

REMARKS BY THE PRESIDENT OF THE LAW SOCIETY OF KENYA: MR. ISAAC E.N OKERO

THEME: *'IMPROVING ACCESS TO JUSTICE THROUGH ALTERNATIVE DISPUTE RESOLUTION'*

OFFICIAL OPENING OF THE LAW SOCIETY OF KENYA 2016 LEGAL AWARENESS WEEK (26th -30th September, 2016)

The Chief Guest: Hon. Justice Mohammed Ibrahim,
Acting President, Supreme Court of Kenya

The Legal Advisor U.S Department Of Justice Mr. Narus William

Senior Counsels Present

Invited Guests

My Fellow Learned Colleagues; Ladies and Gentlemen

Welcome to the law society of Kenya Legal Awareness Week 2016(26th September – 30th September).

The Law society of Kenya is extremely pleased to observe the legal awareness week 2016, a national event which will take place as today up to Friday 30th Sept. The objective of the Legal Awareness Week is to promote legal literacy and awareness to members of the public as an initiative of improving access to justice.

The Law Society of Kenya members numbering in excess of 8,000 will offer free legal advice to the public on various legal issues during this occasion. The LSK branches in all parts of the Country will participate in the exercise. During the week Lawyers

throughout the Country will be available at the various High Court stations to offer free legal advice to the public on matters of Land, Succession and Inheritance, Human Rights Violations, family Law, Employment among others.

This year the LSK will extend its services to the Prisons where Lawyers will offer legal advice to remandees and convicts in various Prisons in Nairobi and other parts of the Country. The areas to be covered include criminal law, self-representation Constitutional provisions and procedure of plea bargaining among other legal provisions of the law.

“Improving Access to Justice through Alternative Dispute Resolution.” Is our Legal Awareness theme for this year; the theme gives us an opportunity to reflect on the challenges facing the adversarial system of dispute resolution. Article 48 of the

Constitution of Kenya, 2010 mandates the state to ensure access to justice for all persons, irrespective of this, the problem that bedevils the justice sector in Kenya persists. These problems, which vary in depth and substance, have a common origin, overreliance on litigation as a conflict resolution mechanism. Although not inherently problematic, litigation is handicapped with procedural problems such as backlog of cases and undue technicalities. The Constitution calls on the use of ADR mechanisms to enable realization of the right to access to justice.

The LSK recognizes that the formal mechanism for conflict resolution such as litigation have not always been very effective in managing conflicts; they have been inaccessible by the majority poor, characterized by complex procedures that are out of reach to many, very costly and surrounded by uncertainties and delays. It is for this reason that

the Society choose to promote the use of Alternative Dispute Resolution Mechanism during this year's Legal Awareness Week.

The Law Society of Kenya will continue to play its role of protecting and assisting the public in Kenya in matters relating to or ancillary or incidental to the law, through similar initiatives. The Society is in the process of establishing a fully-fledged Human Rights and Public Interest directorate which shall be responsible of the protection of human rights and identification of public interest matters for legislation and litigation.

The Society has established various committees, one of which is Public Interest, Legal Aid and Human Right Committee. The Committee is mandated to promote the administration of justice and rule of law, to propose legal reforms on matters relating

to the protection of human rights and legal aid in Kenya and to mainstream the delivery of legal aid services within the membership of the Law Society of Kenya.

Through its Alternative Dispute Resolution Mechanism Committee the LSK will partner with the Judiciary and other actors in the Justice System to promote the use of Alternative Dispute Resolution mechanisms and processes in the administration of justice in Kenya.

We applaud the Judiciary for undertaking reforms aimed at improving access to efficient, effective, expeditious and affordable Justice as envisaged under Article 159 of the Constitution. The establishment of a Court- Annexed mediation program currently running on pilot basis in the Commercial and Family Divisions of the High Court at Milimani Law Courts, Nairobi is one of the successful initiatives. A successful Court-

Annexed mediation program will not only afford Kenyans a relatively affordable and less acrimonious forum for solving disputes pitting the disputants, but also, ease the backlog of cases in our Courts. The establishment and enactment of the Mediation Accreditation Committee and the Civil Procedure Act (Mediation Pilot Project) Rules, 2015 respectively is testament of the Judiciary's resolve to give effect to the Provisions of the Constitution. We call upon the Judiciary to roll out the Court annexed mediations throughout the country.

The role of *probono* services in access to justice cannot be overemphasized;

“We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice”- Associate U.S. Supreme Court Justice Sonia Sotomayor (November 2002)

The Law Society of Kenya continues to encourage its member to offer *probono* services to those who cannot afford to pay for legal fees. The Society purposes to strengthen its *probono* programme (which is currently run by the National Office) by working together with the 8 LSK Branches. Member of the LSK are reminded of the obligation to observe high standards of professionalism in all matters including matters handled on *probono*.

The Retired Hon. Chief Justice, Dr. Willy Mutunga on the 29th January 2016 vide gazette notice no 370 gave practice directions relating to pauper brief scheme and *pro bono* services to apply in capital case and cases of children in conflict with the law in the Magistrates Courts. The directions took effect as from 1st July 2016. Although the directions provide for enhanced fees payable to advocates to 30,000/= there is need

to have the same reviewed so as to ensure advocates are adequately compensated for efficiency and effective representation.

In Conclusion and most importantly, in order to facilitate access to justice and social justice, the Law Society of Kenya calls upon the Government to urgently operationalization the National Legal Aid Service (established under the Legal Aid Act no 6 of 2016) through the gazettment of the full Board, recruitment of the necessary staff and provision of the necessary funding. The government needs to provide adequate funding to legal aid to correspond with the vision 20130 flagship status of legal aid.

"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." – U.S. Supreme Court Justice Hugo Black (1964).

Allow me to convey my sincere gratitude to all those who have made this year's LSK Awareness Week a success through their valued contributions and participation;

- Fida(Kenya)
- East African Court of Justice
- Mediation Training Institute
- Interest Rates Advisory Committee
- International

- Kituo Cha Sheria
- The CRADLE
- Witness Protection Agency
- Centre For Rights Education Awareness (CREAW)
- Chartered Institute of Arbitrators
- LSK Sacco Limited
- Kenya Copyright Board
- Independent Medico Legal Unit (IMLU)
- Kenya Law
- National Legal Aid & Awareness Programme
- Kenya Industrial Property Institute
- Amnesty International
- Kenya National Commission On Human Rights
- Advocates Complaints Commission

Thank you very much and I wish you a fruitful engagement during this week and call upon Kenyans to visit the various centers throughout the Country and take advantage of the services to be offered throughout the week.

We thank our development partners and specifically the United States of America Embassy for partnering with us and making the event possible.

We welcome all the members of the public to take advantage of the free services to be offered throughout the week.

I now call upon the Acting President of the Supreme Court **Hon. Justice Mohammed Ibrahim** to give his remarks and to officially launch the Legal Aid Week.

Mr. Isaac E.N. Okero
President of the Law Society of Kenya