

# **Access to Justice and Legal Aid in East Africa**

**A comparison of the legal aid schemes used in  
the region and the level of cooperation and  
coordination between the various actors**

*A report by the Danish Institute for Human Rights,  
based on a cooperation with the East Africa Law Society*

**December 2011**



## **Access to Justice and Legal Aid in East Africa**

### **A comparison of the legal aid schemes used in the region and the level of cooperation and coordination between the various actors**

© The Danish Institute for Human Rights, 2011

The Danish Institute for Human Rights (DIHR) holds the copyright in this report. Permission to reprint all or parts of this report will be granted subject to the written approval of DIHR.

Report conducted by Dr. Thomas Obel Hansen (independent consultant) on behalf of DIHR.

With contributions from and review by Karol Limondin, DIHR Representative, Justice Department and Fergus Kerrigan, Head of Access to Justice Programme, Justice Department, DIHR.

The content of this report is the sole responsibility of DIHR and does not necessarily reflect the views of donors and organisations that contributed to this initiative.

This report was made possible with financial support from the Danish Ministry of Foreign Affairs (DANIDA).

#### Contacts:

The Danish Institute for Human Rights

Karol Limondin, DIHR Representative, Justice Department

Email: [kli@humanrights.dk](mailto:kli@humanrights.dk)

Fergus Kerrigan, Head of Access to Justice Programme, Justice Department

Email: [fke@humanrights.dk](mailto:fke@humanrights.dk)

[www.humanrights.dk](http://www.humanrights.dk)

The East Africa Law Society

Tito Byenkya, Chief Executive Officer

Email: [ceo@ealawsociety.org](mailto:ceo@ealawsociety.org)

[www.ealawsociety.org](http://www.ealawsociety.org)

## **Executive summary**

This report, which has been carried out by the Danish Institute for Human Rights, based on a cooperation with the East Africa Law Society, presents a comparative analysis of access to justice and legal aid in Kenya, Uganda and Tanzania. The study is part of the follow-up process to the December 2008 Kigali Conference on Access to Justice and Legal Aid in Africa, organised by the Danish Institute for Human Rights, the Rwandan Legal Aid Forum and the East Africa Law Society, which sought to address the challenges within the African context of achieving the goals of the Kyiv Declaration on the Right to Legal Aid. The present report should also be understood in light of other important initiatives undertaken in the field of access to justice and legal aid, including the 2004 Lilongwe Conference and Declaration organised by Penal Reform International.

The main purpose of this study is to identify trends in the provision of legal aid in Kenya, Uganda and Tanzania, including a description of the main legal aid practices used in the region, and an identification and description of linkages between the various legal aid providers. This provides a platform for offering recommendations for the stakeholders in legal aid in the region. In this way, the study also provides a planning base for advocacy strategies for improved access to justice in the countries covered, in particular with regard to strengthening cooperation and coordination between the various legal aid providers.

In order to achieve these purposes, the report uses a comparative approach, where data concerning the main legal aid providers in East Africa is analysed. This includes an examination of questionnaires completed by key stakeholders in the provision of legal aid in the region. In total, 10 such questionnaires have been completed between June 2010 and April 2011, covering state legal aid in Kenya and Uganda; legal aid provided by the legal profession in Kenya, Uganda, Tanzania mainland and Zanzibar; and legal aid provided by paralegals in Kenya, Uganda, Tanzania mainland and Zanzibar. The 10 informants were selected according to their experience, knowledge and overview of the set of legal aid actors to be covered as well as their ability to speak with legitimacy on behalf of the actors they were dealing with.

This data is analysed and compared, in order to extract information on the key legal aid models in East Africa and the level and modes of cooperation and coordination among different legal aid providers. Furthermore, the report analyses a number of other documents relevant for understanding these models of legal aid and linkages between different actors, including international instruments, constitutions, national legislation on legal aid and conference reports covering these topics.

The specific topics covered in the report include an introduction to the legal aid models used in Kenya, Uganda and Tanzania; a description of the types of legal aid provided by various actors in the 3 countries, including an assessment of the forms of legal services offered and the areas of law covered by these services; an examination of how accessible these legal aid schemes are, including a discussion of such issues as eligibility criteria, self-payment by the beneficiaries of legal aid, the geographical coverage of the different legal aid schemes and the use of information and outreach strategies; an analysis of measures, such as training seminars, codes of conduct and

monitoring mechanisms, used to ensure quality legal aid; and an assessment of how the various legal aid providers perceive each other, especially with regard to their ability and willingness to cooperate with other legal aid providers.

As such, the report finds that the state, the legal profession, NGOs and paralegals are all active in the field of legal aid in all of the countries covered. Despite some general trends, the roles played by these actors and the interplay between them however vary significantly across the region.

Whereas the report identifies a number of modes of cooperation between the various legal aid providers in the region, the level of regulation and coordination of legal aid services generally remains low.

The low level of regulation and coordination is most notably evident from the fact that none of the countries have yet adopted and implemented a national legal aid policy and/or bill. However, such policies are currently being drafted in Kenya and Uganda under the auspices of state bodies, but in Tanzania no efforts have yet been made to establish a general policy framework for the provision of legal aid.

Furthermore, whereas state bodies in Kenya and Uganda are directly involved in the provision of legal aid – though usually only through projects of limited scope that draw on the expertise of other legal aid providers, including the legal profession and NGOs and paralegals – the level of direct state involvement in the provision of legal aid remains more limited in Tanzania mainland and Zanzibar. That being said, all of the countries covered in this report utilise a state brief system in the most serious criminal cases, where the defendant is offered legal assistance and representation free of charge. These state brief systems, which are based on the state calling upon private lawyers and paying their fees, are however often criticised for being poorly managed and funded, causing problems for the quality of the legal services provided.

Besides being involved in legal aid through the state brief systems, the legal profession plays a number of other roles for access to justice in the 3 countries covered in this report. One important issue discussed in this study concerns the pro bono work offered by lawyers. Though there is an obligation in all 3 countries for lawyers to offer legal aid free of charge for certain groups and some other similarities, the provision of pro bono work is not yet systematic. There are also some major differences, especially with regard to the areas of law covered by pro bono services and the institutional set-up varies significantly between the countries. Because lawyers usually concentrate in urban centres, their pro bono services are largely inaccessible for the rural population across the region.

While in many cases other legal aid providers, especially those connected to NGOs and paralegal networks, perceive lawyers' willingness to cooperate as a problem for strengthening access to justice, the report also finds that the law societies of East Africa have put in place initiatives that strengthen the accessibility of legal aid services as well as they enhance the level of cooperation between the various actors. One important initiative that is used across the region concerns the organisation of national legal aid or awareness days, where lawyers together with other legal aid providers offer on-the-spot legal aid and in other ways promote access to justice.

NGOs and paralegals play important roles for access to justice across the region. As opposed to the legal aid initiatives managed by state bodies and the legal profession, the legal aid services offered by NGOs and paralegals are usually much more accessible for the poor and vulnerable in rural areas. The types of legal aid offered by these actors, however, tend to vary considerably from the services offered by other legal aid providers. For example, due to the fact that they are mostly prohibited from offering this form of legal aid, paralegals are only rarely involved in legal representation. On the other hand, the report finds that NGOs and paralegals are active in providing other forms of legal aid, including for example legal assistance, legal awareness raising, legal training and advocacy work.

As such, there is presently a limited regulation and coordination of the legal aid work undertaken by NGOs and paralegals. While this may partly be remedied with the development of a national legal aid policy and/or bill in some of the countries, the limited recognition of the legal aid work undertaken by these actors continues to pose a challenge for the efficiency and quality of the services offered. Notwithstanding these challenges, NGOs and paralegal networks have in many cases made efforts to develop common standards and in other ways coordinate the legal aid work provided by these actors. In Kenya, for example the Paralegal Support Network has developed a common curriculum used for training paralegals in the country, an effort that has proved fruitful also for legal aid providers in other countries.

The report concludes that there are some major challenges for access to justice in the region, many of which have to do with the limited involvement of state bodies in legal aid across the region. Analysing international standards relevant for the provision of legal aid, the report concludes that the governments in the region do not fully fulfil their responsibility to ensure that the poor and vulnerable are provided with accessible and quality legal aid. Based on these findings the study offers a series of recommendations for the various stakeholders in legal aid.

## **Table of contents**

Executive summary .....	3
List of tables and figures.....	9
List of abbreviations .....	10
Acknowledgements.....	12
1. Introduction .....	13
A. Background of report.....	13
B. Objectives of the report.....	14
C. Methodology .....	14
D. Structure of the report .....	15
E. Definitions .....	16
2. International regulation and standards on legal aid .....	18
A. The Universal Declaration of Human Rights .....	19
B. The International Covenant on Civil and Political Rights .....	19
C. The Convention on the Rights of the Child .....	21
D. Regional human rights treaties .....	22
E. Soft law instruments and international declarations .....	23
1. The Dakar Declaration.....	23
2. The Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa.....	23
3. The Lilongwe Declaration .....	24
4. The Kyiv Declaration .....	26
3. Background to the East African countries .....	26
A. Kenya.....	26
1. Brief country introduction .....	26
2. The system of governance and key actors in the legal system .....	27
3. The functioning of the legal system and the general access to justice situation .....	28
B. Uganda .....	30
1. Brief country introduction .....	30
2. The system of governance and key actors in the legal system .....	31

3. The functioning of the legal system and the general access to justice situation	32
.....	.....
C. Tanzania	34
1. Brief country introduction	34
2. The system of governance and key actors in the legal system	35
3. The functioning of the legal system and the general access to justice situation	36
.....	.....
4. Access to justice and legal aid in East Africa: Main legal aid practices in the region and cooperation and coordination between different actors	38
A. The legal aid models in East Africa	39
1. Introduction: Different ways of analysing legal aid models	39
2. An overview of the legal aid models used in Kenya, Uganda and Tanzania	43
3. An overall comparison of the legal aid models in East Africa	52
B. The types of legal aid provided in East Africa	57
1. Introduction: Analysing the types of legal aid	57
2. Legal aid for individuals with particular legal problems	59
3. Legal aid for the general public	76
4. Some final remarks on the types of legal aid in East Africa and linkages between the various legal aid providers in this regard	81
C. The accessibility of legal aid in East Africa	82
1. Introduction: Examining accessibility	82
2. Eligibility criteria and requirements of self-payment	83
3. Geographical coverage	88
4. Information and outreach strategies	90
5. Some final remarks concerning accessibility and linkages between the various legal aid providers in this regard	93
D. Use of measures to ensure quality legal aid	94
1. Introduction: Analysing measures that aim at ensuring the quality of legal aid services	94
2. The level of training offered legal aid providers	94
3. Other mechanisms used to ensure quality in the provision of legal aid	103
4. Monitoring mechanisms	106
5. Examples of impact	108

6. Some final remarks concerning measures utilised to ensure quality legal aid and linkages between the various legal aid providers in this regard .....	114
E. The legal aid providers’ perceptions of each other .....	115
1. Introduction: Why analyse legal aid providers’ perceptions of each other ...	115
2. Perceptions of state actors’ commitment to offer quality legal aid and willingness to cooperate with other legal aid providers .....	116
3. Perceptions of the legal professions’ commitment to offer quality legal aid and willingness to cooperate with other legal aid providers .....	118
4. Perceptions of paralegals’ commitment to offer quality legal aid and willingness to cooperate with other legal aid providers .....	120
5. Some final remarks concerning legal aid providers’ perceptions of each other and the implications for cooperation and coordination of their work .....	123
5. Conclusions and recommendations .....	129
6. Appendixes .....	141
Appendix 1: Questionnaires used for the report .....	141
Appendix 2: The Lilongwe Declaration on Accessing Legal Aid on the Criminal Justice System in Africa .....	162
Appendix 3: Resolution 100(XXX) 06 of the African Commission on Human and People’s Rights Resolution on the Adoption of the Lilongwe Declaration	171
Appendix 4: The Kyiv Declaration on the Right to Legal Aid.....	173



### **List of tables and figures**

Fact box 1: Key state legal aid initiatives concerning legal aid in East Africa .....	51
Fact box 2: Comparing the state brief systems in East Africa.....	54
Fact box 3: Number of lawyers and paralegals in East African countries and their involvement in legal aid .....	56
Figure 1: Number of lawyers and paralegals in East Africa.....	57
Table 1: The areas of law covered by NALEAP .....	60
Figure 2: The areas of law covered by NALEAP.....	61
Table 2: Cases registered and concluded by the Uganda Law Council (2007-10).....	62
Table 3: Total number of legal aid cases handled by members of the law societies in East Africa and distribution by main area of law .....	67
Fact box 4: Comparing the legal profession’s pro bono work in East Africa .....	69
Fact box 5: Key paralegal networks, organisations and coordination bodies in East Africa .....	73
Fact box 6: Comparing the legal aid and awareness days organised by the legal professions in East Africa.....	79
Table 4: Main features of legal aid in East Africa and linkages between the various legal aid providers .....	125

### List of abbreviations

- ADR: Alternative dispute resolution
- AHURIO: Association of Human Rights Organisations (Uganda)
- AJISO: Action for Justice in Society (Tanzania)
- AWLAHURIC: Arusha Women Legal Aid and Human Rights Centre (Tanzania)
- CAT: Court of Appeal of Tanzania
- CBO: Community-based organisation
- CCBRT: Comprehensive Community Based Rehabilitation in Tanzania
- CCM: Chama Cha Mapinduzi-CCM, Revolutionary Party (Tanzania)
- CECLARD: Centre for Community Law and Rural Development (Kenya)
- CHRGG: Commission for Human Rights and Good Governance (Tanzania)
- CIPK: Mombasa Multiethnic Council of Imams and Preachers of Kenya
- CJPC: Catholic Justice and Peace Commission (Kenya)
- CLAN: Children’s Legal Action Network (Kenya)
- CMA: Commission for Meditation and Arbitration (Tanzania)
- COVAW: Coalition on Violence Against Women
- DIHR: Danish Institute for Human Rights
- DOLASED: Disabled Organisation for Legal Affairs and Social Economic Development (Tanzania)
- EALS: East Africa Law Society
- ECHR: European Court of Human Rights
- ECJP: Ecumenical Centre for Justice and Peace
- ECWD: Education Centre for Women in Democracy (Kenya)
- EU: European Union
- FAPAD: Facilitation for Peace and Development (Uganda)
- FDNC: Foundation for Development of Needy Communities (Uganda)
- FHRI: Foundation for Human Rights Initiative (Uganda)
- FIDA: International Federation of Women Lawyers
- GDP: Gross Domestic Product
- GJLOS: Governance, Justice, Law and Order Reform Sector (Kenya)
- HURIFO: Human Rights Focus (Uganda)
- ICC: International Criminal Court
- ICCPR: The International Covenant on Civil and Political Rights
- ICJ: International Commission of Jurists
- JLOS: Justice, Law and Order Sector (Uganda)
- KNHREC: Kenya National Human Rights and Equality Commission
- KPA: Kenya Paralegal Association
- KPS: Kenya Paralegal Society
- KWIECO: Kilimanjaro Women Information Exchange and Consultancy Organisation (Tanzania)
- LAF: Rwandan Legal Aid Forum
- LASPNET: Legal Aid Service Providers Network (Uganda)
- LHRC: Legal and Human Rights Centre (Tanzania)
- LIWOPAC: Lindi Women Paralegal Aid Centre (Tanzania)
- LRA: Lord’s Resistance Army (Uganda)

