of legal service providers towards their clients and development of efficient, effective, credible and sustainable legal aid system. Additionally, it encourages participation of stakeholders in enhancing the quality and effectiveness of legal aid. This is the central argument in human rights-based approach, a conceptual framework which is adopted here for analysis. This approach empowers right-holders to claim and exercise their rights and to enhance the capacity of duty bearers who are obligated to respect, protect and promote human rights.¹⁵ It is founded on the principle of participation where right-holders are entitled to participate

¹⁴ Office of the Attorney General and Department of Justice, *National Action Plan, Legal Aid Act 2017-2022* Kenya 39.

¹⁵ United Nations Sustainable Development Group (UNSDG), *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN Agencies* 2003. Available at <https://unsdg.un.org/sites/default/files/6959The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf> accessed on 11 March 2021.

in decision-making process on issues that touch on their rights directly or indirectly, cultivating the culture of accountability on duty bearers.¹⁶

Access and participation by local people to decision making processes is considered to be fundamental to sustained development.¹⁷ Participatory monitoring and evaluation involves all stakeholders in the monitoring and evaluation process.¹⁸ Guijt and Gaventa, recognize participation as a key principle in monitoring and evaluation, that is, opening up the design of the process to include those most directly affected, and agreeing to analyze data together.¹⁹ Participatory evaluation therefore contributes to greater relevance of the evaluation and to greater accuracy in evaluation findings.²⁰ Consequently, legal aid providers can learn from the findings and implement the lessons to ensure establishment of a sustainable and effective legal aid program.

Legal aid programmes are established and developed to improve access to justice that impacts positively on the lives of the marginalized. Development of legal aid programmes involve setting objectives and goals and the activities that the programme will undertake to achieve the said objectives and goals. Monitoring and evaluation is desirable for ensuring that programme is in tandem with the objectives and measure impact on its beneficiaries.

Programme theory describes how a programme will lead to results by providing logical description of how and why a programme's activities should lead to intended results.²¹ Evaluation of a legal aid program that uses program theory identifies how the legal service providers understand the program works and immediate outcomes needs to be achieved for the

¹⁶ United Nations Sustainable Development Group, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN Agencies* 2003.

¹⁷ Judi Aubel, *Participatory Program Evaluation: Involving Program Stakeholders in the Evaluation Process* (2nd Edition December 1999).

¹⁸ Better Evaluation, Participatory Evaluation
<https://www.betterevaluation.org/en/plan/approach/participatory_evaluation>
accessed on 16 April 2021.

¹⁹ Irene Guijt and John Gaventa, *Participatory Monitoring and Evaluation: Learning from Change* (Institute of Development Studies, Issue 12, November 1998).

²⁰ Judi Aubel (n 19).

²¹ Wilder Research, *Program Theory and logic models* (August 2009). Available at <<https://www.evaluatod.org/assets/resources/evaluation-guides/logicmodel-8-09.pdf>> accessed on 8th April, 2021.

program to work.²² The program theory can be represented through a logical model that shows how one thing leads to another, like a flowchart.²³

ROLE OF MONITORING AND EVALUATION

Monitoring is a continuous process which involves the collection, analysis and use of information for gauging performance, identifying challenges and assessing whether progress is being made towards achievement of the project goals.²⁴ Evaluation on the other hand is the objective assessment of an on-going or completed project in order to determine whether objectives have been achieved and whether the project is sustainable.²⁵ Effective monitoring and evaluation mechanisms enable stakeholders to obtain valuable data that indicates the impact of legal aid to indigent and enables them to identify problems and promptly address them.²⁶ It is important to all stakeholders in the legal aid sector as it provides crucial information for decision making and formulation of strategies that ensure efficient and sustainable provision of quality legal services.

Role of monitoring and evaluation to clients

It is the right of every individual to receive quality legal services. In this perspective, monitoring and evaluation of legal aid services will ensure that the legal services offered are of the required standard. It also establishes the efficacy and sustainability of the programme in addressing all the client's legal needs. Monitoring and Evaluation give the clients an opportunity to participate in the reviewing of the legal aid programme to establish whether their legal needs were addressed within reasonable time and efficiently so. Clients are given questionnaires to fill concerning their experiences with the legal aid program and whether they received the legal assistance they

²² Funnel S.C. and Rogers P.J., *Purposeful Program Theory: Effective Use of Theories of Change and Logical Models*, February, 2011. Available at https://media.wiley.com/product_data/excerpt/78/04704785/0470478578-124.pdf> accessed on 8 April 2021.

²³ Wilder Research, *Program Theory and logic models* (August 2009).

²⁴ Organization for Economic Co-operation and Development "Section 10: Monitoring and Evaluation", in *The OECD-DAC Handbook on Security System Reform: Supporting Security and Justice*, OECD Publishing (2011). Available at < <https://dx.doi.org/10.1787/9789264027862-13-en>> accessed on 10 March 2021

²⁵ Ibid.

²⁶ UNODC, *Handbook on Improving Access to Legal Aid in Africa*, (Criminal Justice Handbook Series 2011).

sought. Further, legal aid programmes take contact information of their clients to follow-up on the progress of their clients' matters.

Role of monitoring and evaluation to the legal service providers

For legal aid service providers to ensure quality legal service and to be accountable to their clients, there is a need for monitoring and evaluation of the programme. This is imperative as it is through monitoring and evaluation that one gets the feedback that helps in the next steps. The feedback determines the improvements and enhancements that need to be made, if such needs exist, thereby enhancing service delivery.

Efficiency of the legal aid programmes is enriched by monitoring and evaluation. Legal service providers must use the limited funds available to them to achieve their goals in the best way possible. One of the factors that has been identified to be compromising the efficacy of the legal aid programmes is lack of funds or inadequate funding from the government.²⁷ This essentially means that other sources outside government must be sought to fill in the existing funding gap for legal aid. In Kenya, non-state actors have stepped in to provide some of the needed funding to roll out the legal aid programmes. However, this does not mean that funding is always available and sufficient. Inadequate funding has forced legal aid providers to strain their existing resources for offering quality legal services to the marginalized. Strained resources and inadequate funds can compromise the quality of legal services and limit the numbers of people reached. Through evaluation, legal aid service providers can keep track of their performance and expenses thus enabling appropriate planning appropriately and proffer quality legal services as they demonstrate financial accountability.²⁸

Institutions that run legal aid clinics such as University law schools have a duty to provide quality services to their clients as well as ensure their student receive the best clinical legal education. Monitoring and evaluation enables the supervisors to assess the activities of students and to find the best ways to train them appropriately.

