



Terms of Reference to undertake a study on Civil Justice Systems in Kenya.

About Kenya Human Rights Commission (KHRC)

The KHRC is a premier and flagship Non-Governmental Organization (NGO) in Africa with a mandate of enhancing human rights-centered governance at all levels; a vision of a society of free people and a mission to root human dignity, freedoms, and social justice in Kenya and beyond. In its operations, KHRC works with more than thirty Human Rights Networks (HURINETs) and other grassroots community organizations based in more than thirty counties in Kenya; partners with more than thirty national level state and non-state actors including various coalitions; and more than fifty sub-regional, regional, and international human rights organizations and networks. As a domestic transnational organization, KHRC has sustained impactful interventions on human rights and governance at the County and National levels as the core of its legitimacy and escalated to regional and international levels. To address the systemic violations and governance deficits, KHRC applies a human rights-based approach (HRBA) that is double-prolonged; targeting both the affected people and the violators involved. In its work, KHRC applies a combination of strategies including research, policy engagement, conscious awakening and/or creation, community organizing, coalition/movement building, advocacy, and public interest litigation to realize its objectives. The KHRC also sits at the National Council on the Administration of Justice (NCAJ) Council and helps inform policy at the national level.

About National Council on the Administration of Justice (NCAJ)

The NCAJ is established under Section 34 of the Judicial Service Act, 2011 as a high-level policymaking and coordinating body. Its mandate is to ensure a coordinated, efficient, effective, and consultative approach in the justice system's administration and reform.

The KHRC seeks to engage and collaborate with the NCAJ to undertake a study of the Civil Justice Sector including environmental justice and climate change, land, employment and labour relations sector, family law, succession laws, and the related justice issues. The study will provide a situational analysis of the justice sector and will identify priority civil justice reform areas for intervention and reforms to enhance the administration of justice in Kenya.

Background and statement of the problem

The Constitution under Article 159 provides that justice shall be done to all irrespective of status. To this end, there have been several reform initiatives spearheaded by the former and current chief justice's post the 2010 new constitutional dispensation. The NCAJ Strategic Plan 2021–2026 outlines priority programs on: Strengthening justice sector coordination mechanisms; Deepening criminal and civil justice reforms; Enhancing access to justice for vulnerable persons; and Facilitating grassroots engagements through Court Users Committees (CUCs) and other forums.

Despite these progressive and transformative initiatives, challenges on effective and efficient administration of justice exist. Specifically, and due to systemic policy, legal and institutional gaps in the civil justice arena, the NCAJ Standing Committee on Civil Justice Reforms, to which KHRC is a member, was officially gazetted to identify, review, and formulate reforms for the efficient functioning of the civil justice system in Kenya. The Committee mapped the broad reform areas, notably the nexus between formal and informal civil justice, digitization of the civil justice sector, enhancing Administration of Justice in Kenya Annual Report, 2022 - 2023 efficiency in land justice, succession matters, and commercial and labor-related disputes. The Committee also identified the expeditious disposal of civil cases as a priority.¹

Access to civil justice remains elusive to many Kenyans especially the most disadvantaged population. It is on this basis that we are commissioning an assessment of the civil justice system in Kenya, which targets both the judiciary and court users; and focusing on the issues highlighted in the objectives and Terms of Reference below. This is a build up to the experiences of the audit of the criminal justice system commissioned by the NCAJ in partnership with Legal Resource Foundation and Results Oriented Development Initiative Kenya in 2015. This is in fulfillment of its mandate to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system pursuant to section 34 of the Judicial Service Act. This was the first time in history that the Criminal Justice System has been comprehensively audited, issues systematically documented and published.²

1. Objectives

The overarching objective of the study is to **enhance efficiency in the administration of and access to Civil Justice in Kenya**. Specifically, the study aims at:

- a. Assessing the extent to which the existing frameworks provide a mechanism for effective administration of Civil Justice in Kenya mainly on the following issues: environment, land, employment and labour relations sector, family law, succession laws.
- b. Generating a comprehensive situational analysis of the Civil Justice System.
- c. Identifying gaps and proposing priority legal, policy and administrative reform areas.

2. Specific Objectives/ Terms of Reference for the Consultant (s)

¹ Administration of Justice in Kenya Report 2022-2023

² National Council on the Administration of Justice, Criminal Justice System in Kenya; An Audit (2015)

The following are the tasks and expected outputs of the consultant(s) to develop the Civil Justice System Audit Report and Operational Plan.

The Consultant (s) duties and responsibilities will include to:

1. Conduct a comprehensive operational analysis of the entire Civil Justice System as currently set up and identify contextual and policy gaps taking into account the scope, structure, access, utility, and identify key impediments to the efficient administration of Civil Justice in Kenya.
2. Provide in-depth perspectives on the linkages between human rights principles and obligations, and the administration of civil justice.
3. Critically assess Kenya's Civil Justice System with specific chapters focusing on environment, land, employment and labour relations sector, family law, succession laws and establish any possible incoherence and advise on its adequacy and effectiveness in the administration of justice.
4. Provide experiences of women, youth, guardians, people living with disabilities, and indigenous communities amongst other marginalised groups on access to civil justice.
5. Provide a comparative analysis of civil justice experiences within the national courts in Nairobi and devolved ones in select counties.
6. Guided by the findings, develop a Civil Justice System Assessment Report with the relevant legal, policy, and institutional recommendations.
7. Present the draft Civil Justice System Assessment Report for review during stakeholders' meetings.
8. Incorporate the feedback consolidated from the stakeholders' meetings and develop the final drafts of the Civil Justice System Assessment Report.
9. Finalize and present the Civil Justice System Audit Report and KHRC in a ready-to-print format.

3.Deliverables

The Consultant (s) will deliver the following:

- a. An inception report detailing the understanding of the assignment, conceptual framework and methodology that will be used to undertake the study, milestones and timelines, work plan indicating the phases and their key deliverables and milestones, proposed interview list of key stakeholders and the tools for interviews and discussions, risks, and mitigation measures.
- b. An analysis report of Civil Justice System with clear proposals/recommendations to address identified gaps.
- c. A compilation of the information sources relied upon in the development of the Civil Justice System Assessment Report.
- d. Final drafts of the Civil Justice System Assessment Report developed.

- e. A final report detailing the accomplished work, processes, challenges, and lessons learned.
- f. A policy brief to support and inform Civil Justice reform advocacy work by KHRC and NCAJ.

4.Duration

The development period should be within 90 days between the months of March to June 2024 as will be agreed during the inception meeting between KHRC, NCAJ and the consultant(s).

5.Competencies required for the consultancy

1. At least a master's degree in law, Social Science, Development Studies, or any other relevant field.
2. Demonstrable experience of not less than 7 years in the Civil Justice Sector.
3. Applicant(s) must have a strong understanding of research methodologies and be able to communicate complex concepts clearly and concisely.
4. Demonstrated understanding of constitutional, legal, regulatory, institutional and policy framework on Civil Justice.
5. Demonstrated professionalism, competence, integrity, ability to work independently with minimum supervision, adherence to set timelines, and availability during the research period.

How to apply

Bids should include up-to-date CVs of the consultant and assistants (including at least 3 recent professional organizations that have contracted the individual/company), a sample report (preferably of similar nature), a cover letter expressing interest and suitability for this assignment, a proposal-outlining methodology and work plan and financial proposal detailing daily costs per activity (Max.10 pages). Interested consultant(s) are requested to submit their bid documents by **Wednesday, March 27th, 2024**, to consultancy@khrc.or.ke quoting the title of the assignment.