- LRF: Legal Resources Foundation Trust (Kenya)
- LSRP: Legal Sector Reform Programme (Tanzania)
- MHRDN: MIFUMI Human Rights Development Network (Uganda)
- MPCCL: Mtwara Paralegal Centre Company Limited (Tanzania)
- MPL: Morogoro Paralegal Centre (Tanzania)
- MTS: Medium Term Strategy (Tanzania)
- MUHURI: Muslims for Human Rights (Kenya)
- MWAPACE: Mwanza Paralegal Centre (Tanzania)
- NALEAP: National Legal Aid and Awareness Programme (Kenya)
- NGO: Non-governmental organisation (also referred to as civil society organisation)
- NHRI: National Human Rights Institution
- NOLA: National Organisation for Legal Assistance (Tanzania)
- NRA: National Resistance Army (Uganda)
- PAS: Paralegal Advisory Services (Uganda)
- PASUNE: Paralegal Support Network (Kenya)
- PEDS: People's Empowerment and Development Services (Kenya)
- SODANN: Soroti District Associations and NGOs Network (Uganda)
- SWOLO: The Service for Women, Orphaned and the Little One Organisation (Tanzania)
- TANLAP: Tanzania Network of Legal Aid Providers
- TANU: Tanganyika African National Union
- TAPANET: Tanzania Paralegals Network
- TAWLA: Tanzania Women Lawyers Association
- TLS: Tanganyika Law Society
- UCLF: Uganda Christian Lawyers Fraternity
- UDHR: The Universal Declaration of Human Rights
- UHRC: Uganda Human Rights Commission
- ULC: Uganda Law Council
- ULS: Uganda Law Society
- UNDP: United Nations Development Programme
- UPS: Uganda Paralegals Society
- USD: United States Dollar
- WiLDAF: Women in Law and Development in Africa (Tanzania)
- WLAC: Women's Legal Aid Centre (Tanzania)
- ZAFELA: Zanzibar Female Lawyers Association
- ZLS: Zanzibar Law Society
- ZLSC: Zanzibar Legal Service Centre

## Acknowledgements

This comparative study on access to justice and legal aid in Africa was made possible by the contributions from the following resource persons and institutions that provided the baseline information for this research:

### Kenya

- Anne Amadi, (formerly) National Coordinator, National Legal Aid and Awareness Programme (NALEAP), Ministry of Justice
- Apollo Mboya, Chief Executive Officer, Law Society of Kenya (LSK)
- Jedidah Wakonyo Waruhiu, Executive Director, Legal Resources Foundation (LRF)

### Tanzania (mainland and Zanzibar)

- Emilia Sawingwa, Chief Executive Officer, Tanganyika Law Society (TLS)
- J. Clement Mashamba, Executive Director, National Organization for Legal Assistance (NOLA)
- Jamila M. Juma, Zanzibar Female Lawyers Association (ZAFELA)

### Uganda:

- Hilda Thopacu, State Attorney, Department of Law Council, Ministry of Justice and Constitutional Affairs
- Sylvia Namubiru Mukasa, Executive Director, Uganda Law Society (ULS)
- Richard Nsumba Muganzi, National Coordinator, Legal Aid Service Providers Network (LASPNET)

We also acknowledge the contributions of the following organisations that provided additional information to the research:

- Kenya: Federation of Women Lawyers – Kenya (FIDA Kenya), Kituo cha Sheria and the International Commission of Jurists – Kenyan Section (ICJ Kenya)
- Tanzania (mainland and Zanzibar): Legal and Human Rights Centre (LHRC), Tanzania Women Lawyers Association (TAWLA), Women’s Legal Aid Centre (WLAC), Zanzibar Law Society (ZLS) and Zanzibar Legal Services Centre (ZLSC)
- Uganda: Foundation for Human Rights Initiative (FHRI)

We wish to thank the East Africa Law Society for its cooperation and support throughout the process.

This study was made possible with financial support from the Danish Ministry of Foreign Affairs (DANIDA).

## **1. Introduction**

### **A. Background of report**

In March 2007, the Danish Institute for Human Rights (DIHR) and Kherson Regional Charity and Health Foundation and Redress organised a legal aid conference in Kyiv, Ukraine, which was attended by almost 120 delegates from 25 countries. Its main purpose was to bring legal aid providers from Ukraine together with those from countries in Africa, Asia and Eastern Europe to discuss how to develop legal aid programmes that help to promote and protect human rights. The Kyiv Declaration on the Right to Legal Aid was adopted by the participants at the conference's conclusion.<sup>1</sup> The conference and the Declaration followed on previous initiatives by others in this field in which DIHR had participated, including the 2004 Lilongwe Conference and Declaration organised by Penal Reform International.<sup>2</sup>

In December 2008, DIHR, the Rwandan Legal Aid Forum (LAF) and the East Africa Law Society (EALS) organised a Conference on Access to Justice and Legal Aid in Africa in Kigali, Rwanda, which sought to address the challenges within the African context of achieving the goals of the Kyiv Declaration. The conference was attended by a large number of African and international NGOs, experts, representatives of government agencies and donor organisations.<sup>3</sup>

As part of the follow-up to this conference it was agreed that practice oriented studies should be carried out within a number of areas considered crucial with respect to access to justice and legal aid in Africa. These areas were:

- 1) Paralegalism;
- 2) Pro bono and the role of practicing lawyers;
- 3) State funded initiatives/State legal aid boards;
- 4) Public interest litigation; and
- 5) Informal justice systems.

In 2009, it was decided to initiate studies on the 3 first aspects in the East African region, with a focus on Kenya, Uganda and Tanzania (mainland and Zanzibar).<sup>4</sup> The purpose of the studies is to provide a planning base for advocacy strategies for improved access to justice through identification of existing and potential linkages among legal aid providers in the East African Region with a view to strengthening their cooperation and coordination. This can then be used for advocacy vis-à-vis state actors with respect to the regulatory framework, donors with respect to funding, and other partners, such as centres of higher learning, National Human Rights Institutions

<sup>1</sup> The Kyiv Declaration on the Right to Legal Aid can be found in its full length in the appendixes.

<sup>2</sup> The Lilongwe Declaration can be found in its full length in the appendixes.

<sup>3</sup> The conference report is available at [http://www.humanrights.dk/files/Importererede%20filer/hr/pdf/Dokumenter%20til%20Nyhedsarkiv/Kigali\\_Legal\\_Aid\\_Conf\\_Africa\\_2008\\_Report.pdf](http://www.humanrights.dk/files/Importererede%20filer/hr/pdf/Dokumenter%20til%20Nyhedsarkiv/Kigali_Legal_Aid_Conf_Africa_2008_Report.pdf).

<sup>4</sup> In respect of the fifth aspect, Informal Justice Systems, the participants referred to ongoing studies by other people and organisations, including the ongoing global study of informal justice systems carried out by DIHR on behalf of UNDP, UNICEF and UNIFEM.

(NHRIs) and others with technical expertise, in relation to research, training and monitoring.

## **B. Objectives of the report**

The purpose of the present report is to:

- 1) Identify trends in access to justice and legal aid provision in East Africa, including a description of the main legal aid practices used in the region;
- 2) Identify and describe linkages between the different legal aid providers in the 3 countries covered in the report; and
- 3) Provide recommendations for the stakeholders in legal aid in the region, especially concerning coordination and cooperation between these actors.

## **C. Methodology**

In order to achieve these purposes, the report analyses data concerning legal aid providers in East Africa. This includes an analysis of questionnaires completed by key stakeholders in the provision of legal aid in the region.<sup>5</sup>

In total, 10 such questionnaires have been completed between June 2010 and April 2011, covering state legal aid in Kenya and Uganda; legal aid provided by the legal profession in Kenya, Uganda, Tanzania mainland and Zanzibar; and legal aid provided by paralegals in Kenya, Uganda, Tanzania mainland and Zanzibar. The 10 informants were selected according to their experience, knowledge and overview of the set of legal aid actors to be covered as well as their ability to speak with legitimacy on behalf of the actors they were dealing with. They are all actively involved in the development of legal aid service provision in their respective countries.

That no questionnaires have been obtained on state-run legal aid schemes in Tanzania reflects the state's general lack of direct involvement in the provision of legal aid in Tanzania (mainland as well as Zanzibar). Furthermore, the information obtained on Zanzibar is rather limited, which means that in many cases it is not possible to include a discussion of Zanzibar in the comparative analysis.

The questionnaires cover a variety of topics relevant for the conclusion of this report, including:

- A description of the legal system in the country and the general access to justice situation
- A description of the legal regulation and policies relevant for legal aid and access to justice
- A description of how legal aid mechanisms are organised and monitored
- Information on geographical coverage, the number of individuals involved in legal aid and other statistical information
- Information on the type of legal aid provided and the areas of law dealt with
- Information on eligibility criteria and requirements of self-payment

<sup>5</sup> A copy of the questionnaires used can be found in the Appendixes.

- An identification of target groups of the legal aid schemes
- A description of the training provided to legal aid providers, including training offered by other legal aid providers
- Information concerning measures aimed at making legal aid schemes accessible, such as the use of information and outreach strategies
- A description of documentation strategies
- Examples of impact of legal aid
- Information concerning the funding of legal aid mechanisms
- A description of formal and informal linkages between different legal aid providers, including the level of cooperation and coordination
- General conceptions of strengths and challenges to the provision of legal aid

This data is analysed and compared, in order to extract information on the key legal aid models in East Africa and the level and modes of cooperation and coordination among different legal aid providers.

Furthermore, the report analyses a number of other documents relevant for understanding these models of legal aid and linkages between different actors, including national legislation on legal aid and conference reports covering these topics. In order to facilitate a description of the legal system in these countries, the report also relies on an assessment of the constitutional orders and other key documents concerning the 3 countries examined.

#### **D. Structure of the report**

In order to achieve its comparative purposes, the overall structure of the report is defined by thematic issues, rather than a country-by-country analysis. Based on an assessment of the purposes of this report and the information available in the questionnaires, 5 central themes are identified, which each compose a separate section (4.A-4.E) of the main analytical part of the report:

- **Section 4.A: The legal aid models in East Africa** – This section introduces the key aspects of the legal aid models used in the 3 countries, such as the role of public and private actors in legal aid schemes, leading to a comparison of these central features
- **Section 4.B: The types of legal aid provided in East Africa** – This section identifies and compares what types of legal aid the various actors offer (legal information, legal advice, legal assistance, legal representation, etc.) as well as the areas of law covered by the various legal aid schemes (land law, family law, criminal law, etc.)
- **Section 4.C: The accessibility of legal aid in East Africa** – This section identifies and compares a number of issues that are relevant for enhancing the accessibility of legal aid providers, including the use of eligibility criteria, the level of geographical coverage by the various legal aid schemes and the possible use of information and outreach strategies

- **Section 4.D: Use of measures to ensure quality legal aid** – This section identifies and compares how legal aid providers in the region have put in place mechanisms that aim at maintaining or enhancing the quality of the legal aid provided, including the level of training offered to legal aid providers, the use of codes of conduct and similar measures that may strengthen quality and the possible use of monitoring mechanisms (the section also uses a number of examples to illustrate the impact of these legal aid schemes)
- **Section 4.E: The legal aid providers’ perceptions of each other** – This section analyses the perceptions the various legal aid providers in the region have of each other, which is of particular relevance for understanding why in some cases the level of cooperation and coordination is high, but in other cases not

Before commencing this analysis and comparison, the report describes international standards on legal aid, in this way offering a normative framework for making conclusions and recommendations (section 2. “International regulation and standards on legal aid”). The main analytical part of the report is also preceded by a brief country introduction of the 3 countries covered in this report (section 3. “Background to the East African countries”). First, however, some important definitions of the terms used in the report are outlined.

### **E. Definitions**

The report uses a number of terms, which it is important to define already at this point:

#### *Access to Justice*

The present study operates with a definition of access to justice that focuses on outcomes and remedies rather than merely on institutions. It involves the following elements:

- A framework of legal protection setting out acceptable substantive and procedural standards
- Legal awareness on the part of providers and users
- The availability of legal services needed to link needs to enforceable remedies, including legal aid and counsel
- Adjudication of disputes that is fair and effective
- Enforcement or remedies
- Transparency and oversight of the operation of the system

#### *Informal / formal justice systems*

It is difficult to arrive at a definition of informal justice systems that is both precise and sufficiently broad to encompass the range of systems and mechanisms that are outside the ordinary courts and justice institutions and yet are trusted and used by people to resolve disputes and maintain social order. Acknowledging the difficulties



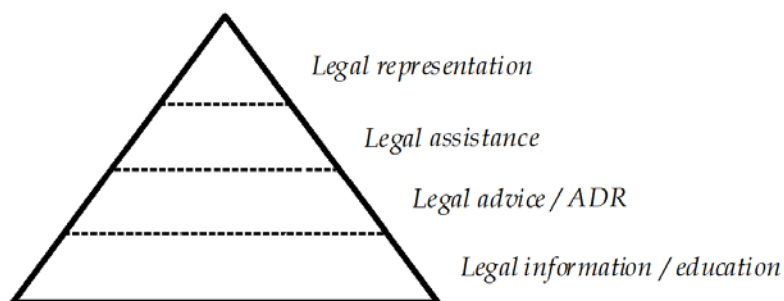
of satisfactory definition, a forthcoming UN report<sup>6</sup> proposes a continuum of informality – formality. It observes that what is common to most such systems is that they:

- 1) resolve disputes and regulate conduct by means of adjudication or the assistance of a neutral third party;
- 2) are not, or are not fully a part of the judiciary as established by law and/or;
- 3) have a substantive, procedural or structural foundation that is not primarily based on statutory law.

The UN draft report also proposes a typology of informal justice systems that is employed here. In the countries under consideration in this report, the informal systems of most relevance are (i) those based in the traditional structure of village heads and chiefs, (ii) those based in religious structures and authorities, (iii) those based in the (local) administrative structures of government and (iv) those based on NGO promoted mediation schemes performed at community level by paralegals or village mediators.

### *Legal aid*

Generally understood as free or subsidised services to eligible individuals or groups, mainly poor and vulnerable people, provided as a means to strengthen their access to justice, for example legal information and education, legal advice and assistance, alternative dispute resolution (ADR) and/or legal representation.



**THE LEGAL AID PYRAMID**

DIHR operates with a strategic framework that aims at solving legal problems at the lowest and simplest level possible. This can be illustrated by means of the pyramid figure above. Legal services can start with legal information and education, giving people knowledge that they have rights under the law and how to exercise them. Such knowledge and confidence can help in solving legal problems without recourse to the courts, a cost-effective and empowering strategy. Where legal remedies are available, this can be the cheapest and simplest form of legal aid, and the one where the greatest resources should be applied.

Legal advice (explaining what the law means and how to exercise it in relation to a concrete problem) is often less costly than providing assistance – understood as helping a person to take legal steps to protect their rights. Representation in court is often

<sup>6</sup> UNDP, UNICEF and UN WOMEN (UNIFEM), *Informal Justice Systems – Access to Justice and Human Rights* (forthcoming 2011).

the most expensive legal service, and is thus placed at the top of the pyramid. There are of course occasions where the more expensive forms of legal aid are absolutely necessary, and legally required by national and international human rights standards, but these should not be used if the problem could be solved with simpler and cheaper interventions. In some circumstances litigation can also be employed strategically to benefit a large number of people. There are clear benefits in having cooperative links between those providing legal services at the various levels.

#### *State legal aid bodies*

Public bodies, including specialised legal aid bodies, often operating under or as departments of government ministries and any other public agencies, with a mandate to carry out state legal aid initiatives.