²⁷ A debate in Parliament in March 2021 questioned why a Funding scheme established in 2016 by the Legal Act 2016 has not been operationalized by government to boost the legal aid kitty for purposes of rolling out legal aid activities.

²⁸ Gregg et al (n 8).

Role of monitoring and evaluation to funding institutions/donors

Monitoring and evaluation enables funders to assess performance and financial accountability of legal aid providers. This is to ensure that the funds given to them are properly used. Further, valuable information that dictates funders' continued involvement or not with the programme is provided for through monitoring and evaluation. For instance, the Board is required to prepare annual estimates of the revenue and expenditure of the Service at least three months before the commencement of the financial year.²⁹ The estimates can be more accurate if the Board has information concerning the functioning of the Service.

Role of monitoring and evaluation to the government

The governmental has role to ensure that services offered to its citizens meet the set-out standards. Legal services are not left behind in this standard control, thus monitoring and evaluation becomes imperative. Through it, the government can establish whether to formulate more policies to guide the entire legal aid programme or just to implement the already existing ones to enhance legal service delivery within the country. Principle 13 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems dictates that it is the responsibility of the states to put in place mechanisms to ensure that legal aid service providers have the education, training, skills, knowledge and competence in the provision of legal services.

In Kenya, the National Legal Aid Service (NLAS) ensures legal aid service providers have the skills and knowledge to provide legal services for purpose of quality assurance. While NLAS is the body created by the Legal Aid Act, 2016, to undertake this task, its capability is doubtful due to low staffing. NLAS relies on advocates to help execute most of its work as it is in its nascent stage and not fully equipped. Its efficacy in monitoring and evaluating legal aid service providers and their programmes is yet to be fully realized.

STEPS IN MONITORING AND EVALUATION

Nikartas and Limanté, defines evaluation as an external and independent assessment of the quality of legal aid using an objective criteria and

²⁹ Legal Aid Act 2016, sec 32(1).

methodology.³⁰ To impact the legal aid programmes, monitoring and evaluation must be effective and efficient by adopting requisite steps. The steps include identification of project objectives, stakeholders and participants and undertaking baseline surveys to establish conditions that existed before the project was conducted. Additionally, the project plan must be implemented by actualizing monitoring and evaluation process and finally, submitting a final evaluation report which includes the findings, conclusions and recommendations to the stakeholders for considerations.³¹

Planning the monitoring and evaluation project

Gregg *et al*³² posit that funders and legal aid providers, consider conceptual options in undertaking monitoring and evaluation task. They assert that evaluators must address important questions such as who will be conducting the evaluation, and who are the stakeholders? Who constitute the users of the evaluation? What are the goals and objectives of the program? What is the program's working theory? To what extent will the evaluation focus on needs, processes, outcomes, or costs? And what comparisons or controls are available for purposes of analysis? Such questions help in identification of the best methods and form of monitoring and evaluation that can achieve objectives an effective evaluation.

Evaluation is mainly conducted by the government to ensure quality legal services and for planning purposes while on the other hand the funders undertake it to ensure legal service providers use the funds properly and within the budget line. Legal service providers also conduct self-evaluation to assess their performance and in line with their goals and objectives to ensure efficiency. Planning of the project must consider the users of the evaluation for its relevance³³ for example, an evaluation process by funders of a project ensures that the findings can be used by the funders for their intended objectives. Identification of the objectives and users of the evaluation can be undertaken by holding discussions and inviting stakeholders to comment on the proposed evaluation project and by directly

³⁰ Simonas Nikartas and Agnè Limanté, (2018) *Tools and Criteria for Measuring Legal Aid Quality: Guidelines for EU Member States* available at https://www.jura.uni-frankfurt.de/75941968/qual-aid_evaluation-of-legal-aid-quality.pdf accessed on 11 March 2021

³¹ International Federation of Red Cross and Red Crescent Societies (IFRC), *Project/Programme Monitoring and Evaluation (M&E) Guide* 2011.

³² Gregg *et al* (n 8)

³³ IFRC (n 31).

involving them in the planning process and throughout the evaluation project.³⁴

Formulation of evaluation and monitoring questions is conducted in planning stage of the evaluation process, guided by the objectives.³⁵ Some of the questions include: Whether the legal aid program met the needs of the stakeholders and to what extent? Whether the project was cost effective? Did the resources cater for all the needs of the legal service providers? What was the impact of the program? Did the legal service providers have the necessary skills to conduct their activities? Is the impact of the program sustainable? What can be improved to make the program more sustainable and efficient?

The planning process involves the identification of the data and information to be collected including the most efficient way of collecting the data.³⁶ For example, identifying client interviews as a source of information for the evaluation process will enable the legal service providers to seek consent from clients to participate in the evaluation.

The ABA Standards for the Monitoring and Evaluation of Providers of Legal Services for the poor, 1991 provides that evaluation through analysis of records from legal aid providers should not disrupt its operations, therefore, by planning earlier, the review agencies can plan for efficient collection of data without causing any disruptions to the activities of the legal aid providers.

Tools and Techniques for Monitoring and Evaluation

Identification of tools and techniques that will be employed in monitoring and evaluation process takes place at the planning stage. The common tools for data collection are surveys, focus groups, and use of existing data collected by legal aid providers as they conduct their activities. The tools are discussed below:

Surveys involve conducting interviews or doing self-administered surveys. Surveys are important because they allow surveyors to have one on one

³⁴ Gregg et al (n 8).

³⁵ Legal Assistance for Economic Reform, *The Why, What and How of Monitoring and Evaluation: Guidance for Providers of International Pro Bono Legal Assistance* (Guidance Note 1). Available at <https://www.roleuk.org.uk/sites/default/files/files/Monitoring%20and%20evaluation%20guidance%20note%20for%20the%20pro%20bono%20community.pdf> accessed on 9 April 2021

³⁶ Ibid.