#### *Lawyers / Members of the legal profession*

Persons who have obtained a law degree and who are entitled to practice in a court of law, normally subject to a professional body established by law for the purpose of ensuring levels of qualification and the maintenance of professional discipline.

#### *Jurists*

Persons who have obtained a law degree or other equivalent educational qualification.

#### *Paralegals*

Persons who, in general, are without a law degree, but possess the relevant skills and training to provide some legal services to individuals and groups in need of legal aid. Paralegals may be volunteers or paid, working as individuals, or under state or non-state bodies. The term remains wide, covering a range of levels of qualifications and experience. Organisations/institutions involved in paralegalism are discussing the possibility of introducing greater precision, in particular to more accurately describe levels of qualification and experience.

#### *East Africa*

For the purposes of this study, East Africa refers only to the countries of Kenya, Uganda and Tanzania unless otherwise noted.

## **2. International regulation and standards on legal aid<sup>7</sup>**

A key purpose of this report is to identify trends in access to justice and the provision of legal aid in East Africa. In doing so, it is useful to identify a normative apparatus that can serve as a foundation for making conclusions on the legal aid schemes and practices that have been put in place in East Africa as well as offering a platform for recommending further action. A number of requirements and standards on legal aid

<sup>7</sup> This section draws significantly on the Danish Institute for Human Rights, *Legal Aid in Rwanda: A Report on the Legal Assistance Available in Rwanda*, April 2004 (on file with author), pp. 10-14.

can be derived from international human rights law. The most important instruments (from an East African perspective) are briefly examined in the following.

### **A. The Universal Declaration of Human Rights**

Though the Universal Declaration of Human Rights (UDHR) is not a legally binding instrument, it is taken into regard when interpreting other international human rights instruments and many of its provisions are considered to form part of international customary law. The UDHR sets in general terms, as a common standard of achievement for all peoples and all nations, that everyone charged with a penal offence should be granted “all the guarantees necessary for his defence” (art. 11 (1)).<sup>8</sup> However, the UDHR does not define what exactly should be understood by “all the guarantees necessary for his defence”, thus offering little guidance on the role of legal aid in criminal justice. The UDHR does not entail requirements to legal aid in civil cases.

### **B. The International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty which all of the countries covered in this report are party to,<sup>9</sup> lays down a number of more specific requirements to how criminal trials should be conducted. These include an obligation for the state to ensure that the accused has “adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing” (art. 14 (3) (b)), and a right for the accused to be “tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it” (art. 14 (3) (d)).

As such, art. 14 is said to be a “of a particularly complex nature, combining various guarantees with different scopes of application”,<sup>10</sup> making it difficult to offer a clear and consistent interpretation of the specific nature and scope of the state obligations entailed in the article. Nevertheless, it is possible to elaborate on what states are actually required to do.

First of all it is necessary to note that the obligation of the state to ensure that the defendant can choose his own counsel is not absolute, but may be subjected to certain restrictions when legal assistance is granted by the government (though it is generally understood that the wishes of the accused should be taken into account).<sup>11</sup>

<sup>8</sup> The Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 10 December 1948.

<sup>9</sup> Kenya ratified the covenant on May 1, 1972, Uganda ratified on June 21, 1995 and Tanzania ratified on June 11, 1976. See United Nations, *United Nations Treaty Collection*,

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>10</sup> UN Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial* (August 23, 2007), UN Doc. CCPR/C/GC/32, para. 3.

<sup>11</sup> See e.g. UN Human Rights Committee, *Antonio Viana Acosta v. Uruguay*, *Communication No. 110/1981* (29 March 1984), U.N. Doc. CCPR/C/OP/2 at 148 (1990).

The requirement for states to assign legal assistance to the accused where “the interests of justice so require” and for the state to assign such assistance free of charge if the accused does not have the means to cover the cost are obligations which leave the state with a margin of discretion to decide when this is the case. However, it is generally understood that an individual assessment of each case must take place.<sup>12</sup> In a recent comment on art. 14, the UN Human Rights Committee offered some further guidance concerning the scope of state discretion and the criteria that states use: “The gravity of the offence is important in deciding whether counsel should be assigned ‘in the interest of justice’ as is the existence of some objective chance of success at the appeals stage”. Importantly, this statement does not clarify the types of offence that may trigger a state obligation to ensure legal aid free of charge. However, the comment goes on to make it clear that as a very minimum the state is obliged to ensure that in capital offence cases the accused “must be effectively assisted by a lawyer at all stages of the proceedings”. From the comments it also follows that art. 14 (3) (d) requires that the legal counsel assigned by the state must be “effective in the representation of the accused”. The committee explains: “Unlike in the case of privately retained lawyers, blatant misbehaviour or incompetence, for example the withdrawal of an appeal without consultation in a death penalty case, or absence during the hearing of a witness in such cases may entail the responsibility of the State concerned for a violation of article 14, paragraph 3 (d), provided that it was manifest to the judge that the lawyer’s behaviour was incompatible with the interests of justice. There is also a violation of this provision if the court or other relevant authorities hinder appointed lawyers from fulfilling their task effectively”.<sup>13</sup> In other words, there is an obligation for the state to ensure that indigents are provided with effective legal counsel free of charge in serious criminal cases, especially if the accused would appear to stand a good chance for a successful appeal, but besides capital offence cases, it is not possible to say in general what categories of cases are covered by this rule.

Some further guidance for the interpretation of art. 14 (d) (3) may be found in the practice of the European Court of Human Rights (ECHR). Though obviously this practice concerns the European Convention of Human Rights rather than the ICCPR, the provisions dealt with are similar, and the practice of the ECHR may thus have some relevance for interpreting the ICCPR.<sup>14</sup> According to the ECHR, factors that must be taken into consideration in order to determine when the interests of justice require that free legal assistance be given include the severity of the penalty risked by the accused, the complexity of the case and the capability of the accused to defend himself.<sup>15</sup>

<sup>12</sup> See e.g. UN Human Rights Committee, *Wright and Harvey vs. Jamaica*, Communication No 459/1991, 27 October 1995 and UN Human Rights Committee, *Reid vs. Jamaica*, Communication No 250/1987, 20 July 1990.

<sup>13</sup> UN Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial* (August 23, 2007), UN Doc. CCPR/C/GC/32, para. 38.

<sup>14</sup> The European Convention on Human Rights art. 6.3 stipulates that “Everyone charged with a criminal offence has the following minimum rights: ... (c) to defend himself on person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”.

<sup>15</sup> European Court of Human Rights, *Case of Quaranta vs. Switzerland*, Appl. No 12744/87, 24 May 1991, paras. 33 and 34, see also European Court of Human Rights, *Case of Benham vs. United Kingdom*, Appl. No. 19380/92, 23. January 1995, para. 61. In this case, the applicant risked a penalty of 3 months imprisonment, and this was seen as severe enough to require that the defendant was granted legal aid free of

It goes without saying that general rules and standards of international human rights law, including the principle of non-discrimination, apply to the provision of legal aid covered by the treaties referred to here. The requirement of non-discrimination means that decisions on the allocation of legal aid should be made objectively, on the basis of need, and should not be influenced by any discriminatory bias. In particular, states must safeguard against any suggestion or appearance of wishing to influence the progress or fairness of a particular trial through decisions on allocation of legal aid. Likewise, respect of the independence of the legal profession, closely connected to the right to a fair trial, demands that the state remains at “arms length”. Good practice in this regard includes the delegation of decisions on legal aid management to an independent body not under the direct control of the executive branch of government. An increasing number of countries in Africa have already taken steps in this direction. This does not mean a loss of control over budgetary allocations to legal aid, or even of the general power to set priorities.

While the ICCPR is silent on the matter of legal aid in civil cases, regional human rights instruments do include obligations to provide legal aid in civil cases in some circumstances<sup>16</sup>.

### **C. The Convention on the Rights of the Child**

The convention on the Rights of the Child lays down some specific requirements to legal aid when children are accused of crimes. Most notably, art. 40 (2) obliges state parties to ensure that the child is “informed promptly and directly of the charges against him or her, and, if appropriate, through his or her guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence”, and “to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to the law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians”. In other words, states are required to ensure that legal aid is provided to children in all criminal cases, unless special circumstances would dictate that it is not in the best interest of the child.

---

charge. In that case it was stated that if a deprivation of liberty is at stake, the interests of justice in principle call for legal representation.

<sup>16</sup> The practice of the ECHR has extended the obligation of the state to provide legal aid in some civil cases, depending on the particular circumstances of the case. The European Court of Human Rights laid down this obligation in the case of *Airey vs. Ireland*, Appl. No. 6289/73, 9. October 1979. The Court held that art. 6 (1) of the convention may sometimes compel the state to provide the assistance of a lawyer in civil cases. This includes instances where such assistance is indispensable for effective access to the court system, either because legal assistance is compulsory or because of the complexity of the procedure. The Court further stated that while the convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Airey judgment makes it clear that it is the state’s responsibility to make legal remedies accessible and effective, also in civil cases. It also follows from the judgment that the state can lessen its obligation to provide legal aid by ensuring that legal procedures are not unduly complex or intimidating to the poor and uneducated. This point seems particularly relevant in relation to poorer countries, including those in Africa. Arguably, the state’s obligation to offer legal aid schemes in civil cases should therefore be assessed in light of the legal system, including the extent to which procedures are simple, transparent and accessible.

## D. Regional human rights treaties

Besides international human rights treaties, some regional arrangements are of interest for understanding the state's obligation to offer legal aid in the 3 countries under assessment in this report.

The African Charter on Human and People's Rights (the Banjul Charter)<sup>17</sup> contains a provision regarding fair trial which stipulates that the accused has "the right to defence, including the right to be defended by counsel of his choice" (art. 7 (1) (c)). Though the Banjul Charter does not explicitly say that defence counsel must be provided free of charge when the accused cannot afford to pay, a duty of the government to provide for such would seem to be present if no other legal aid schemes are available to ensure the defendant's rights, as the right in art. 7 (1) (c) would otherwise only be theoretical. Furthermore, art. 4 of the Banjul Charter protects the right to life.<sup>18</sup> Since a judgment that sentences a person to death, without a defence lawyer having been present during the court hearings, would seem to constitute an arbitrary deprivation of life, the Banjul Charter must be understood to require as a minimum that defendants in capital punishment cases are offered free legal aid by the state if they cannot afford to pay on their own. The Banjul Charter does not deal with legal aid in civil cases.

Besides the Banjul Charter, the African Charter on the Rights and Welfare of the Child,<sup>19</sup> which entered into force on 29 November 1999 and has been ratified by all of the countries covered in this report,<sup>20</sup> entails some provisions that are relevant for legal aid. According to art. 17 (1) "every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others". More specifically, the charter (art. 17 (2) (c)) requires the state to ensure that minors are "afforded legal and other appropriate assistance in the preparation and presentation of his defence". This must be assumed to entail an obligation for the state to assign legal counsel to minors in criminal cases, regardless of the nature of the offence and the severity of a possible sentence.

Furthermore, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) requires that women have "effective access [...] to judicial and legal services, including legal aid" (art. 8 (a)) as well as it encourages "support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid" (art. 8 (b)).

<sup>17</sup> The Banjul Charter was adopted 27 June 1981 (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)), and entered into force 21 October 1986.

<sup>18</sup> "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right".

<sup>19</sup> Available at

[http://www.africaunion.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf)

<sup>20</sup> For an overview of the signatories to the charter, see [http://en.wikipedia.org/wiki/File:Acrwc\\_africa.jpg](http://en.wikipedia.org/wiki/File:Acrwc_africa.jpg).

## **E. Soft law instruments and international declarations**

In addition to the UDHR and the treaty obligations discussed above, it is necessary to examine a number of soft law instruments and international declarations when establishing what standards are relevant for the provision of legal aid. Though these instruments and declarations are not legally binding in a strict sense, they have value for understanding the scope of state obligations under treaty law as well as they may lay down standards that are relevant for evaluating the performance of states and other legal aid providers.

### 1. The Dakar Declaration

Firstly, the African Commission on Human and People's Rights' Resolution in 1999 on the Right to a Fair Trial and Legal Aid in Africa (the Dakar Declaration)<sup>21</sup> emphasises the importance of access to justice as part of the right to a fair trial, and places the primary responsibility for ensuring legal aid in criminal cases on the government: "Access to justice is a paramount element of the right to a fair trial. Most accused and aggrieved persons are unable to afford legal services due to the high cost of court and professional fees. It is the duty of governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective". Since reference is made not only to "accused persons", but also to "aggrieved persons", the declaration should probably be understood as stipulating a duty for the state to provide legal aid services to other persons, such as victims of certain crimes and persons with certain civil claims.

The Dakar Declaration recommends that state parties to the Banjul Charter "urgently examine ways in which legal assistance could be extended to indigent accused persons, including through adequately funded public defender and legal aid schemes".

The declaration also recommends that the state parties "in collaboration with Bar Associations and NGOs enable innovative and additional legal assistance programs to be established including allowing paralegals to provide legal assistance to indigent suspects at the pre-trial stage and pro bono representation for accused in criminal proceedings".<sup>22</sup> Furthermore, the declaration articulates a need for the state parties to encourage "the contribution of the judiciary, human rights NGOs and professional associations" in delivering legal aid. In other words, the Dakar Declaration urges the government to cooperate with other legal aid providers as well as it urges some form of coordination from the side of the government.

### 2. The Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa

Secondly, in accordance with the Dakar Declaration, in 2001 the African Commission on Human and People's Rights adopted the "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa".<sup>23</sup> These principles, which it is urged

<sup>21</sup> Available at [http://www.achpr.org/english/resolutions/resolution46\\_en.html](http://www.achpr.org/english/resolutions/resolution46_en.html).

<sup>22</sup> The Dakar Declaration is available in full length at [http://www.penalreform.org/files/man-2006-index-legal-aid-v2-en\\_0.pdf](http://www.penalreform.org/files/man-2006-index-legal-aid-v2-en_0.pdf).

<sup>23</sup> The principles are available at [http://www.achpr.org/english/declarations/Guidelines\\_Trial\\_en.html](http://www.achpr.org/english/declarations/Guidelines_Trial_en.html).

should be incorporated into national legislation by the state parties to the Banjul Charter, entail a series of recommendations, including:

- “States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status”
- “States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar”
- “States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms”
- “The accused or a party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or party to a civil case if he or she does not have sufficient means to pay for it”

The principles define 2 criteria which should be taken into account when deciding whether “the interest of justice” require the state to offer legal aid free of charge in criminal cases: “the seriousness of the offence” and “the severity of the sentence”. It is stipulated that “the interests of justice always require legal assistance for an accused in any capital case, including for appeal, executive clemency, commutation of sentence, amnesty or pardon”.

The principles also lay down some specific requirements concerning *how* lawyers appointed by state-run legal aid schemes (criminal as well as civil law) should operate. It is stipulated that the lawyer appointed shall:

- “Be qualified to represent and defend the accused or a party to a civil case”
- “Have the necessary training and experience corresponding to the nature and seriousness of the matter”
- “Be free to exercise his or her professional judgement in a professional manner free of influence of the State or the judicial body”
- “Advocate in favour of the accused or party to a civil case”
- “Be sufficiently compensated to provide an incentive to accord the accused or party to a civil case adequate and effective representation”

### 3. The Lilongwe Declaration

Thirdly, the African Commission on Human and People’s Rights has adopted the Lilongwe Declaration, which is based on a conference organised by Penal Reform International in November 2004 that was attended by government officials, judges,



lawyers, academics, representatives from civil society organisations and others from 26 countries, including 21 African countries.<sup>24</sup>

The Lilongwe Declaration recognises that “the vast majority of people affected by the criminal justice system are poor and have no resources with which to protect their rights”, and notes that the government has the “primary responsibility to recognise and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system”. Accordingly, the declaration urges governments to “adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice”. The importance of providing legal assistance during all the aspects of criminal proceedings is also emphasised in the declaration.