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talk with clients giving them the opportunity to ask more questions and study their demeanour, thereby increasing the chances of having honest response. Although client interviews provide valuable information based on their experiences, it is a tedious and time-consuming process in that, the interviewers must facilitate the meetings with the many clients the legal service providers have assisted for questioning. Additionally, clients may not possess sufficient legal knowledge for them to assess whether they received quality legal education.³⁷

On the other hand, questionnaires enable the clients to give feedback on the service they received without having to physically appear before an interviewer. The questionnaires are given to clients once they have received legal assistance. However, questionnaires may not give accurate information, especially when the parties do not understand the questions asked hence possibility of not getting back the questionnaire is high.³⁸ Surveys are not only applicable to clients but also to other stakeholders such as court officers and legal practitioners to identify the performances of legal aid providers.³⁹ Surveying presents one of the best modes of data collection thus making the results of the monitoring and evaluation more credible.

Focus groups are a more economical way of collecting data from key stakeholders where the Focus hold regular meetings and explore specific issues.⁴⁰ It may discuss the experiences clients had during the legal aid project or legal aid providers can discuss their experiences while providing legal assistance to the clients. It also consists of groups of key stakeholders that establish regular meetings on a structural basis amongst professionals within the field. These meetings can be done on a regular basis to explore specific issues. The disadvantage of this method is that it may not meet the objectives of key stakeholders, government or funders who may require more detailed findings to make their conclusions and recommendations.⁴¹

Review of existing data model involves analysis of data that is already available to stakeholders making it time efficient and less costly compared with other forms of monitoring and evaluation. For instance, the Legal Aid

³⁷ Nikartas and Limantè, (n 30)

³⁸ Gregg et al (n 8).

³⁹ UNODC, *Handbook on Improving Access to Legal Aid in Africa (Criminal Justice Handbook Series 2011)*.

⁴⁰ Ibid.

⁴¹ Gregg et al (n 8).

Act requires legal service providers to keep a record of their activities.⁴² In Sierra Leone, the Legal Aid Board requires legal aid providers to fill out relevant forms available online at the end of every activity, thus enabling the Board to collect data conveniently.⁴³ Analysis of existing data collected regularly for a period indicates the trends and changes that have occurred as the legal aid providers conduct their activities. The disadvantage of this method is that the information collected may be inaccurate, incomplete, missing, or inconsistent thus compromising the quality of evaluation.⁴⁴ Its use should be complemented with other forms of data collection buttress evaluationⁱ

To assess the performance of legal aid service providers, a specific criterion must be used by the monitors. The EU “Tools and Criteria for Measuring Legal Aid Quality” provides that in conducting individual assessment, the monitor may give the provider a score of one to five points with each score having an established criterion.⁴⁵ For instance, for an excellent score, there must be proper communication and advice tailored to each client’s circumstance, correct and full advice given to the client, in-depth knowledge and use of skill to provide the client with the best outcome, among others. On the other hand, for a failure performance score, among others, the communication and advice given to the client is inadequate, cases are not conducted with reasonable skill and diligence and there is no meaningful service given to the client. Therefore, it is important to determine the criteria the legal service providers will be subjected to, for proper monitoring and evaluation to take place.

Conducting a baseline study

The OECD DAC⁴⁶ *Criteria for Evaluating Development Assistance* provides that while conducting a monitoring and evaluation, the parties must examine the impact of the legal aid program for example, to the legal aid seekers. To examine the impact of a service, the parties must first look at the conditions

⁴² Legal Aid Act 2016, sec 65.

⁴³ UNODC (n 38).

⁴⁴ Gregg et al (n 8).

⁴⁵ Nikartas & Limanté (n 30)

⁴⁶ Organization for Economic Co-operation and Developments, Development Assistance Committee. *Evaluating Development Co-operation: Summary of Key Norms and Standards* 2nd Edition June 2010 available at <https://www.oecd.org/derec/keypublications/> accessed 9 April 2021

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before the program was established. Conducting a baseline study involves the analysis of the initial conditions before the start of the legal aid programme, against which progress can be assessed or comparisons made with the conditions after the legal aid programme has been established.⁴⁷ An illustration is looking at the legal awareness of the group of people before they receive legal assistance and education from the legal aid providers and the situation after the programme has been established. This calls for proper record keeping of the programme for efficient conduct of baseline study.

Implementing the monitoring and evaluation plan

Once the planning process of the project is complete the actual monitoring and evaluation process can be conducted. Although, there are different methods of collecting data, the stakeholders have the option of choosing either or all the forms. While conducting the legal aid programmes, the ABA Standards require that the confidentiality of clients be maintained and places an obligation on the legal aid providers to provide data to the reviewing agencies in a form that does not breach confidentiality.⁴⁸ The parties analysing collected data should also put in place mechanisms to validate data to ensure the information is accurate.⁴⁹

Submission of the Monitoring and Evaluation Report

Once data has been collected, parties that conducted the evaluation must submit to all the stakeholders the findings, conclusions, recommendations and actions to be taken by the relevant stakeholders.⁵⁰ The report must be relevant and useful and serve the specific purpose the evaluation intended; timely in that it should be available to the stakeholders when they require it, for example, the report should be available to the funders before they make decisions concerning assignment of funds to the legal aid providers;

⁴⁷ International Federation of Red Cross and Red Crescent Societies, *Project/Programme Monitoring and Evaluation (M&E) Guide* (2011).

⁴⁸ American Bar Association Standards for the Monitoring and Evaluation of Providers of Legal Services for the Poor, standard 3.11 of 1991, 2002 edition available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_monitor_eval_providers_legal_svcs_to_poor_authcheckdam.pdf.

⁴⁹ IFRC, *Project/Programme Monitoring and Evaluation (M&E) Guide*, 2011.

⁵⁰ United Nations International Children's Emergency Fund (UNICEF), *Programme Policy and Procedures Manual: Programme Operations*, UNICEF, New York, Revised May 2003, pp. 109-120.

complete, that is, the report should provide all the necessary information for it to be useful to the stakeholders; reliable, that is, the information should be accurate; user-friendly where the stakeholders should be able to understand easily the information reported; consistent where the findings should be useful in making comparisons with past and future projects including recommendations; and cost-effective where the resources put into it should correspond to its relevance and use.