While the Lilongwe Declaration notes that there is no uniform way of fulfilling the state’s responsibility to provide legal aid, it is implied that the government is responsible for overall coordination of legal aid: “Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. In carrying out its responsibility to provide equitable access to justice for poor and vulnerable people, there are a variety of service delivery options that can be considered. These include government funded public defender offices, judicare programmes, justice centres, law clinics - as well as partnerships with civil society and faith-based organisations. Whatever options are chosen, they should be structured and funded in a way that preserves their independence and commitment to those populations most in need. Appropriate coordinating mechanisms should be established”. Recognising the limited capabilities of the formal legal systems in Africa, the declaration also encourages states to promote ADR mechanisms and points to the importance of paralegals and other non-lawyers in delivering legal aid.

Although the Lilongwe Declaration makes clear that the primary responsibility for providing legal aid rests with the government, it also recognises that the legal profession has a responsibility for promoting legal aid services: “It is universally recognised that lawyers are officers of the court and have a duty to see that justice systems operate fairly and equitably. By involving a broad spectrum of the private bar in the provision of legal aid, such services will be recognised as an important duty of the legal profession. The organised bar should provide substantial moral, professional and logistical support to those providing legal aid. Where a bar association, licensing agency, or government has the option of making pro bono provision of legal aid mandatory, this step should be taken. In countries in which a mandatory pro bono requirement cannot be imposed, members of the legal profession should be strongly encouraged to provide pro bono legal aid services”.

The declaration recommends that legal aid is understood broadly to include legal advice, assistance, representation, education, and ADR mechanisms; and to include a wide range of stakeholders, such as non-governmental organisations, community-

<sup>24</sup> See [http://www.achpr.org/english/resolutions/resolution105\\_en.htm](http://www.achpr.org/english/resolutions/resolution105_en.htm). The declaration in full length is available at [http://www.penalreform.org/files/man-2006-index-legal-aid-v2-en\\_0.pdf](http://www.penalreform.org/files/man-2006-index-legal-aid-v2-en_0.pdf) and in an appendix to this report.

based organisations, religious and non-religious charitable organisations, professional bodies and associations, and academic institutions.

#### 4. The Kyiv Declaration

Fourthly, the Kyiv Declaration on the Right to Legal Aid, adopted by a 2007 conference which was attended by government officials, legal aid practitioners, academics, and representatives from human rights, legal advocacy, and legal and justice sector reform organisations, entails a number of standards on legal aid that are relevant for assessing the performance of governments and other stakeholders.<sup>25</sup> The declaration recognises that the poor and vulnerable have a *right* to legal aid, and stipulates that the state has the primary responsibility for creating legal aid schemes.

The Kyiv Declaration encourages governments to cooperate with other legal aid providers: “Governments should establish cooperative arrangements with a wide range of stakeholders – such as non-governmental organisations, community-based organisations, religious and non-religious charitable organisations, professional bodies and associations and academic institutions – and ensure effective public participation in the formulation of legal aid policies, programs and legislation”.

However, as is the case with the Lilongwe Declaration, the Kyiv Declaration stipulates that the legal profession has a responsibility for ensuring that the poor and vulnerable have access to legal aid schemes: “Support for and involvement in the provision of legal aid should be recognised as an important duty of the legal profession which should, through the organised bar and law schools, provide moral, ethical, professional and logistical support to those providing legal aid, especially through pro bono legal aid services. Governments should promote an enabling environment for private practitioners to provide pro bono services and ensure competitive rates of remuneration”.

### 3. Background to the East African countries

#### **A. Kenya**

##### 1. Brief country introduction

With a population of 38.6 million people, Kenya is the second most populous country in East Africa.<sup>26</sup> 22 percent of the population lives in urban areas. Kenya’s GDP is around 32.7 billion USD, with a GDP per capita of 1,600 USD (2009).<sup>27</sup> The distribution of wealth in Kenya is highly unequal (Gini index 47.7). Kenya ranks number 128 on UNDP’s Human Development Index, and around 20 percent of the population lives below UNDP’s official poverty line (whereas around 47 percent lives below the

<sup>25</sup> The declaration is available at [http://dih.org/legalaid/index.php?option=com\\_content&task=view&id=36&Itemid=1](http://dih.org/legalaid/index.php?option=com_content&task=view&id=36&Itemid=1) and in an appendix to this report.

<sup>26</sup> For an account of the recent census, see Daily Nation, *Census: Kenya has 38.6 M People*, August 31, 2010, <http://www.nation.co.ke/News/-/1056/1000340/-/11114rlz/-/index.html>.

<sup>27</sup> World Fact Book (CIA), *Kenya*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>.

national poverty line). There is a clear gender element in poverty in Kenya as the country is ranked number 117 on UNDP's Gender Inequality Index.<sup>28</sup> The main sources of income in Kenya are agriculture (27 percent) and tourism (19 percent).<sup>29</sup>

Kenya gained independence from British colonial rule in 1963. Jomo Kenyatta, the leader of the KANU party, was elected president and ruled the country until his death in 1978, after which Daniel Moi took power in a bloodless coup. The country was a de facto one party state from 1969 until 1982, the year in which the constitution was amended to make KANU the only legal political party. Following pressure from Kenya's international donors, multi-party elections were held in 1992 and again in 1997. Moi maintained power until 2002, where Mwai Kibaki was elected president. Following the disputed elections in 2007, Kibaki claimed victory and was sworn in for another term. However, as the result of an internationally sponsored mediation process, a so-called grand coalition government was formed, in which his competitor, Raila Odinga, became Prime Minister. Besides the 2002 elections, periods of elections in Kenya have been surrounded by large-scale violence, which has had an ethnic dimension because support for the political leaders in Kenya is usually based on ethnic affiliation. Part of the explanation for this violence is that the political leaderships have tended to prioritise resource allocation to (elements within) supportive ethnic communities, resulting in 'winner-takes-it-all' calculus and general dissatisfaction with the political system among the members of those ethnic communities not connected to the incumbent. Following the 2007 post-election violence, which claimed the lives of more than a thousand people and displaced several hundred thousands, a number of mechanisms have been put in place to address the causes of political violence in Kenya. These include a 'Truth, Justice and Reconciliation Commission', International Criminal Court (ICC) investigations and a constitutional reform process.<sup>30</sup>

## 2. The system of governance and key actors in the legal system

It is hoped that the new constitution, which was adopted on August 4, 2010, will lead to fundamental changes in the system of governance. The new constitution decentralises power by establishing counties with a degree of legislative power and some amount of financial autonomy. The constitution also improves the system of checks and balances, for example by requiring parliamentary approval of important public appointments, including police chiefs, the attorney-general, the director of public prosecution and the members of commissions, such as the electoral commission and the national land commission. In addition, the new constitution provides for a stronger and more independent judiciary. Where in the past, the executive had significant influence over the appointment and removal of judges, the new constitution allows the judiciary itself to make these decisions through the creation of an independent Judicial Service Commission. The judiciary is also granted financial autonomy. Another way in which the new constitution lays the ground for a fundamental restruc-

<sup>28</sup> UNDP, *Human Development Report 2010*,

[http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Complete\\_reprint.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf).

<sup>29</sup> Questionnaire conducted by DIHR/EALS selected informant on state legal aid in Kenya (hereinafter "State Legal Aid Kenya").

<sup>30</sup> Obel Hansen, Thomas, *Political Violence in Kenya: A Study of Causes, Responses and a Framework for Discussing Preventive Action*, ISS Paper No. 205, November 2009, <http://www.iss.co.za/uploads/P205.PDF>.

turing of the judiciary concerns the organisation of the courts. In the past constitutional order, there were 3 levels of courts: Subordinate Courts, a High Court, and as the highest instance, a Court of Appeal. The new constitution establishes a Supreme Court, as the highest instance in the country, but maintains the Court of Appeal and the High Court. The Subordinate Courts consist of Magistrate Courts, a Court Martial and so-called Kadhis' Courts. These Kadhis' Courts – which also existed under the past constitution, but are strengthened with the new law – apply Islamic law to disputes between Muslims in the areas of family law and inheritance.<sup>31</sup>

Kenya has also adopted legislation on ADR mechanisms, but the rules of practice are yet to be adopted by the Rules Committee of the High Court.<sup>32</sup>

Furthermore, though policy making and resource allocation focuses on the formal justice system, informal systems of justice play an important role in Kenya. Examples of informal justice systems include the Mombasa Multiethnic Council of Imams and Preachers of Kenya (CIPK), Wazee wa Mtaa and Wazee wa Magogo for the Giriama community, Kaya for the Digo community, Wazee wa Kijiji for the Taita community, Duruma and Matadetha for the Orma community and Gasa and Kijoamong for the Pokomo community.<sup>33</sup>

Other important actors in Kenya's legal system include the Attorney-General, who is the principal legal advisor to the government and represents the government in court; the Director of Public Prosecution, who has the power to direct the Inspector-General of the National Police Service to investigate allegations of criminal conduct; and the Kenya National Human Rights and Equality Commission (KNHREC), which is established by the new constitution (replacing the Kenya National Commission on Human Rights) to monitor and promote the protection of human rights in Kenya.<sup>34</sup>

Kenya uses the common law system, derived from the British colonisers, but as evident from the above, Islamic law and customary law also play a role in the legal system.

### 3. The functioning of the legal system and the general access to justice situation

The functioning of the legal system in Kenya is reported to be “poor and many people no longer use it”.<sup>35</sup> It is argued that the general public has “lost confidence in the judiciary and the police services due to poor case management and judgements that people cannot relate with”.<sup>36</sup> Another problem mentioned by the informants of this report concerns human rights ignorance among state agencies, especially those at the

<sup>31</sup> Obel Hansen, Thomas, “Constitutional Reform, Transition, and Preventing Political Violence: An Assessment of Kenya's New Constitution”, in Lydiah Bosire (ed.), *Understanding Contemporary African Politics: A History of Violence and Accountability in Kenya*, Fahamu Books (forthcoming 2011).

<sup>32</sup> The rules on ADR mechanisms are laid down in The Civil Procedure Act, Chapter 21 of the Laws of Kenya, Revised Edition 2009 (2008) (CPA). See State Legal Aid Kenya.

<sup>33</sup> Questionnaire conducted by DIHR/EALS selected informant on the legal profession in Kenya (hereinafter “Legal Profession Kenya”) and questionnaire conducted by DIHR/EALS selected informant on paralegal organisations in Kenya (hereinafter “Paralegal Kenya”).

<sup>34</sup> State Legal Aid Kenya.

<sup>35</sup> Paralegal Kenya.

<sup>36</sup> Paralegal Kenya.

frontline of justice delivery, such as the police, prison guards and judges. Cases of delay are also reported “where people who are in detention ‘serve their term’ as if they had been convicted even before their matter is completed in court”.<sup>37</sup>

However, there are some recent positive developments in the legal system. For example, the Ministry of Justice recently adopted a Human Rights Policy and National Action Plan, which will be used to guide all ministerial programming and budgeting. The policy has been validated and is about to be implemented.<sup>38</sup> The strengthened position of the judiciary, which follows from the new constitution, is also likely to remedy problems in the delivery of justice, but exactly how these constitutional provisions will be implemented is yet to be seen. However, the establishment of a supreme court and the appointment of a chief justice generally seen to be committed to the reform agenda are positive signs of how the Kenyan judiciary may develop.

In general, access to justice in Kenya remains limited. A study by the Governance Justice Law and Order Reform Sector (GJLOS) in 2006 indicated that only 26 percent of the persons who needed legal services actually benefit from this.<sup>39</sup> Access to justice in Kenya is hampered by supply side problems at the level of the judicial structure. In places such as Northern Kenya courts are few and cover a very large area. In Lodwar, for example, people need to travel for several hundred kilometres to reach a court, a journey that many cannot afford.<sup>40</sup> The courts are also frequently understaffed and overworked, which is a cause of the slow delivery of justice in Kenya.<sup>41</sup> Another problem is that while judicial personnel, including resident magistrates, as well as executive officials such as district administrative officers and the District Commissioner, are legally obliged to pay visits to detainees in prisons and police stations, they frequently fail to do so, causing access to justice problems in the sphere of criminal justice.<sup>42</sup> It has also been noted that legal instruments are drafted in a way that make them too complicated for ordinary people to understand and it is often impossible to obtain copies of legislative acts.<sup>43</sup>

The poorly resourced judiciary is symptomatic of the legal system in general, and more particularly in regard to legal aid. One informant of this report argues that these problems in part are the result of lack of political will, noting that “the general perception by the local civil society is that the state has not made the political choice to provide quality legal aid in Kenya”.<sup>44</sup> Another problem concerns the availability of lawyers. One informant of this report explains that lawyers are “expensive, complicated in language and not accessible in rural or urban slum areas”.<sup>45</sup> The same informant states that “the general public regards lawyers as greedy, unreasonable and [they] complicate matters in court... They would prefer to have lawyers locked away

<sup>37</sup> Paralegal Kenya.

<sup>38</sup> Paralegal Kenya.

<sup>39</sup> State Legal Aid Kenya.

<sup>40</sup> Paralegal Kenya.

<sup>41</sup> State Legal Aid Kenya.

<sup>42</sup> Paralegal Kenya.

<sup>43</sup> Paralegal Kenya.

<sup>44</sup> Paralegal Kenya.

<sup>45</sup> Paralegal Kenya.

from their matters if they could be able to [represent themselves]”.<sup>46</sup> The pro bono services offered by lawyers are criticised because in reality few litigants benefit from the services and their quality is said to be low.<sup>47</sup>

One consequence of access to justice problems in the formal legal system is that many Kenyans resort to alternative systems of justice, such as mediation processes facilitated by paralegals and community-based traditional justice systems. In some areas, such as Northern Kenya, informal justice systems have almost replaced the formal justice system, also in dealing with criminal offences.<sup>48</sup> However, there is an amount of interplay between the formal and informal justice systems, evident for example from the fact that community leaders who serve in informal justice systems can refer serious crimes cases to the ordinary courts.<sup>49</sup>

Despite the seriousness of the access to justice problems described above, the informants of this report also point to a number of improvements in access to justice which have taken place over the last years. For example, civic education initiatives, paralegal training, child rescue initiatives and accountability measures have been put in place as a result of civil society partnership with actors in the administration of justice, including the Children’s Department, prisons and the provincial administration.<sup>50</sup> Moreover, there is said to be increased awareness among citizens that state authorities should be held accountable when they fail to fulfil their duties.<sup>51</sup> This may in part be explained by the creation of a National Legal Aid and Awareness Programme (NALEAP) in 2008.<sup>52</sup> Finally, it should be noted that the new constitution (art. 48) entails a provision in the bill of rights concerning access to justice, according to which “the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and not impede access to justice”. The extent to which this provision will foster improvements in access to justice remains to be seen, but it will likely support advocacy and pressure on the government to improve the situation.

In sum, a number of developments have taken place in Kenya which may increase access to justice in the future, but presently a series of significant challenges render the situation highly problematic, especially in terms of access to the formal justice system for the poor and vulnerable.

## **B. Uganda**

### **1. Brief country introduction**

Uganda has a population of 30.7 million people, of which the large majority (84.6 percent) live in rural areas.<sup>53</sup> Uganda’s GDP is around 15.7 billion USD (2009), and

<sup>46</sup> Paralegal Kenya.

<sup>47</sup> Paralegal Kenya.

<sup>48</sup> Legal Profession Kenya and Paralegal Kenya.

<sup>49</sup> Legal Profession Kenya.

<sup>50</sup> Paralegal Kenya

<sup>51</sup> Paralegal Kenya.

<sup>52</sup> State Legal Aid Kenya.

<sup>53</sup> Questionnaire conducted by DIHR/EALS selected informant on state legal aid in Uganda (hereinafter “State Legal Aid Uganda”).

the GDP per capita is around 1,200 USD.<sup>54</sup> Though less manifest than in Kenya, income distribution in Uganda is highly unequal (Gini index 42.6). Around 52 percent of the population lives below UNDP's official poverty line (whereas around 31 percent lives below the national poverty line). Ranked number 143, Uganda falls below Kenya in UNDP's Human Development Index. As in Kenya, there is a clear gender element in poverty (Uganda is ranked number 109 on UNDP's Gender Inequality Index).<sup>55</sup> The main sources of income in Uganda are services (46.4 percent), agriculture (23.7 percent) and transport and communication (6.8 percent).<sup>56</sup>

Uganda gained independence from British colonial rule in 1962, and Milton Obote became Prime Minister. In 1966, Obote suspended the constitution and claimed all government powers. In a 1971 military coup Obote was overthrown and Idi Amin installed himself as president. The constitution was subsequently amended so he acquired absolute power. Amin's regime was responsible for serious repression of the political opposition and systematic human rights violations, which cost the lives of at least 100,000 Ugandans. In 1978, Ugandan rebels joined forces with the Tanzanian army and Amin was ousted. The subsequent years were characterised by political instability, and Obote's return to the presidency in 1980 did not lead to an increased protection of human rights. In 1985, Obote was once again overthrown in a military coup. The new president, Tito Okello, offered promises that he would end tribal rivalry and opened negotiations with the rebel forces (the National Resistance Army (NRA)) led by Yoweri Museveni, but the armed struggle continued and in 1986 the NRA overthrew the regime. Since then, Museveni has ruled the country, which has arguably become more stable due to the adoption of a one-party policy. However, serious human rights violations have continued to occur under Museveni's regime, in particular in the context of the long-lasting conflict between government forces and the Lord's Resistance Army (LRA) in the north. Presidential elections were held in 2001 and again in 2006, with Museveni claiming victory in both. A partial opening up of the political space has taken place in Uganda over the last couple of years, as other political parties are now allowed to operate more freely. However, parliamentary and presidential elections held in 2011 confirmed the large domination of Museveni (elected with 68.4% of the votes) and his party at the National Assembly (with control of 75% of seats).<sup>57</sup>

## 2. The system of governance and key actors in the legal system

Uganda is governed by the 1995 constitution, which was amended in 2005 to remove presidential term limits and to adopt a multi-party system. The constitution establishes an executive branch of government with broad powers; a National Assembly

<sup>54</sup> World Fact Book (CIA), *Uganda*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>.

<sup>55</sup> UNDP, *Human Development Report 2010*, [http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Complete\\_reprint.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf).

<sup>56</sup> State Legal Aid Uganda.

<sup>57</sup> Uganda Electoral Commission, <http://www.ec.or.ug/eresults.html>; and World Fact Book (CIA), *Uganda*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>.

with 332 seats, of which 215 are elected by popular vote and the rest selected by interest groups; and an independent judiciary.<sup>58</sup>

The judiciary is structured according to art. 129 (1) of the constitution, which establishes a Supreme Court, a Court of Appeal (which also includes the Constitutional Court), a High Court and Subordinate Courts.<sup>59</sup>

The High Court has established a number of divisions to handle specific fields of law, including the Family Division, the Criminal Division, the Anti-Corruption Division, the War Crimes Division, the Land Division, the Civil Division and the Commercial Division. The Subordinate Courts include the Magistrates' Courts; the Industrial Court; Local Council Courts; the Court Martial; and Qadhis' Courts, which as in Kenya use Islamic Law to deal with family and inheritance cases.<sup>60</sup>

The constitution (art. 126) promotes reconciliation and administration of justice without undue regard to legal technicalities. The formal justice system has adopted ADR mechanisms, which are in particular used by the commercial division of the High Court. Paralegals have been deployed to local communities in order to facilitate dispute resolution using reconciliatory modes of justice. As is the case in Kenya, community-based traditional justice systems are widely used in Uganda, especially in rural areas.<sup>61</sup>

Other central actors in the Uganda legal system include the Tax Appeals Tribunals; the Family and Children's Court; the Land Tribunals; the Local Council Courts; the Centre for Conflict Resolution; and the Uganda Human Rights Commission (UHRC), which besides being mandated to monitor government compliance with human rights standards and undertake civic education has court-like powers to summon persons to appear before it in connection with investigations into human rights abuses.<sup>62</sup>

Like Kenya, Uganda uses the common law system that was established by the British during colonial rule, but the legal order also accommodates Islamic and customary law to certain disputes.<sup>63</sup>

### 3. The functioning of the legal system and the general access to justice situation

Despite some serious points of criticism discussed below, the informants of this report generally hold that the functioning of the legal system in Uganda has improved over the last years, and the current implementation of a number of reforms is expected to further improve this. In particular the use of a sector wide strategy, referred

<sup>58</sup> World Fact Book (CIA), Uganda, <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>; and Constitution of Uganda, [http://www.ugandaembassy.com/Constitution\\_of\\_Uganda.pdf](http://www.ugandaembassy.com/Constitution_of_Uganda.pdf).

<sup>59</sup> Questionnaire conducted by DIHR/EALS selected informant on paralegal organisations in Uganda (hereinafter "Paralegal Uganda") and State Legal Aid Uganda.

<sup>60</sup> Paralegal Uganda and State Legal Aid Uganda.

<sup>61</sup> State Legal Aid Uganda and questionnaire conducted by DIHR/EALS selected informant on the legal profession in Uganda (hereinafter "Legal Profession Uganda").

<sup>62</sup> State Legal Aid Uganda, Legal Profession Uganda and Paralegal Uganda.

<sup>63</sup> Legal Profession Uganda.



to as the Justice, Law and Order Sector (JLOS), has helped decentralise the delivery of justice and has led to the establishment of codes of conduct and performance standards for legal sector personnel. These efforts are reported to have improved the efficiency and the level of services in the legal system.<sup>64</sup>

That being said, some serious problems for the legal system are also reported. For example, corruption and political interference to some extent continue to obstruct judicial independence and fair justice. In addition, legal sector personnel are reported to regularly abuse their powers, for example by using unlawful searches or detain suspects in a manner inconsistent with the law.<sup>65</sup>

The general access to justice situation has improved in recent years, and as one informant notes, the perception is that “the existing laws and ongoing reforms are a big achievement in the right direction to ensure access to justice”.<sup>66</sup> Part of the explanation for these improvements concerns the recent creation of additional courts, a measure that has strengthened physical access to the justice system.<sup>67</sup> Increased use of civil society actors in the delivery of justice is also said to have had positive effects on the access to justice situation in general.<sup>68</sup> Furthermore, increased use of information technology has allowed case files to be easier accessed, which is also important from an access to justice perspective.<sup>69</sup>

Despite these improvements, a number of factors significantly limit access to justice in Uganda. One major challenge concerns the huge backlog of cases, which is in part caused by budgetary constraints that limit the number of judicial personnel.<sup>70</sup> Another key problem is that legal sector personnel, including paralegals, often lack the necessary training.<sup>71</sup> It has also been reported that there are “legislative bottlenecks” relating to procedural guidelines, which cause access to justice problems, especially at the local level.<sup>72</sup> Furthermore, the lack of coordination and communication between key actors in the legal system is mentioned as a cause of concern.<sup>73</sup> Poverty also constitutes a significant obstacle for access to the formal justice system, both because it is connected to ignorance of the law and because many people cannot afford legal assistance and representation or cover the costs related to transport, user fees or even bribery.<sup>74</sup> This also has to do with the fact that despite the current efforts to decentralise justice, “geographical distribution and proximity of justice delivery” remains a problem.<sup>75</sup> In particular, conflict affected areas such as northern Uganda suffer from these problems, and the failure to implement in such areas the reforms currently underway

<sup>64</sup> State Legal Aid Uganda and Legal Profession Uganda.

<sup>65</sup> Paralegal Uganda.

<sup>66</sup> Paralegal Uganda.

<sup>67</sup> State Legal Aid Uganda.

<sup>68</sup> Legal Profession Uganda.

<sup>69</sup> Paralegal Uganda.

<sup>70</sup> State Legal Aid Uganda and Legal Profession Uganda.

<sup>71</sup> Paralegal Uganda.

<sup>72</sup> Paralegal Uganda.

<sup>73</sup> Paralegal Uganda.

<sup>74</sup> State Legal Aid Uganda, Legal Profession Uganda and Paralegal Uganda.

<sup>75</sup> Paralegal Uganda.

in other parts of Uganda presents a significant challenge for access to justice.<sup>76</sup> In addition to these problems, there might be a lack of willingness on the part of some legal aid providers to promote access to justice. One informant of this report notes that most lawyers “do not give quality legal aid services to indigent clients. The legal profession is looked at by most people as a business and not as a means to enable others attain justice. As a result paid up clients get better legal aid services than the poor or indigent clients”.<sup>77</sup>

In sum, the informants of this report generally suggest that the access to justice situation in Uganda has improved significantly due to the putting in place of far-reaching reforms. Nonetheless, the same informants also point to a number of serious obstacles for access to justice, especially for the poor and vulnerable and in areas affected by conflict.

## C. Tanzania

### 1. Brief country introduction

Tanzania has a population of 41 million people, with 25 percent of the population living in urban areas. Tanzania’s GDP amounts to 22.3 billion USD (2009), and the GDP per capita is around 1,400 USD.<sup>78</sup> The income distribution in Tanzania is more equal than in Kenya and Uganda (Gini index 34.6). Around 89 percent of the population lives below UNDP’s official poverty line (whereas around 36 percent of the population lives below the national poverty line). Tanzania ranks number 148 in the UNDP Human Development Index, thus below Kenya and Uganda. Tanzania is not ranked on UNDP’s Gender Inequality Index.<sup>79</sup> Tanzania’s main sources of income are services (46.4 percent), agriculture (26.4 percent) and industry (22.6 percent).<sup>80</sup>

As the first East African state to be relieved from colonial rule, the mainland of Tanzania (Tanganyika) became independent from Britain in 1961. Julius Nyerere, who had formed the Tanganyika African National Union (TANU), became Prime Minister, and remained in power until 1985. Zanzibar, which had been a sultanate under British protectorate, gained independence a few years later, and in 1964 the United Republic of Tanzania was formed as a union between these 2 countries. In 1977, Nyerere’s TANU party was renamed Chama Cha Mapinduzi-CCM, Revolutionary Party (CCM), and other political parties were banned. As opposed to the leaderships in Kenya and Uganda, Nyerere emphasised the construction of a national identity, and regional and ethnic differences continue to play a smaller role in Tanzania compared to its neighbours. This is generally seen as a key reason why Tanzania has tended to be more peaceful and politically stable than the other East African countries. In 1985, Nyerere was succeeded by Ali Hassan, who was then succeeded by Benjamin Mkapa

<sup>76</sup> Legal Profession Uganda.

<sup>77</sup> State Legal Aid Uganda.

<sup>78</sup> World Fact Book (CIA), *Tanzania*, <https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html>.

<sup>79</sup> UNDP, *Human Development Report 2010*,

[http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Complete\\_reprint.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf).

<sup>80</sup> World Fact Book (CIA), *Tanzania*, <https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html>.

in 1995. Following the 2005 elections, Jakaya Kikwete gained power. He was sworn in for another term following the October 2010 elections, where he won a comfortable victory (62 percent of the votes, compared to the 27 percent who voted for his main challenger, Wilibrod Slaa of the Chadema party).<sup>81</sup> Overall, the country remains heavily dominated by the CCM, which currently controls nearly 80 percent of the seats in parliament.<sup>82</sup>

## 2. The system of governance and key actors in the legal system

The fundamental law of the United Republic of Tanzania is the 1977 Constitution. The constitution stipulates that Tanzania is a socialist state that adheres to multi-party democracy (art. 3(1)), and establishes 3 independent branches of government: The executive, the legislature and the judiciary. The constitution of Tanzania provides for extensive autonomy for Zanzibar, as it has its own president, legislature and administration, and is also governed by its own constitution.

One consequence of this autonomy is that the court system in Tanzania is divided between courts with jurisdiction over Tanzania mainland and courts with jurisdiction over Zanzibar.

For the mainland of Tanzania there are 4 levels of the judiciary. Highest is the Court of Appeal of Tanzania (CAT), which only has jurisdiction in appeal cases. Below this court a High Court is established, which has 14 sub-registries. The High Court relies on 3 specialised divisions: The Commercial Division, the Land Division and the Labour Division. The court level below the High Court is referred to as Subordinate Courts, which include the Resident Magistrate Courts and the District Courts. District Courts are located in all the districts of Tanzania mainland, and Resident Magistrates Courts are located in major towns, municipalities and cities that serve as the regional (provincial) headquarters. The Primary Courts make up the lowest level of the court system. These courts deal with criminal cases as well as civil cases which concern property and family law matters, and can apply customary law as well as Islamic law. Beyond these 4 court levels, a number of specialised tribunals are established, including the District Land and Housing Tribunals, the Tax Tribunal and the Tax Appeals Tribunal, the Labour Reconciliation Board, the Tanzania Industrial Court and Military Tribunals for the Armed forces. Appeals from these specialised tribunals are referred to the High Court.<sup>83</sup>

Other central actors in the legal system in Tanzania mainland include the Commission for Human Rights and Good Governance (CHRGG), which functions both as a NHRI and as an Ombudsman institution; the Law Reform Commission, which is mandated to keep under review Tanzanian laws in order to ensure coherence and further development of the laws; and the Tanganyika Law Society (TLS), mandated to maintain and improve the standards of the legal profession in Tanzania, to assist the govern-

<sup>81</sup> The Economist, *The Results are In*,

[http://www.economist.com/blogs/baobab/2010/11/tanzanias\\_election](http://www.economist.com/blogs/baobab/2010/11/tanzanias_election).

<sup>82</sup> US Department of State, *Background Note: Tanzania*, <http://www.state.gov/r/pa/ei/bgn/2843.htm>.

<sup>83</sup> Questionnaire conducted by DIHR/EALS selected informant on the legal profession in Tanzania mainland (hereinafter "Legal Profession Tanzania" and questionnaire conducted by DIHR/EALS selected informant on paralegal organisations in Tanzania mainland (hereinafter "Paralegal Tanzania").

ment and the courts in all matters affecting legislation, administration and practice of the law in Tanzania and to protect and assist the public in Tanzania in all legal matters.<sup>84</sup>

As is the case in the other East African countries, Tanzania mainland also promotes ADR mechanisms. Such mechanisms are provided for in the constitution (art. 107A), and a number of ADR mechanisms have since been created, including a Commission for Mediation and Arbitration (CMA), which deals with labour disputes in a less formal and more reconciliatory manner than the ordinary courts, and a Ward Tribunal which deals with small land disputes, marital disputes and minor offences using customary law which emphasises reconciliation.<sup>85</sup>

Zanzibar has developed its own court structure in accordance with the Constitution of Zanzibar of 1984. A High Court of Zanzibar is established, but this court is nonetheless subordinated to the CAT as described above, in this way formally linking the court systems of Tanzania mainland and Zanzibar. There are 2 court systems below the High Court: The civil Subordinate Courts and the Kadhi's Courts. The Kadhi's Courts have jurisdiction in cases concerning family law and inheritance and use Islamic law to solve these disputes. There are also a number of specialised courts in Zanzibar, including a Juvenile Court, an Industrial Court and a Land Tribunal.<sup>86</sup>

As the other East African countries, Tanzania's legal system relies on the common law model, influenced by the British colonisers, but as discussed above, Tanzania also accommodates Islamic and customary law, the use of which however varies between mainland Tanzania and Zanzibar.