MONITORING AND EVALUATION FRAMEWORK IN KENYA

As discussed earlier, establishment of adequate and detailed legislation on legal aid ensures that the legal system of a state is stable and the legal aid services provided to indigent persons are of high quality to meet their needs.⁵¹ Steps in monitoring and evaluation provides guideline for an effective process to ascertain impact of the project and whether it met its objectives. This section discusses how the steps are applied and anchored in Kenya through analysis of the legal instruments, both international and national frameworks for Legal Aid services.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System was adopted by the General Assembly on 20th December 2012 during the 60th plenary meeting, to guide the member states on the principles on which a legal aid system in criminal justice should be based on and the first dedicated to this causer. They recognize that provision of legal aid must be prompt and effective at all stages throughout the criminal justice process.⁵² The Guidelines mandate member states to put mechanisms for ensuring that all legal aid service providers are competent to provide legal aid. The providers must possess education, training, skills and experience commensurate with the nature of their work.⁵³

Guideline 11 requires states to establish a legal aid body/ authority to provide, administer, co-ordinate and monitor legal services to ensure effective implementation of nationwide legal aid schemes. The authority should have power to set the criteria and accreditation of legal aid providers,

⁵¹ UNODC, *Model Law on Legal Aid in Criminal Justice Systems with Commentaries* (2017). Available at <https://www.unodc.org/documents/justice-and-prison-reform/Legal_Aid/Model_Law_on_Legal_Aid.pdf> accessed on 10 March, 2021.

⁵² UN Principles and Guidelines on access to Legal Aid in the Criminal Justice System (2012) principle 7.

⁵³ UN Guidelines (n 51), principle 13.

assessment of legal aid needs nationwide and the power to develop its own budget.

The Legal Aid Act places the responsibility of monitoring and evaluation of legal aid service providers on the National Legal Aid Service (NLAS). Section 7 of the Legal Aid Act sets out some of the functions of the Service on monitoring and evaluation such as supervising the establishment and working of legal aid services in universities, colleges and other institutions, evaluation of justice delivery centres and monitoring and evaluation of paralegals and other legal service providers and to give general directions for the proper implementation of legal aid programmes. Legal aid providers are required to keep proper records of activities conducted and legal representation of the persons aid which are subject to monitoring and evaluation by the Service.⁵⁴

States have an obligation to put in place mechanisms that ensure that legal service aid providers possess the education, training, skills and experiences that are commensurate with the nature of their work.⁵⁵ In order to ensure clients receive quality legal assistance, the government enacted the Legal Aid Act that stipulates the accredited persons and organizations which can provide legal aid services.⁵⁶ The criteria for accreditation are provided in Part III of the Legal Aid (General) Regulations, 2020 as follows:

- **Paralegals:** must have completed a Council of Legal Education approved training for paralegals; employed or supervised by an advocate or accredited legal service providers; and is a member of a duly registered association of paralegals.
- **Advocates:** must be advocates of the High Court of Kenya and possess a valid annual practicing certificate. Law firms must be dully registered as a sole proprietorship, general or limited liability partnership and must have one or more advocates that qualify for accreditation.
- **Other organizations⁵⁷:** must be accredited and must have adequate facilities and personnel qualified and must have in employment at least one advocate and paralegal who qualify for accreditation.

⁵⁴ Legal Aid Act 2016, sec 65.

⁵⁵ UNODC (n 50).

⁵⁶ Legal Aid Act, sec 56.

⁵⁷ Regulation 4 (a) of the Regulations requires the Organizations to be dully registered under Organizations as Public Benefit Organization Act, 2013 for Public Benefit Organizations; Non-Governmental Organizations Co-ordination

- **Universities and other institutions:** must be accredited by the Council of Legal Education to provide legal education or training and must have a full-time member of the faculty who is an advocate with seven years' experience to run the legal clinic.
- **State Agency:** must have in its employment at least one paralegal or advocate who qualifies for accreditation as legal service providers.

In addition to the Act⁵⁸, the NLAS developed a code of conduct⁵⁹ applicable to all legal aid providers. The aim of the code is to promote integrity, respect, confidentiality, accountability, public responsibility, and competency in provision of legal aid services.⁶⁰ It requires the legal aid providers to have the necessary skills and competency to provide quality legal services to their clients⁶¹ and to discharge their duties consistently with the proper and efficient administration of justice.⁶²

Further, the code of conduct provides for the duties of legal aid providers to various stakeholders—clients, court, legal professionals, and law enforcement agencies. An important aspect of the regulation that protects clients is the window that enables unsatisfied client to file a complaint with the Director. Thereafter, the Director is mandated to undertake investigations into the matter and make recommendations depending on the outcome of the process. Such recommendations are made to the Board of NLAS which may direct that the legal aid provider be retained in the register or their name be struck off.⁶³ This is a safety guard to clients and puts the service providers on notice to work diligently and uphold standards set by the regulator.

CHALLENGES IN KENYA'S MONITORING AND EVALUATION FRAMEWORK

Despite the existence of elaborate legal and policy framework on Legal Aid-Legal Aid Act, Legal Aid (General) Regulations, 2020 and the Legal Aid

Act, 1990 for Non-Governmental Organizations; and the Societies Act for a society.

⁵⁸ Legal Aid Act.

⁵⁹ Legal Notice No. 121, The Legal Aid Code of Conduct for Accredited Legal Aid Providers 2019

⁶⁰ *Ibid*, para 2.

⁶¹ *Ibid*, para 4.

⁶² *Ibid*, para 11.

⁶³ *Ibid*, para 17.

Monitoring and Evaluating Legal Aid Service Provisions...

Code of Conduct for Accredited Legal Aid Providers effective monitoring and evaluation mechanism remains a challenge.

Legal Aid service providers have been in operation in Kenya long before the launch of the Legal Aid Guidelines in July 2020. Part III of the Legal Aid (General) Regulations⁶⁴ provide for the accreditation of the Legal Aid providers and as well as minimum qualifications for eligibility. Section 30(6) of the Regulations⁶⁵ states that accreditation takes effect on the date the legal service provider and the Legal Aid service shall sign the accreditation agreement.⁶⁶ However, Legal Aid providers that have been in operation before the regulations were adopted require more time to internalise and operationalize their activities in tandem with the new regulations. The providers operated in silos with no effective regulatory oversight with their own internal M&E guidelines. One would therefore say that it was difficult to have a uniform evaluation guideline as each has different mandate and vision.