### 3. The functioning of the legal system and the general access to justice situation

Despite the creation of a Medium Term Strategy (MTS) in 1999 to address the challenges of the legal system in Tanzania, the informants of this report generally hold that the justice system in Tanzania faces significant challenges. Among these challenges are corruption and other unethical conduct and practices in the legal system; cumbersome laws and systems, and a lack of responsiveness to emerging social, political, economic and technological developments; inadequate numbers of legal professionals; and a low level of public trust in the legal system.<sup>87</sup>

Access to justice also remains problematic in Tanzania. One informant of this report notes: "The situation of access to justice in Tanzania depicts a picture with many unpleasant features. On the face of it, the Government of Tanzania has been endeavouring to improve the legal sector as well as access to justice since independence to no avail".<sup>88</sup> One key challenge for access to justice in Tanzania concerns inordinate delays in the handling of cases. This problem may have to do with the fact that, despite the use of strategies to increase the number of legal professionals, Tanzania continues

<sup>84</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>85</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>86</sup> Questionnaire conducted by DIHR/EALS selected informant on legal profession in Zanzibar (hereinafter "Legal Profession Zanzibar").

<sup>87</sup> Legal Profession Tanzania.

<sup>88</sup> Paralegal Tanzania.

to suffer from a lack of adequately trained lawyers, especially in the public sector.<sup>89</sup> Another major problem for access to justice is that legal aid programmes only reach a very limited number of litigants, which in part has to do with the absence of legislation or policies that can ensure that legal aid is provided in criminal cases (beyond capital offences), and in part is caused by the concentration of legal aid providers in urban centres.<sup>90</sup>

In 1996, then Attorney-General, Mark Bomani, who had led a high-level task force formed in 1993, identified a number of key challenges for access to justice in Tanzania. To remedy this, the Bomani report had suggested the annual budget of the legal sector be raised to 266 million USD, in this way enabling Tanzania to bring about a meaningful reform that would guarantee effective access to justice for all, including the poor and vulnerable. However, the government, faced with budgetary restraints and possibly lacking the political will to commence fundamental reforms, decided to identify priority areas around which a smaller, more cost-effective programme would be designed (the MTS with a budget of around 41 million USD to reform the legal sector). An updated version of the MTS continues to provide the central document for the Legal Sector Reform Programme (LSRP) in Tanzania.<sup>91</sup>

Key improvements in the access to justice situation brought about by the use of the MTS include:

- 1) Separation of investigation units and prosecution units, facilitating that the task of prosecution has been handed over from the police force to trained jurists (the office of the Director of Public Prosecution), a measure that has led to a more speedy handling of criminal cases and reduced the number of pending cases<sup>92</sup>;
- 2) Increased coordination of national legal aid, exemplified by the creation of the Tanzania Network of Legal Aid Providers (TANLAP) initiative and the National Legal Aid Network which is currently being developed in order to harmonise legal aid services and produce Kiswahili translations of the various pieces of legislation;<sup>93</sup>
- 3) The establishment of the Law School of Tanzania (2008), which has led to a very significant increase in the number of graduates (from around 70 in 1999 to around 1,000 presently), as well as the creation of a post-graduate training programme for graduates who wish to become practicing lawyers (the first graduates of this programme came out in June 2010)<sup>94</sup>;
- 4) An increase in the number of judicial personnel, including judges, lawyers and state attorneys;<sup>95</sup> and
- 5) The establishment of additional district divisions of the High Court (increasing from 9 in the 1990s to 13 presently).<sup>96</sup>

<sup>89</sup> Paralegal Tanzania.

<sup>90</sup> Legal Profession Tanzania.

<sup>91</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>92</sup> Legal Profession Tanzania.

<sup>93</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>94</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>95</sup> Paralegal Tanzania.

<sup>96</sup> Paralegal Tanzania.

As in Tanzania mainland, the legal system in Zanzibar suffers from inadequate funding and a lack of human resources, causing serious obstacles for access to justice. However, a tendency for the legal system to discriminate against women, for example concerning disputes over land ownership, and the lack of technical equipment on the island, such as machinery for DNA tests, are concerns which appear to relate more specifically to the legal system in Zanzibar.<sup>97</sup>

In sum, some major improvements for access to justice in Tanzania have taken place in recent years, but the situation in many aspects remains critical, especially for the poor and vulnerable in rural sides. Some specific challenges can be identified for Zanzibar, including gender based discrimination in the justice system.

#### **4. Access to justice and legal aid in East Africa: Main legal aid practices in the region and cooperation and coordination between different actors**

This main analytical part of the report analyses 5 key aspects of legal aid in East Africa. Firstly, an introduction to the legal aid models in East Africa is provided for. Secondly, the various types of legal aid (including the forms of legal aid as well as the areas of law covered) available in the countries covered in this report are identified and compared. Thirdly, the accessibility of these legal aid schemes is discussed and compared. Fourthly, various measures utilised by legal aid providers aimed at ensuring quality legal aid are identified and compared. Finally, it is analysed how the different legal aid providers perceive each other.

In analysing and comparing these aspects of legal aid, the report pays particular attention to identifying linkages between the various legal aid providers.

As such, this analysis of legal aid providers and schemes should be viewed in light of access to justice concerns. To the extent that legal aid schemes are not sufficiently available to the population, that certain areas of law are neglected, that the mechanisms put in place fail to offer quality services, etc, this obviously poses a problem for the public's access to justice. On the other hand, to the extent the population is not informed about the existence of legal aid schemes or lack knowledge concerning how they should be approached and utilised, this also presents a problem for access to justice. When the present report points to some strengths and challenges concerning the legal aid models used in the East African countries, especially with the regard to the level of cooperation and coordination between the various legal aid providers, the conclusions made can therefore be viewed in the broader context of access to justice. Though access to justice obviously depends on other factors than the ones discussed in detail in this report – such as the question of whether acceptable substantive and procedural standards are used in the legal framework or the extent to which judicial decisions are actually enforced – a comparative account of the legal aid practices used in East Africa can thus be seen as an important contribution to the access to justice debate. In particular, the fact that the report focuses extensively on identifying existing and potential linkages between the various legal aid providers means that it holds potential for improving access to justice, as such cooperation and coordination is cru-

<sup>97</sup> Legal Profession Zanzibar.

cial for strengthening various aspects of legal aid, including accessibility and quality. In addition, the comparative approach taken in the report means that the stakeholders in legal aid may learn from each other, something which could obviously prove fruitful for improving access to justice for the poor and vulnerable in the region.

## **A. The legal aid models in East Africa**

### 1. Introduction: Different ways of analysing legal aid models

A number of different ways to distinguish between legal aid models have been suggested, each entailing some strengths but also posing some problems. For the purposes of this report, it is useful to dwell on these theoretical models before analysing the modes of legal aid in the East African countries.

#### *Publicly and privately funded legal aid schemes*

First of all, it is useful to make an overall distinction between publicly and privately funded legal aid schemes. Almost all countries use a combination of publicly and privately funded legal aid schemes, but economic development usually leads to greater public involvement in the financing of legal aid schemes (but with some significant variations, where for example in the US the state remains less involved compared to most European countries). Though in most countries, legal aid is funded through a variety of channels, public as well as private, it must be kept in mind that the state is under an obligation according to international human rights law to ensure that legal aid is available for certain categories of cases, the scope of which it is however not easy to define in general terms as mentioned in section 2. The state can fulfil these obligations in different ways, for example by employing lawyers, jurists or paralegals to offer legal aid services, by offering direct funding to legal aid schemes or by providing favourable policy frameworks, such as tax deductible contributions to charities that undertake the legal aid work in practice, putting in place legislation that requires the legal profession to offer legal aid and/or supporting civil society organisation that employ lawyers, jurists or paralegals to offer legal aid.

Alan Paterson distinguishes between 3 overall models of legal aid, which partly reflect the different ways in which the state can fulfil its obligations to offer legal aid:

- 1) The “staff attorney model” (or the “public defender model”), where lawyers are employed on a full-time basis – generally by the public legal aid agency – with the sole purpose of providing legal assistance and representation to those individuals who meet the eligibility criteria;
- 2) The “judicare model”, where private lawyers or law firms, who also work for fee-paying clients, are paid on a case-by-case basis by the state to provide legal assistance and representation to poor and vulnerable people who qualify for such legal aid; and
- 3) The “community legal clinic model”, where non-profit clinics employ lawyers, jurists and/or paralegals to provide legal services to local communities.<sup>98</sup>

<sup>98</sup> Paterson, Alan, *Legal Aid at the Crossroads*, 10 Civil Justice Quarterly 124, 1991. See also Legal Aid Service Providers’ Network, *Mapping Report: Legal Aid Service/ Provision in Uganda*, April 2009, [http://laspnet.org/index2.php?option=com\\_docman&task=doc\\_view&gid=6&Itemid=15](http://laspnet.org/index2.php?option=com_docman&task=doc_view&gid=6&Itemid=15), p. 7.

The first 2 models above are the traditional 2 ways of setting up publicly (state) managed legal aid schemes, but even they have been supplemented in more recent times by newer models, such as contracting legal service provision to law firms or consortiums of firms, with strings attached in terms of quantitative and qualitative delivery indicators.

However, in many countries, especially poor ones, the state is only able or willing to promote legal aid to a limited extent. In consequence, private actors may become the primary suppliers of legal aid, either on an interest or a charitable basis. Private actors can deliver legal aid services in a variety of ways, but some common modalities include the legal profession's pro bono work, legal aid schemes run by NGOs, university legal aid clinics and other actors such as religious based organisations. However, it is important to keep in mind that such initiatives can be funded by the state, thus combining public and private legal aid schemes.

Another model, though of limited application, is where some legal services are available to members of organisations or associations, such as trade unions, professional or commercial associations. This can be referred to as "interest based legal services provision".

While this overall distinction between publicly- and privately-run legal aid initiatives is useful, it is insufficient for understanding the complexity of legal aid models. Attention should also be paid to the whether the beneficiaries of legal aid are required to contribute financially to the services offered.

#### *Financial contribution of beneficiaries of legal aid*

In analysing legal aid models according to the question of whether beneficiaries contribute financially to the legal aid they receive, it has been proposed that we may distinguish between the following 3 models:<sup>99</sup>

- 1) The "insurance model": According to this model it is not the government or the legal profession that is responsible for providing legal aid. Instead, private citizens (sometimes through associations to which they belong) sign insurance policies covering the eventuality of certain kinds of legal expenses. The insurance policy then covers all expenses related to the court proceedings, including legal assistance and representation, when citizens need these legal services. Such systems, however, tend to concern civil cases only, so that other models are applicable in the sphere of criminal justice. The insurance model is not commonly used in African countries, except perhaps occasionally in relation to liability for motor accidents. As a result it is not discussed in this report;
- 2) The "loan model": According to this model beneficiaries of legal aid are forced to make a financial contribution to the legal aid offered, the size of which may depend on their financial status. This contribution takes the form of a loan from the public purse, where following the use of legal aid, benefi-

<sup>99</sup> Centre for Liability Law, Tilburg University, *Legal Aid Systems Compared*, December 2003, <http://www.tilburguniversity.nl/faculties/law/research/tisco/publications/reports/legal-aid-systems.pdf>.



aries are obliged to make periodic repayments. Once again, the loan model does not appear to be used in African countries and is therefore not discussed in this report;

- 3) The “contribution model”: According to this model, the applicants for legal aid contributes by paying part of the expenses, whether concerning lawyers’ fees in civil or criminal cases or other forms of legal aid. The question of whether applicants have to contribute to the legal aid they benefit from is particularly important in an African context, as it may exclude large segments of the population from enjoying legal aid services.

One could add 2 additional funding models to this framework for analysing legal aid:

- 4) The “contingency fees model”: According to this model, legal aid provided by the legal profession in civil cases is granted free of charge, as the lawyers bear the risk of the outcome of the case. This means that any financial award of the law suit is shared between the client and the lawyer, but on the other hand the litigant receives legal aid free of charge. Such schemes are used particularly in the US, and though they are presently not used in an East African context, they might prove relevant for enhancing access to justice for the poor and vulnerable in some cases;
- 5) The “charitable model”: According to this model, legal assistance and representation is simply provided free of charge, either by the state or other actors such as the legal profession or university law students and lecturers. This model is discussed extensively below in the country analyses.

One advantage of using the distinctions above is that they allow for comparative studies on the extent to which litigants can benefit from free legal aid, and thus an important element of access to justice. However, by focusing so extensively on the question of funding, the nature of different actors and the interplay between them may be neglected. Furthermore, the models suggested emphasise legal representation, whereas other forms of legal aid, such as legal awareness raising or public interest litigation, do not fit well into this framework for analysing legal aid.

#### *Actors and the types of legal aid provided*

A third way of distinguishing focuses on the modes of funding as well as the question of what types of actors are involved in legal aid schemes and the types of legal aid provided. Based on an assessment of legal aid in South Africa, David McQuoid-Mason establishes 11 different models of legal aid, which however are not mutually exclusive. These models concern:

- 1) Pro bono legal aid services offered by private lawyers;
- 2) Judicare referrals to private lawyers;
- 3) Public defenders, understood as lawyers employed by the state, who are not paid according to the number of cases handled, but on a monthly basis;
- 4) Law intern public defenders, which is to be understood as the provision of legal assistance and representation by students enrolled at the law faculties;

- 5) Justice centres, which use lawyers, jurists or paralegals to provide a range of legal aid services, though usually focusing on other forms of legal aid than representation;
- 6) Impact litigation, which concerns legal aid boards' attempts to set precedence in cases with impact for the general population, such as environmental issues;
- 7) Cooperation agreements, where a national legal aid body contracts specialists, including NGOs, legal aid clinics or private law firms, to provide legal aid in a particular area of law;
- 8) The use of law interns in rural law firms, who in their work deal primarily with providing legal aid;
- 9) Public interest law firms, which attempt to set precedence in cases that concern the general public;
- 10) Independent university law clinics, where law students under the supervision of legal professionals provide a range of legal aid services;
- 11) Paralegal advice offices, where either paid employees or volunteers provide a wide range of legal aid services for the local community, including civic education to raise awareness of legal rights.<sup>100</sup>

A major strength of using these distinctions is that they incorporate modes of legal aid which cannot easily be understood according to the other frameworks for analysing legal aid. Furthermore, it is a strength that attention is paid to the relevant actors as well as the types of legal aid these actors usually provide and the issue of funding. However, one might argue that some of the models, such as the impact litigation model and the public interest model, are almost identical, therefore overly complicating the identification of particular practices according to this framework.

#### *Legal aid in the East African context*

Importantly, the frameworks for analysing legal aid models discussed above have not been developed in an East African context (but often in the context of wealthier countries). Arguably, this means that insufficient attention is paid to issues such as legal awareness raising, as in most of the wealthier countries basic legal information is widely available. In the East African context, where to some extent the legal framework is passed over from colonial rule and the poor and vulnerable often have very limited knowledge of their rights and legal procedures, a central aspect of legal aid will often be to make legal information available for these marginalised groups.