National Legal Aid Service (NLAS) has been given the mandate to monitor the services provided by the legal aid providers. This obligation can be delegated to a professional body who must report to NLAS on their findings.⁶⁷ However, there are underlying issues. Firstly, the Regulations do not give the guidelines that the professional bodies must follow in conducting monitoring and evaluation such as, the reasonable notification to the legal aid providers of the intention to monitor their services. There is a regulator conceived in the legal Aid Act, NLAS, however, there is no effective regulatory oversight.

Secondly, there is no provision of specific time frame when the staff of the NLAS can evaluate the services of the legal aid providers. This may cause disruption to the operations of the legal aid providers who may not have adequate time to collaborate with NLAS thus affecting the quality of the evaluation. Thirdly, the Regulations do not provide for guidelines on confidentiality of client information as it requires the legal aid providers to give NLAS access to information on the aid seekers. They do not consider the monitoring and evaluation frameworks the existing legal aid providers may have or input of other stakeholders such as private funding institutions.

⁶⁴ Legal Aid (General) Regulations of 2020 Pt III.

⁶⁵ Legal Aid (General) Regulations 2020.

⁶⁶ Ibid, sec 30(b).

⁶⁷ Legal Notice (n 58), para 5.

Lastly, they do not specify the procedure that legal aid seekers can follow to submit their feedback to NLAS on the quality of services they received.

The framework does not provide general guidelines on how to conduct the monitoring and evaluation process such as the number of times for conduction, methodologies that the NLAS applies, input of funders, legal aid providers, clients and other stakeholders despite being critical to the process.

The framework does not provide for guidelines that legal aid providers can follow to self-evaluate yet this is essential for gauging the services being offered. It also requires legal aid providers to record information concerning the aid seekers, however, it does not provide for a uniform system of keeping records. Consequently, this may lead to inconsistency in information gathering during evaluation. Kenya needs to borrow from some good practice from Sierra Leone as will be discussed in next section where the Board requires legal aid providers to fill relevant forms online after every activity which is then used to monitor and evaluate legal aid providers.⁶⁸ The NLAS framework is limited to quality assurance, however, as discussed in the previous sections, monitoring and evaluation is also useful for decision making and enhancing service delivery by legal aid providers, among others. Therefore, NLAS should expand the scope of the monitoring and evaluation framework and include other purposes other than that of oversight.

Finally, the legal professional bodies which NLAS will monitor are required to provide a report. However, the Regulations do not state whether such report will be available to the legal aid service providers, nor the consequences of the evaluation, such as whether the report will provide recommendations that the legal aid providers are mandated to implement.

OPPORTUNITIES AVAILABLE FROM CROSS -JURISDICTIONAL PRACTICES

An effective monitoring and evaluation framework should be a practical tool for funders, planners and legal aid service providers to better learn from

⁶⁸ *UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes: Practical Guidance and Promising Practices* (Criminal Justice Handbook Series 2019) pg. 73

their work.⁶⁹ The UNODC/UNDP study revealed that number one priority of member states and experts was to improve the quality of legal aid services. It recommended global sharing of experiences, lessons learnt and good practices⁷⁰. The existing frameworks for monitoring and evaluation of legal aid services provides opportunities for service providers, funders, clients and governments that can be borrowed and customized to the needs of all. NLAS need not reinvent the wheel but can tap on the existing frameworks in context and develop a more effective framework. Some the opportunities available is discussed in perspective of different institutions from other jurisdictions, such as Legal Aid South Africa, American Bar Association, and Development Assistance Committee of the OECD. FOLLAP's monitoring and evaluation practice is also highlighted just to demonstrate that M& E is desirable in legal aid and is doable to ensure that the programme remains on track.

Legal Aid South Africa

Legal Aid South Africa is a body established by the Legal Aid South Africa Act, No. 39 of 2014 to provide legal aid to those who cannot afford their own legal representation⁷¹. It has a comprehensive monitoring and evaluation program. The framework ensures legal service providers offer quality services and include recruitment of the best practitioners and establishment of extensive legal training and development.⁷² Quality monitoring programmes such as regular file reviews, practitioner self-reviews, quality service reviews by Justice Centre managers, stake holder feedback, complaints monitoring and client satisfaction surveys have been established by the Legal Aid South Africa.⁷³ A computerized case management system is developed for monitoring and evaluation of productivity of Justice Centres by providing various relevant reports that are timely and up to date.⁷⁴

Legal Quality Assurance Unit has been established by the Legal Aid South Africa to conduct independent assessments on the quality of services rendered by practitioners. This is done through assessment of files and

⁶⁹ Suzie Forell and Hugh M. McDonald, *Evaluation of Legal Service Delivery: Challenges, Opportunities and Work towards a Framework*, (ILAG Conference June 2017).

⁷⁰ UNODC/UNDP, *Global Study on Legal Aid* (2016)

⁷¹ Legal Aid South Africa *Strategic Plan 2015-2020*.

⁷² Legal Aid South Africa, *Country Report* (April 2017). 21.

⁷³ Ibid.

⁷⁴ Ibid.

court observations.⁷⁵ The Legal Quality Assurance Unit goes a step further in the monitoring and evaluation process by holding a feedback session with the practitioners after the court observations and file assessments.⁷⁶ This involves a discussion on the outcomes of the assessment or observation, the findings and corrective measures that the practitioner needs to be aware of and implement.⁷⁷ This, therefore, expands the role of monitoring and evaluation from quality assurance to enhancing competency and performance of legal practitioners as they conduct their activities.

Sierra Leone Legal Aid

Sierra Leone Legal Aid Board is a body established by the legal Aid Act No.6 of 2012 to provide legal aid services to those who cannot afford their own legal representation.⁷⁸ It is one of the first Board to have been established in low-income countries funded by government and supplemented by donors.⁷⁹ Sec 32 of the Act mandates the Board to monitor and evaluate the quality of legal representation in legal aid cases in accordance with prescribed procedures. This is further buttressed section 40(1)b of the Legal Aid Act which empowers the Board to make rules and regulations for procedures for monitoring and evaluating legal aid services.