This report takes an open approach to understanding the legal aid schemes in East Africa, thereby attempting to avoid placing these practices in fixed boxes. Nevertheless, the report draws on the analytical apparatus described above when identifying overall structures in the systems of legal aid. In analysing the legal aid practices and policies in Kenya, Uganda and Tanzania this section focuses on the questions of how legal aid schemes are *organised*; how they are *regulated*; who the *central actors* are (using an overall distinction between state actors, the legal profession and NGOs and paralegals, and discussing the roles of these various actors in different levels of legal aid, including the policy-making as well as the management and provision levels of legal

<sup>100</sup> McQuoid-Mason, David, "Legal Aid: Traditional and Non-Traditional Methods of Delivery", *Handout at the 2<sup>nd</sup> European Forum on Access to Justice*, February 24-26, 2005 (note on file with author).

aid), and how the different mechanisms are *funded*. Furthermore, this section focuses on the overall *interplays between the different actors*, for example by analysing whether national legal aid bodies coordinate or in other ways are involved in the work of the legal profession or paralegals. As subsequent sections deal more extensively with the questions of what areas of law are covered by different actors, the accessibility of different legal aid schemes and the quality of these mechanisms, these issues are only touched upon peripherally in this section. The present section should thus be seen as an attempt to describe in overall terms the legal aid practices used in the 3 countries covered in this report. To do so, trends and similarities as well as main differences between the East African countries are highlighted. Before pointing to these similarities and differences, it is useful to describe the legal aid models used on a country-by-country basis.

## 2. An overview of the legal aid models used in Kenya, Uganda and Tanzania

### *Kenya*

Kenya uses a variety of systems to ensure that the poor and vulnerable are provided with legal aid, including the staff attorney model,<sup>101</sup> the *judicare* (or state brief) model and the community legal clinic model. Though the state is increasingly becoming involved in the provision of legal aid, it is fair to say that legal aid relies extensively on private initiatives, such as the services offered by the legal profession, NGOs and paralegals. In terms of funding, Kenya places itself closest to the charitable model, as most legal aid schemes do not require self-payment by litigants and an insurance system is not in place. Using the more detailed distinctions offered by McQuoid-Mason, Kenya (to very different extents) uses the following models: Pro bono legal aid services offered by private lawyers; *judicare* (state brief) referrals to private lawyers; justice centres, which use lawyers, jurists and/or paralegals to provide a range of legal aid services;<sup>102</sup> paralegal advice offices; independent university law clinics; and (arguably) a cooperation agreement, where a national legal aid body (or more correctly put in the case of Kenya, a state legal aid initiative)<sup>103</sup> contracts specialists to provide legal aid in a particular area of law.<sup>104</sup>

To facilitate the provision of legal aid, a number of legislative acts and policies are put in place. 2 important initiatives concern the new constitution's prompting of access to justice and free legal assistance and representation in criminal cases (art. 48 and 50 (2)), and the establishment of NALEAP in September 2008, which is responsible for developing a national legal aid policy and legislation.<sup>105</sup> It is important to note that Kenya uses the monist system, where international treaties that the country is part to as well as international customary law automatically form part of the domestic legal order.<sup>106</sup>

<sup>101</sup> Kenya does not use public defenders, but the NALEAP has employed a limited number of lawyers to provide legal aid in certain cases (see further below).

<sup>102</sup> However, justice centres are only run on a pilot basis by the NALEAP (see below).

<sup>103</sup> It is probably more correct to refer to NALEAP as a state legal aid initiative than as a national legal aid body. See further below on NALEAP.

<sup>104</sup> State Legal Aid Kenya, Legal Profession Kenya and Paralegal Kenya.

<sup>105</sup> State Legal Aid Kenya.

<sup>106</sup> See art. 2 (5) and (6) of the Kenyan constitution.

In the criminal justice sphere, no single system of legal aid ensures the rights of the accused to legal assistance and representation. So far the state has assumed financial responsibility only in capital punishment cases, using the pauper brief system (a judicare system that in reality only covers murder trials and treason cases in the High Court).<sup>107</sup> This system relies on private lawyers appointed and paid by the judiciary on a case-by-case basis, but has been deemed inefficient in part due to the poor fees offered to lawyers. This results in mostly young and inexperienced lawyers taking these cases and sometimes in a lack of commitment on the part of lawyers to engage actively in the defence of the accused.<sup>108</sup> Other likely criticisms of the scheme concern the lack of clear and uniform criteria in its application, and a tendency for funds to dry up later in the budgetary year.

In addition to this state-run initiative, the legal profession through the Law Society of Kenya (LSK) has adopted rules which oblige lawyers to provide pro bono services, but these rules do not stipulate how and to what extent such services must be provided, and the impression is that only few lawyers offer such services in reality. Furthermore, the legal profession's pro bono work generally focuses on major urban centres, leaving most of the poor and vulnerable in rural areas out of reach of these services.<sup>109</sup>

Depending on how it will be implemented and managed, the inclusion of a provision in the new constitution (art. 50 (2) (h)) which (in a quite similar way to international instruments, such as the ICCPR) requires the state to pay for legal assistance and representation in criminal cases "if substantial injustice would otherwise result" may lead to changes in the provision of legal aid in criminal cases. Furthermore, the new constitution (art. 49 (1) (c) and 50 (7)) would seem to allow paralegals to intervene in court proceedings on behalf of the accused or victims, which may also improve access to legal aid in the sphere of criminal justice as it is likely to enhance the role of paralegals in offering legal representation.<sup>110</sup>

Generally speaking, the level of interaction between the state, the legal profession, NGOs and paralegals and other legal aid actors in Kenya has improved over the last few years. In particular, the recently established NALEAP illustrates this. The programme is run by GJLOS, but NGOs and other stakeholders in the legal system are included in the steering committee, and the projects established draw extensively on the expertise of the legal profession and paralegals. Presently, NALEAP only runs 6 pilot projects that are geographically limited in reach. For example, NALEAP has established a Nairobi Children's Court Legal Education and Aid Pilot Project, which is facilitated by the LSK and the Children's Legal Action Network (CLAN), and aims at

<sup>107</sup> See The Criminal Procedure code Cap 75 Laws of Kenya.

<sup>108</sup> State Legal Aid Kenya and Legal Profession Kenya.

<sup>109</sup> Legal Profession Kenya.

<sup>110</sup> It remains to be seen, however, to what extent paralegals will be allowed to operate according to these 2 provisions, which stipulate that "an arrested person has the right to communicate with an advocate, and other persons whose assistance is necessary" (art. 49 (1) (c)) and "In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court" (art. 50 (7)). Until then, paralegals in Kenya have been allowed to offer legal representation in certain cases relating to children and in connection with the Advocates Complaint Tribunal.

legal awareness raising and assistance to litigants; a Capital Offences Legal Aid Pilot Project based in Mombasa, facilitated by the Mombasa branch of the LSK, which offers legal education, advices, assistance and representation, in this way replacing the pauper brief system in Mombasa; a Paralegals Advice Office Pilot Project based in Kisumu, which facilitates cooperation between the local Magistrates Court, the LSK, the Catholic Archdiocese and paralegal networks with the purpose of offering legal advices to indigents; and a Law Clinic Pilot Project at Moi University in Eldoret, which offers legal education, mediation and assistance by drawing on the expertise of the local branch of LSK. Despite the limited geographical reach of these initiatives, some informants of this report emphasise that NALEAP has the potential for becoming an important body for improving legal aid in Kenya, for example because it may lead to improvements in state-supported legal aid schemes in civil cases, which has so far been limited to the pauper briefs system (where the state pays court fees, but not the fees of lawyers, for those who cannot afford it).<sup>111</sup> The complicated application process of this pauper brief system has been a major obstacle for the poor and vulnerable in Kenya to actually benefit from it.<sup>112</sup>

Other legal aid initiatives in Kenya include a Legal Awareness Week, organised by the LSK but involving other legal aid providers such as paralegals, where the general public can seek free legal advices. Having established complaint mechanisms concerning human rights abuses and conducting legal awareness raising and advocacy, the KNHREC is also involved in legal aid work in Kenya.<sup>113</sup>

Paralegals also play an important role for the various aspects of legal aid in Kenya. Paralegal activities in the field of legal aid are not regulated by law or general policies, but the NALAEP national policy on legal aid which is currently being drafted includes these actors. Though a number of paralegal networks, such as the Paralegal Support Network (PASUNE) and the Kenya Paralegal Association (KPA), have been established, the level of coordination between paralegal organisations in many aspects remains limited.<sup>114</sup>

The legal aid schemes available in Kenya are funded in various ways. The state legal aid initiatives, including the NALEAP initiative, have been allocated an amount of 200 million KSH (approximately 2.5 million USD) over the past 2 years. This funding comes from general budget allocation of the government, a basket fund under the GJLOS reform programme and international donors. Legal aid schemes offered by the legal profession are funded through membership contributions (LSK), NALEAP allocation of resources and contributions from other partners of the law society, including NGOs. The legal aid offered by civil society organisations and paralegals is funded primarily by international donors, including Sweden, Germany, Denmark, Norway, UNIFEM and the UNDP.

Many Kenyans do not have access to the legal aid they need, and the availability of legal aid providers varies significantly across the regions. In particular the northern

<sup>111</sup> State Legal Aid Kenya and Legal Profession Kenya.

<sup>112</sup> State Legal Aid Kenya and Legal Profession Kenya.

<sup>113</sup> State Legal Aid Kenya, Legal Profession Kenya and Paralegal Kenya.

<sup>114</sup> Paralegal Kenya.

parts of the country suffer from a lack of access to legal aid as the number of providers, especially lawyers, is very limited.<sup>115</sup>

### *Uganda*

Uganda uses a number of different systems to ensure that the poor and vulnerable have access to legal aid, including the staff attorney model (through the pilot Justice Centres that employ lawyers on a salaried basis), the *judicare* (or state brief) model and the community legal clinic model. Though (as in Kenya) the state is increasingly becoming involved in the provision of legal aid, it is fair to say that legal aid relies extensively on private initiatives, such as the services offered by the legal profession, NGOs and paralegals. In terms of funding, most of the legal aid schemes in Uganda can be used free of charge, thus placing the country closest to the charitable model. Using the more detailed distinctions offered by McQuoid-Mason, Uganda (to very different extents) uses the following models: Pro bono legal aid services offered by private lawyers; *judicare* (state brief) referrals to private lawyers; justice centres (presently operating under the judiciary), which use lawyers and paralegals to provide a range of legal aid services; cooperation agreements, where a national legal aid body (or more correctly put in the case of Uganda, state legal aid initiatives) contracts specialists to provide legal aid in a particular area of law;<sup>116</sup> independent university law clinics, where law students under the supervision of legal professionals provide a range of legal aid services; and paralegal advice offices.<sup>117</sup>

Though one coherent national policy on legal aid is yet to be finalised and implemented, to a certain extent the provision of legal aid in Uganda is regulated through legislation and policies. Central documents include the 1995 Constitution, which deals with legal aid in the most serious criminal cases (art. 28 (2) (e)), and the Advocates (Amendment) Act 2002, which deals with lawyers' pro bono services. The Uganda Law Council (ULC) has been established by an act of parliament to supervise and regulate legal aid in Uganda.<sup>118</sup> It is important to note that Uganda relies on the dualist system, where international treaties ratified by the state only become part of the domestic legal order after parliament adopts a bill to govern ratification.<sup>119</sup>

The provision of legal assistance and representation in criminal cases relies on the state as well as the legal profession and paralegals. Art. 28 (3) of the Ugandan Constitution requires the state to ensure and pay for legal representation in cases where the defendant can be sentenced to death or life imprisonment, and the Poor Persons Defence Act further spells out the procedures and criteria of eligibility for legal aid in these cases. To facilitate legal assistance and representation in serious criminal cases, Uganda uses a *judicare* (or state brief) system, where the state calls on private lawyers and pay them a (modest) fee to provide legal aid on a case-by-case basis.<sup>120</sup>

<sup>115</sup> State Legal Aid Kenya, Legal Profession Kenya and Paralegal Kenya.

<sup>116</sup> The Law Development Centre and the Justice Centres Pilot Project, legal aid initiatives adopted by the government, contract lawyers and others to provide legal aid (see further below).

<sup>117</sup> State Legal Aid Uganda, Legal Profession Uganda and Paralegal Uganda.

<sup>118</sup> State Legal Aid Uganda and Legal Profession Uganda.

<sup>119</sup> See art. 123 of the Ugandan constitution. See also Constitutional Court of Uganda, *Paul Kawanga Ssemwogerere & Ors v Attorney General*, Constitutional Petition 5 of 2002 (unreported).

<sup>120</sup> State Legal Aid Uganda and Legal Profession Uganda.

Another way of ensuring legal aid in criminal cases as well as other cases concerns lawyers' obligation to provide pro bono services. Uganda has adopted legislation which lays down requirements for lawyers to offer pro bono services, including an obligation for every lawyer to use 40 hours on this task every year. This obligation, however, does not only concern legal assistance and representation, but can be fulfilled by providing a number of other legal aid services, including legal education, and in reality many lawyers appear to circumvent the rule by instead paying a penalty fee. In part, this might be so because the statutory obligation to provide pro bono services is currently primarily being implemented through a pilot pro bono project established by the Uganda Law Society (ULS), where 7 clinics have been established across the country. In these clinics, lawyers and paralegals with a diploma in law are permanently employed by the ULS to provide legal aid, which includes conducting human rights outreach programmes and providing assistance and representation free of charge for the poor and vulnerable.<sup>121</sup>

There are a number of other relevant initiatives concerning legal aid in Uganda, many of which are based on cooperation between the state, the legal profession, NGOs employing and organising paralegals, and other actors. For example, a Law Development Centre has been established by the government, which uses lawyers as well as law post graduate students (under the guidance of experienced lawyers) to provide legal aid and assistance for members of vulnerable groups during their training in legal practice. Also based on cooperation between different actors, the recently established judiciary-run Justice Centres Pilot Project uses lawyers and paralegals to offer free legal advices in clinics. Furthermore, Uganda is in the process of establishing a pilot small claims procedure, which would allow claimants to receive legal assistance from legal aid providers in order to present themselves before the tribunals for civil/commercial claims of not more than 10,000,000 USH (approximately 4,500 USD), in this way offering a less technical procedure which results in a faster completion of cases. There is also a Department of the Administrator General under the Ministry of Justice, where jurists are employed on a full-time basis to offer free legal services in certain areas of law, including inheritance and issues related to minors. Other actors involved in legal education and legal awareness raising in Uganda include the state-run ULC, the UHRC and the Uganda Law Reform Commission, which uses lawyers and jurists to conduct workshops etc. in connection with the drafting of new laws. In 2008, the ULS launched a national legal aid week, where various legal aid providers invited the public to obtain on-the-spot legal aid.<sup>122</sup>

Paralegals play an important role for the various aspects of legal aid in Uganda (even if they are presently not allowed to provide legal representation. Paralegal activities in the field of legal aid are not yet regulated by law, but some strategies are currently being drafted under the auspices of the ULC. Many paralegals work with state bodies in a partnership between the Paralegal Advisory Services (PAS), which is currently hosted by the Foundation for Human Rights Initiative (FHRI) and the various institutions of the JLOS. No national regulation concerning the work of paralegals has yet been put in place, but many paralegal organisations apply codes of conduct. A number of legal aid networks, such as the Legal Aid Service Providers Network (LASP-

<sup>121</sup> Legal Profession Uganda.