The Board uses technology and internet for managing cases, delivering training, and assessing performance for every legal aid activity.⁸⁰ For instance, paralegals, lawyers and other staff of the Board use messaging application group to report their daily activities, support each other and discuss successes and challenges for supervision and educational purposes. The messaging group make work easy for the Board and ensure that the remote areas are accessible at a click of button and to make informed decisions on interventions. Monitoring paralegal work has been made easy through the same application as they are required to post their activities weekly to their supervisors for purposes of determining kind of

⁷⁵ Legal Aid South Africa, *Legal Aid Manual*, (2017)51.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Section 2 Legal Aid Act No.6 of 2012, Sierra Leone.

⁷⁹ Marcus Manuel and Clare Manuel, A report for People Centred Justice for all: A route to Scaling up access to justice advice and assistance in low-income countries April 2021 pg. 31

⁸⁰ *UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes: Practical Guidance and Promising Practices* (Criminal Justice Handbook Series 2019) pg. 55

legal assistance is required to help plan their follow ups. It is also used to assess the quantity and quality of work the paralegals are undertaking which is important for programming interventions in a cost-effective manner. The information posted is crucial to those concerned such as the prisons and inmates that is drawn for the attention of the Ministry of Justice, Office of the Chief Justice, Ministry of Internal Affairs and Prisons authorities for their respective actions.

The board developed seventeen (17) forms that cover paralegals' work, and they are required to fill the respective form for every activity after completion.⁸¹ Some of the activities include visits to the police stations, correctional centres, magistrates' courts, high court, local court, and informal courts such as paramount chiefs as well as remand homes. The forms are available online, lawyers, paralegals and other officers can fill the relevant form at the end of an activity and submit them online with very minimal costs. This is a good practice that enables accurate data collection which in turn helps keeping a service provider with up-to-date information on a regular basis feedback thus an avenue for determining what needs to be improved or changed in the programme.

The Board also uses focus group discussion with stakeholders that have established regular meetings on structural basis amongst professionals within the criminal justice system or field of criminal law. This method is used by the Board to assess people's understanding of the law and how the legal system works.⁸² Such discussions are crucial for informing programme strategies and interventions. Despite progress, the Board notes that it faces constraints in its monitoring and evaluation processes⁸³ particularly inadequate resources.

Lithuania Legal Aid

Legal aid is state guaranteed vide statute VIII-1591 adopted in 2000⁸⁴. Article 1 of VIII-1591 highlights purposes of legal aid as to enable persons to

⁸¹ UNODC (n 78) pg. 74

⁸² UNODC (n 78) pg. 73

⁸³ This was highlighted the Executive Director Sierra Leone Legal Aid Board (Carlton-Hanciles) during her presentation on introduction of Legal Aid in Sierra Leone available at http://internationallegalaidgroup.org/images/miscdocs/South_Africa_2017_PowerPoints/compressed_PP_Introducing_Legal_Aid_in_Sierra_Leon.pdf accessed on 24 November 2020

⁸⁴ Law No.VIII-1591 2000 (revised 16 April 2009 – No XI-223) available at

assert their rights and protect their legal interests. The services are fully paid for by the state and operates at two levels primary and secondary.⁸⁵

Legal Aid Co-ordination Council ensures the implementation of the functions assigned to the Ministry of Justice in the field of state-guaranteed legal aid. The Council is a hybrid body with membership from representatives of the Committee on Legal Affairs and the Committee on Human Rights of the Seimas of the Republic of Lithuania, the Ministry of Justice, the Ministry of Finance, the Association of Local Authorities in Lithuania, the Lithuanian Bar, the Lithuanian Lawyers' Society, the Judicial Council, and other institutions and associations whose activities are related to the provision of state-guaranteed legal aid or the protection of human rights.⁸⁶

The law stipulates institutions managing state-guaranteed legal aid as the government, the Ministry of Justice), municipal institutions, state-guaranteed legal aid services (the Services) and the Lithuanian Bar. Even though the government and the Ministry of Justice take an active policy making role in the legal aid system, the main actors in the structure are Services and the legal aid lawyers.⁸⁷ The provision of legal aid is a shared responsibility between the Services which compile the list of legal aid lawyers, and the authorities, which designate a defense lawyer in a criminal case. The verification of the quality of the activities of legal aid lawyers is done by the Bar, in accordance with the rules for assessment of the quality of legal aid approved by the Lithuanian Bar Association, as agreed with the Ministry of Justice.⁸⁸ The Service conducts annual surveys that include

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.350869?jfwid=mmceokng5>
accessed 23 April 2021

⁸⁵ Article 2(2) & (3) Law No. VIII-1591 Primary legal aid entails provision of information and legal advice and preparation of documents while secondary legal aid is a state guaranteed assistance from a lawyer in judicial proceedings including drafting documents, conducting defence and representing clients in court proceedings.

⁸⁶ Ed Cape and Zaza Namoradze 2012 Effective Criminal Defence in Eastern Europe – Bulgaria, Georgia, Lithuania, Moldova & Ukraine available at <https://www.osce.org/files/f/documents/2/1/124399.pdf> accessed 20 April 2021

⁸⁷ Ibid

⁸⁸ Ed Cape and Zaza Namoradze, 2012 Effective Criminal Defence in Eastern Europe – Bulgaria, Georgia, Lithuania, Moldova & Ukraine pg. 247 available at <https://www.osce.org/files/f/documents/2/1/124399.pdf> accessed 20 April 2021, See also Article 10(2) of the Law No. VIII-1591 on State-Guaranteed Legal Aid, 2000

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.350869?jfwid=mmceokng5>
accessed 23 April 2021

Judges, prosecutors and police officers where the stakeholders are asked questions on their contact frequency with legal aid providers, how often the legal representatives postpone the hearing and how reasonable these requests are, and generally provide information concerning the quality of services provided by the legal aid providers.⁸⁹

In summary, supervision of advocates providing legal aid is carried out by the Lithuanian Bar Association and the State-Guaranteed Legal Aid Service (SGLAS). It resolves beneficiaries' complaints regarding the actions of legal aid providers. The Bar Association has a general duty of supervising the advocates. The SGLAS is not empowered to supervise the quality of the service itself. Disciplinary measures against the lawyers are taken by the Bar Association.

American Bar Association (ABA) Standards for the Monitoring and Evaluation of Providers of Legal Services for the Poor

The Standards was adopted by the American Bar Association (ABA) House of Delegates in 1991 to provide guidance in the monitoring or evaluation of organizations providing free legal services in civil and criminal matters. The standards apply to all regardless of the type of services they provide, or criteria used in determining eligibility for the service.

The Standards recognize three forms of monitoring and evaluation: on-going informal interaction between funders and the legal aid providers; periodic review of reports and other information submitted by the service provider; and periodic on-site visits. The funders have the discretion of determining whether to review use of funds and the means to take.⁹⁰ Standard 1.4 provides that the reviewing agency should inform the legal aid provider of the purpose of the process like, performance evaluation to provide feedback

⁸⁹ Christoph Burchard, Matthias Jahn, Sarah Zink, Simonas Nikartas, Agnė Limantė, Laurynas Totoraitis, Anželika Banevičienė, Diana Jarmalė, 2018 Practice Standards for Legal Aid Providers *Developed in the framework of the project: Enhancing the Quality of Legal Aid: General Standards for Different Countries* pg.30, available at https://teise.org/wp-content/uploads/2019/09/Qual-Aid_Practice-Standards_EN.pdf accessed 23 April 2021

⁹⁰ Standards for the Monitoring and Evaluation of Providers of Legal Services for the Poor 1991, standard 1.3.

for improving services provided, or determination of programme's effectiveness and efficiency.

On-site monitoring and evaluation involve the analysis of the documents and records of the Legal Aid provider. Therefore, Standard 2.2 provides that the reviewing agency may access the necessary documents and records that are within the scope of its review such as to determine the use of funds by the legal aid providers. Since on-site evaluation involves visits to the legal aid providers, the reviewing agencies have a duty to give reasonable written notice of the intention that outlines the date, intended purpose, the scope of the visit and the criteria against which the service provider will be measured.⁹¹ A key provision of the Standards is on interviews with current or former clients. Standard 3.8 requires the reviewing agency to notify the legal aid provider of their intention to interview clients, who in turn must inform the clients who may be interviewed on their rights including their rights to not be interviewed or the right to have a legal representative present while the interview is being conducted.

The Standards recognize the necessity of a preliminary and final monitoring report where the reviewing agency has the responsibility of preparing a written report which sets out the findings, conclusions and recommendation. The report is then submitted to the legal aid providers to comment and submit corrections or objections to the findings, conclusions, and recommendations. Thereafter, the reviewing agency submits the final report of their findings, conclusions, recommendations and responses of the legal aid providers to the report.⁹² It is a useful tool for guiding funders and reviewing agencies as they conduct the monitoring and evaluation process. However, the Standards do not provide guidance on how to evaluate the approaches the reviewing agencies can take while planning and implementing the evaluation.⁹³

It focuses on monitoring and evaluation by reviewing agencies which are mostly done by funders of legal aid providers and has not provided guidance on self-evaluation by the legal aid providers themselves.⁹⁴ While NLAS has the mandate of monitoring and evaluation on accredited legal aid providers

⁹¹ Ibid, standard 3.1.

⁹² Ibid (n 89), standard 4.2.

⁹³ Gregg G. Van Ryzin and Marianne Engelman Lado, *Evaluating Systems for Delivering Legal Service to the Poor: Conceptual and Methodological Considerations*.

⁹⁴ Ibid.

in Kenya, the ABA Standards do not provide guidelines for a state organization to conduct monitoring and review that can work on all the various legal aid providers.

The Development Assistance Committee of the OECD

The OECD⁹⁵ DAC members developed guiding principles to be used by Legal Aid Agencies and countries while developing their own monitoring and evaluation frameworks.⁹⁶ The Principles set out the following criteria to be used while evaluating programmes:⁹⁷

Relevance— focuses on whether the programme is in line with the needs of the stakeholders –aid seekers, legal service providers, funders and government.

Coherence- examines whether the programme is compatible and complements other programmes in the country.

Effectiveness - whether the objectives of the programme were achieved.

Efficiency - assesses the extent, to which the programme achieved its objectives and results in the most cost-effective way and in a timely manner.

Impact- looks at the effect of the programme- positive or negative, direct or indirect, intended or not intended; and finally, its sustainability.

According to the DAC principles, evaluation process can only be successful if it is independent and impartial, transparent, useful to the stakeholders especially in decision making, and should involve the stakeholders throughout the evaluation process.⁹⁸ NLAS and other stakeholders should adopt the above principles while formulating its framework for Kenya's legal aid programme to be sustainable and relevant to the needs of indigent.

⁹⁵ Organisation for Economic Co-operation and Development (OECD) is an international body where governments of member states work together to develop policies and find solutions to social, economic and environmental challenges.

Available at <https://www.oecd.org/about/> accessed on 23 November 2020.

⁹⁶ OECD, *DAC Principles for Evaluation of Development Assistance*, 1991. The DAC adopted a new set of evaluation criteria on 10th December 2019. Available at <https://www.oecd.org/dac/evaluation/eval-criteria-global-consultation.htm> , accessed on 23 November 2020.

⁹⁷ OECD, *Evaluation Criteria* available at <https://www.oecd.org/dac/evaluation/daccriteriaforevaluatingdevelopmentassistance.htm> accessed on 23 November 2020.

⁹⁸ OECD- *DAC Principles for Evaluation of Development Assistance* (1991).

Egerton University Faculty of Law Legal Aid Project (FOLLAP)

FOLLAP was launched in November 2019 in collaboration with European Union and UNDP-Amkeni Wakenya to facilitate and enhance access to justice for the indigent in Nakuru County. To ensure that the aid seekers receive relevant and quality services, FOLLAP conducts monitoring and evaluation of its programmes quarterly in two stages, the Stakeholders and the students' level. At the stakeholders' stage, they are brought on board to give their opinion on areas of strengths and areas that need improvement by the project, whilst the students give insight to the project at the grassroots levels for better service delivery.

FOLLAP provides contacts to their clients for follow-up purposes. The clients provide feedback on whether they were satisfied with the services received and whether those who were referred to FOLLAP partners received the legal assistance sought.⁹⁹ Partners such as the National Legal Aid Service-Nakuru, Gender Institute-Egerton University and the Rift Valley Law Society have assisted FOLLAP in boosting its monitoring and evaluation plan through focus discussions. As stakeholders, they have provided diverse ideas on areas of improvement to develop a more impactful legal aid program for the marginalized within Nakuru County.

The Project keeps a file every client seeking legal assistance from the Clinics. The file contains the client's information and feedback from the client on service rendered. Additionally, the area Chief is asked to fill a form (form D) to certify information recorded in the form is correct at the end of each activity during outreach. The form takes into account the number of people reached, the nature of cases handled and the cases that need urgent attention. The records are reviewed quarterly to establish cases that have been finalised and those that are pending. These provide crucial information concerning the efficiency or otherwise of their operations by monitoring the number of activities conducted by the project and assessing whether their objectives were met. The records also provide stakeholders with evidence that resources are used efficiently by the Project.

Through monitoring and evaluation, FOLLAP can determine the challenges and future indications and adjust towards developing a better strategy to overcome the challenges and aid effective implementation of the project.

⁹⁹ FOLLAP, Free Legal Appointment, available at <https://follap.egerton.ac.ke/explore/appointment/> accessed on 12 March 2021.

Additionally, monitoring and evaluation has created an interactive system, for all stakeholders to be involved in decision making, making them part and parcel of FOLLAP bolstering its credibility in service delivery.

Application to the Kenyan monitoring and evaluation framework

From the discussion above, Kenya can enhance its monitoring and evaluation framework to be more relevant and applicable to NLAS and other relevant stakeholders. Some of the key features that Kenya can adopt include:

Record Keeping: The Legal Aid Act requires legal aid providers to keep client records.¹⁰⁰ This is a practice done by most legal aid providers in Kenya, for instance, FOLLAP provides contacts to their clients for follow-up purposes. Therefore, NLAS can use this practise as a monitoring and evaluation tool by developing a system that engages both legal aid seekers and legal aid providers to assess quality of the service assistance and determine if objectives met. In South African file assessment and data analysis is undertaken from a well-established computerized case management system. In Sierra Leone, the Board uses technology and internet for managing cases, delivering training, and assessing performance for every legal aid activity. NLAS can embrace technology and establish a computerized system where stakeholders can provide useful data on their operations for measuring their performance and quality of services offered. This is critical understanding the strengths and gaps in their operations and decision-making for better service provision.

Expanding the purpose of Monitoring and Evaluation: The discussions highlighted the purposes of monitoring and evaluation. While the Kenyan framework focuses on quality assurance, it has the opportunity of expanding this scope to the use of monitoring and evaluation for making financial decisions by the Legal Aid Fund as well as private funders of legal aid projects, measuring performance of legal services, and for ensuring compliance with the laws and regulations on legal aid, for example, on the qualifications of legal service providers among others. This can also be done by adopting the principles laid down by the OECD DAC members on the need for the framework to be useful to all the relevant stakeholders.

Engaging all the relevant stakeholders in the monitoring and evaluation process: Kenyan framework provides for monitoring and evaluation of legal aid providers and clients. However, key participants such as private funders

¹⁰⁰ Legal Aid Act, sec 65.

and judicial officers among others are not expressly provided for as in the case of Lithuania. In Lithuania, the State Guaranteed Legal Aid Service conducts annual surveys that include judges, prosecutors and police officers where the stakeholders are asked questions on their contact frequency with legal aid providers, how often the legal representatives postpone the hearing and how reasonable these requests are, and generally provide information concerning the quality of services provided by the legal aid providers.¹⁰¹ In order to engage all the participants, the framework should also define the forms of monitoring and evaluation that can be used such as surveys, focus groups and use of existing data.

Defining the responsibilities of the relevant participants; The existing framework does not provide the role each participant in the monitoring and evaluation plays. The Guidelines should include the role of each participant in the monitoring and evaluation process, for instance, reviewing agency or party in charge of monitoring and evaluation to notify legal aid providers of conducting a credible process and submitting a report that is relevant and useful to all stake holders; and the responsibility of legal aid providers to keep proper records of their activities as well as ensuring client confidentiality as they provide relevant information to the monitors.

Stating the frequency of monitoring and evaluation; Although the ABA guidelines do not provide for a specific number of times monitors can conduct evaluation, it requires them to conduct the process at reasonable intervals to acquire relevant data without causing disruptions to the operations of the legal aid providers. The Kenyan framework should define the frequency of monitoring such as quarterly or annually. For this to be effective, the framework should provide for the collaboration of stakeholders in the monitoring and evaluation process.

Access to the monitoring and evaluation report and Implementation of recommendations; The Kenyan framework does not provide for the accessibility of the monitoring and evaluation report to all relevant stakeholders nor the actions that the legal aid providers need to take once monitoring and evaluation is conducted—whether it is mandatory for the legal aid providers to adopt the recommendations given because of M & E conducted on their services. It is imperative that the guidelines be amended to include the persons or groups that can access the report by the monitors on the evaluation process as well as provide how they can adopt the

¹⁰¹ Christoph Burchard et al (n 88)

recommendations stated in the report. Although Kenya has an existing monitoring and evaluation framework, it lacks certain provisions that are essential in conducting an effective monitoring and evaluation process. Looking at existing practices internationally as well as nationally, it is possible to adopt and enhance the existing framework for it to not only be useful to NLAS but also other stakeholders in Kenya.

CONCLUSION

Monitoring and evaluation plays a critical role to legal aid service providers, clients, funders and government. This paper discussed M & E of legal aid programmes in Kenya by first identifying the role of M & E to various stakeholders such as clients, legal aid service providers, funders, and the government. It has demonstrated the importance of M & E of legal aid services in ensuring access to quality and efficient legal services, as assessing performance and prudent utilization of funds as well as decision making to stakeholders. A good M& E framework must identify conceptual and methodological issues both at planning and implementation stage as well as evaluation geared towards meeting the objectives of the project.

The paper appraised the Kenyan M & E framework by looking at the provisions of the Legal Aid Act as well as the Legal Aid (General) Regulations and Code of Conduct which addresses and places the M & E responsibility on the National Legal Aid Service. Through its appraisal, the framework is focused on quality assurance and requires organizations providing free legal services to have the requisite qualifications to be accredited to offer the services with limited guidelines on how to conduct M & E.

The paper identified best practices that Kenya can borrow from other jurisdictions to strengthen its quality assurance to the Service and other stakeholders. Such good practises are crucial for decision making and enhancing performance, efficiency and sustainability. Effective monitoring and evaluation framework is imperative for gauging the services.