<sup>122</sup> State Legal Aid Uganda, Legal Profession Uganda and Paralegal Uganda

NET) and the Uganda Paralegals Society (UPS), coordinate paralegals' legal aid work, but the level of cooperation is still limited.<sup>123</sup>

The legal aid schemes available in Uganda are funded in various ways. As for the state-run legal aid initiatives, the government's general budget and international donors play the most important role. Examples of funding include the UHRC (having received around 4.7 billion USH (around 2 million USD) in the 2007/08 financial year and around 4.4 billion USH (around 1.9 million USD) in the 2008/09 financial year from the government, and around 2 billion USH (around 850.000 USD) from international donors in the 2007/08 financial year and around 2.7 billion USH in the 2008/09 financial year (around 1.2 million USD). The state brief system (which is directly financed through the judiciary) as well as the ULC (which is supported through the Legal Aid Basket Fund) receives very limited funding from the government while the Justice Centres Pilot Project is financed through the Legal Aid Basket Fund. Legal aid schemes offered by the legal profession are mostly funded by membership subscriptions (ULS), international donors (for particular projects) and the Legal Aid Basket Fund (for the implementation of ULS' pro bono pilot project). The legal aid schemes put in place by civil society organisations are mainly funded by international donors (sometimes this funding goes via the Legal Aid Basket Fund), including Austria, Denmark, Ireland, The Netherlands, Sweden, the United Kingdom, USA, Japan, the EU and other grant makers in Canada, Germany and Norway.

The availability of legal aid in Uganda is much higher in urban centres compared to rural areas, which still suffer from an inadequate number of legal aid providers, especially lawyers.<sup>124</sup>

### *Tanzania*

The state is only to a limited extent involved in providing legal aid in Tanzania mainland. Tanzania mainland uses 3 overall systems of legal aid. In the sphere of criminal justice, the judiciary is responsible for managing a legal aid scheme, which can best be described as following the *judicare* (or state brief) model. Accordingly, judges appoint private lawyers, who are paid (modestly) on a case-by-case basis by the state, to assist and represent the accused. In practice, however, legal aid is provided free of charge only in capital offence cases through this system.

With regard to civil cases, the emphasis is mostly on non-state initiatives. The TLS has established a *pro bono* system, where lawyers are in principle obliged to offer legal advice and representation free of charge (neither the government nor the TLS offers compensation to the lawyers). Furthermore, clinics have been established by NGOs, where in-house staff, consisting mostly of jurists and paralegals (but also a limited number of lawyers), provide a variety of legal aid services. Though a small amount may be required when using certain legal aid schemes, Tanzania mainland usually follows the charitable model. Placing the other schemes of legal aid in Tanzania mainland according to the distinctions offered by McQuoid-Mason, includes independent university law clinics and paralegal advice offices.<sup>125</sup>

<sup>123</sup> Paralegal Uganda.

<sup>124</sup> State Legal Aid Uganda, Legal Profession Uganda and Paralegal Uganda.

<sup>125</sup> Legal Profession Tanzania and Paralegal Tanzania.



Besides the state-funded criminal legal aid scheme, 2 key categories of legal aid providers exist in Tanzania mainland. The first category relates to institutions whose main objective is legal aid. These include legal aid clinics connected to higher learning institutions, such as the School of Law of the University of Dar es Salaam. In these clinics, lawyers who work for the university offer pro bono services. The second category concerns institutions (including the TLS, various NGOs and paralegal networks) that offer a variety of services, but are also involved in the provision of legal aid. Legal aid providers in this category include full-time in-house employed lawyers, jurists and paralegals, private lawyers who are recruited for specific tasks and lawyers offering pro bono services on an ad hoc basis in connection with the programmes established by these organisations. The CHRGG is also involved in various aspects of legal aid, including legal awareness raising, training and advocacy.<sup>126</sup>

It is of particular interest that the TLS has adopted internal rules that require its members to accept legal aid briefs assigned by the society. However, these rules not only fail to define what is understood by legal aid but also fail to lay down minimum requirements in terms of the work hours lawyers must dedicate to pro bono services.<sup>127</sup> Furthermore, the TLS is involved in other legal aid activities, including the launching of a so-called Legal Aid Day in 2007.

There is no national policy or bill on legal aid in Tanzania mainland, and though the Ministry of Justice and Constitutional Affairs has recently established a Directorate for Public Legal Services (which covers legal aid), none is currently being drafted (as opposed to what is the case in Kenya and Uganda). A draft *legal sector policy* was formulated in 2008, currently awaiting the approval of the government. Key documents on the provision of legal aid in Tanzania include the Constitution, which (but only indirectly) deals with legal representation in criminal cases (art. 13 (6) (a)); and the Court Fees Rules and the Court of Appeal Rules, which exempt certain categories of claimants from paying court fees.<sup>128</sup> Like Uganda, Tanzania follows the dualist system, according to which international instruments only become part of the domestic legal order after parliament passes a bill.<sup>129</sup>

There are no formal mechanisms for coordinating the different legal aid schemes established in Tanzania mainland, though this may be remedied with the establishment of a Legal Aid Network in the future. It is the LSRP under the auspices of the Ministry of Constitutional Affairs and Justice that will be responsible for creating this network. Despite the absence of coordination bodies, to a certain extent the TLS cooperates with other actors in its legal aid activities, including government agencies, university legal aid clinics and NGOs and paralegal organisations.<sup>130</sup> In addition, TANLAP is in the process of defining unified rules to regulate paralegals' provision of legal aid.<sup>131</sup>

<sup>126</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>127</sup> Legal Profession Tanzania.

<sup>128</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>129</sup> See art. 63 (3) of the Tanzanian constitution.

<sup>130</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>131</sup> Paralegal Tanzania.

Legal aid services offered by lawyers tend to concentrate in urban centres. The TLS has 8 offices, which are located in regional centres, but the large majority of lawyers' legal aid cases are dealt with in Dar es Salaam.<sup>132</sup>

To a larger extent than lawyers, paralegals operate in rural areas. In Tanzania mainland, there is no national policy regulating and coordinating the work of paralegals. However, a number of legal aid networks, including TANLAP and specifically on paralegals the newly Tanzania Paralegals Network (TAPANET), have been established and organisations such as the National Organisation for Legal Assistance (NOLA), Legal and Human Rights Centre (LHRC), Tanzania Women Lawyers Association (TAWLA) and Women's Legal Aid Centre (WLAC), deploy paralegals in different communities to promote access to justice. Despite the absence of national regulation, many paralegal organisations have created codes of conduct and other forms of internal regulation.<sup>133</sup>

The legal aid schemes available in Tanzania mainland are funded in various ways, including government-funding through the judiciary for the state brief system; membership subscriptions (TLS) and funding from the LSRP for the administration of the law society's pro bono scheme; and local and international donors for the legal aid schemes run by civil society organisations.

As for Zanzibar, the provision of legal aid in many ways distinguishes itself from Tanzania mainland. There is no legal regulation or general policies covering legal aid in Zanzibar, and the draft Legal Practice Act prepared by the Zanzibar Law Society (ZLS) in 2006 seems to have since been neglected. The main actor in legal aid provision in Zanzibar is the ZLS, which is formed as an NGO rather than a statutory body. The Zanzibar practitioner's decree indicates that lawyers should offer pro bono services, but there is no specific regulation of the topic. Consequently, the lawyers in Zanzibar simply provide legal aid on an individual ad hoc basis. Perhaps due to the absence of legal regulation and policies governing issues related to legal aid, a tradition has been formed where the Chief Justice of Zanzibar requests lawyers of the High Court to take serious criminal cases when the defendant cannot afford a lawyer. The lawyer is paid by the High Court for these services. Besides lawyers, legal aid is offered by paralegals and NGOs, such as the Zanzibar Legal Service Centre (ZLSC) and the Zanzibar Female Lawyers Association (ZAFELA).<sup>134</sup> The legal aid initiatives in Zanzibar are not funded by the government, but rather local and international donors and membership subscriptions (ZLS).

<sup>132</sup> Legal Profession Tanzania.

<sup>133</sup> Paralegal Tanzania.

<sup>134</sup> Legal Profession Zanzibar and questionnaire conducted by DIHR/EALS selected informant on paralegal organisations in Zanzibar (hereinafter "Paralegal Zanzibar").

### **Fact box 1: Key state legal aid initiatives concerning legal aid in East Africa**

**Legal Aid and Awareness Programme (NALEAP) in Kenya:** The NALEAP was established in September 2008, charged with the responsibility of developing a national legal aid policy and legislation. The programme is run by the Governance, Justice, Law and Order Reform Sector (GJLOS), but NGOs, representatives of the legal profession and other stakeholders in the legal system are included in the steering committee. The strategic objectives of the policy development, which is still to be finalised, include:

- 1) Promoting, providing and guaranteeing equal and equitable access to justice for all, irrespective of gender, age, ethnicity, religion or political affiliation, mental or physical disability;
- 2) Eliminating systematic and systemic marginalisation of the vulnerable, marginalised and poor persons in respect to the provision of legal awareness and aid;
- 3) Demystifying the law, creating public awareness and restoration of public confidence in the administration of justice;
- 4) Recognising, promoting and institutionalising paralegalism in the administration of justice;
- 5) Recognising and promoting the use of community ADR mechanisms;
- 6) Recognising and building sustainable linkages with key stakeholders in the provision of legal awareness and aid in the judicial, administrative and communal dispute resolution system;
- 7) Establishing an implementation, monitoring, evaluation, regulatory, supervisory support framework for NALEAP; and
- 8) Advocating for and ensuring allocation of fiscal, human and technical resources to legal aid and awareness programmes.

Besides being involved in policy development, NALEAP has established a number of pilot projects that in cooperation with other legal aid providers, such as the legal profession, NGOs and paralegals, offer legal aid in certain geographical areas and/or certain categories of law.

**The Uganda Law Council (ULC) in Uganda:** Under the Justice, Law and Order Sector (JLOS). The ULC, which is a Department in the Ministry of Justice and Constitutional Affairs, has been charged with the responsibility to formulate a national legal aid policy. The expected areas to be covered by the policy are as follows:

- 1) The nature of legal aid to be provided, the areas of law and geographical coverage;
- 2) The best model or a combination of models for delivery of legal aid services from the wide variety available;

- 3) Methods for identifying legal aid clients (a means and merit testing systems);
- 4) Definitions of indigence, inability to pay and best practises;
- 5) The establishment of a national legal aid body that will be responsible for providing legal aid to the public;
- 6) Establishment of the sources of funding for the legal aid body and legal aid services; and
- 7) Setting standards for client care and quality service (providing best practises for client care, requirement for continuous professional development, standardised mode of delivery, requirement for internal monitoring and evaluation of the quality of services, procedures for supervision of staff, requirements for strong internal policy to ensure quality service and regular monitoring and evaluation of legal service providers).

The ULC, which is established by the Advocates Act, is also responsible for developing rules and legislation covering the area of legal aid. So far, this has led to the adoption of the Legal Aid Service to Indigent Persons Regulations S.I.12/2007 and the Advocates (Pro Bono Service to Indigent Persons) Regulations S.I.39/2009, which set out various requirements to legal aid providers. The ULC is also responsible for certifying legal aid providers and approving pro bono projects. Furthermore, the ULC carries out regular inspections of legal aid providers on the ground. The ULC has a number of sub-committees, including the sub-committee on legal aid which implements the mandate of the ULC to regulate and supervise the provision of legal services. The membership of this sub-committee is composed of representatives from the law society.

**Legal Sector Reform Program (LSRP) in Tanzania (mainland):** The Ministry of Constitutional affairs and Justice has established the LSRP to establish a national legal sector policy, which is currently awaiting the approval of the government. There is no government initiative in place to ensure the adoption of a national legal aid policy, but the LSRP supports the establishment of a Legal Aid Network, which may with time lead to the formulation of a legal aid policy. Similarly, the recently established a Directorate for Public Legal Services (which covers legal aid) at the Ministry of Justice and Constitutional Affairs may also lead to further policy development.

### 3. An overall comparison of the legal aid models in East Africa

One general feature concerning legal aid in the East African countries is that its provision does not rely mainly on *one* single actor, such as the state or the legal profession, but rather involves a multitude of actors, each usually focusing on one or more particular forms of legal aid. Nonetheless, there is also some amount of overlapping, where different legal aid schemes, such as lawyers' pro bono services and legal advices offered by NGOs and paralegals, can serve a similar purpose.

As such, the direct role of governments in the provision of legal aid in East Africa tends to be rather limited. Despite some pilot initiatives in Kenya and Uganda, none of the countries covered in this report use a system yet where public defenders are employed permanently by the state to offer legal aid to the poor and vulnerable, and only to a limited extent do the states compensate private lawyers who assist and represent the poor and vulnerable in court. For example, whereas all of the countries covered in this report use the *judicare* (or *state brief*) model, where private lawyers receive payment from the state when defending the accused in criminal cases, these systems only cover the most serious cases (usually only capital offence cases), leaving the large majority of defendants without access to state-funded legal aid schemes.

However, some of the governments of East Africa are involved in the provision of legal aid in other more indirect or subtle ways. For example, besides Zanzibar, all of the countries covered in this report have established some sort of sector-wide programmes and/or other initiatives to deal with legal aid issues (Kenya: GJLOS and NALEAP; Uganda: JLOS and ULC; and Tanzania: LSRP). Though none of the East African countries have yet adopted a national legal aid policy, some of the states (Kenya and Uganda) are actively involved in the drafting of such as a result of these programmes. Nonetheless, there are important differences concerning the work of these government programmes. In Uganda, for example, the government-run ULC plays a role for attempting to supervise and coordinate the provision of legal aid, while on the other hand the government's role in supervision and coordination presently remains limited in Kenya (at least until the legal aid policy is finalised and adopted) and Tanzania. Furthermore, the Kenyan and Ugandan government-run programmes have created a number of projects on the ground, which aim at improving access to legal aid. However, these projects tend to target only certain groups and/or are geographically limited in their reach, and many are still in their pilot phase. Nonetheless, they usually reflect an innovative approach to legal aid, which draws on the expertise of different actors, including the legal profession and paralegals.

In all of the countries covered in this report, the legal profession is active in legal aid activities. One common feature concerns lawyers' obligation to work on a *pro bono* basis. Whereas in Uganda this is a statutory obligation (although only implemented on a pilot basis), in Kenya and Tanzania mainland internal rules of the national law society require private lawyers to offer certain litigants legal assistance and representation free of charge. However, neither the LSK nor the TLS have specified how this obligation must be fulfilled, and there are no requirements in terms of the work hours that must be dedicated to this task. Though such requirements exist in Uganda, it is a common problem in all of the East African countries that lawyers can avoid *pro bono* work due to the absence of effective regulation and monitoring of compliance with these rules. Moreover, the *pro bono* work offered by the legal profession tends to concentrate in urban centres, leaving much of the rural population without access to this kind of legal aid. It should be noted though that there are also some major differences between the legal professions' engagement in *pro bono* work. In Kenya and Tanzania, for example, there is no coordination between lawyers in this regard. In Uganda, on the other hand, lawyers' *pro bono* work is primarily facilitated through a coordinating desk at ULS level responsible for organising the *pro bono* work to be undertaken by lawyers in relation to cases identified at the level of the law society clinics.

Besides providing legal assistance and representation free of charge, the lawyers in East Africa also tend to be involved in a number of other legal aid initiatives, including projects that aim at increasing legal awareness. In all of the countries (excluding Zanzibar), the law societies have created legal aid or awareness days, where the general public is invited and can benefit from different forms of legal aid. Furthermore, in some instances the members of these professional associations offer advice and assistance to the local population in connection with government-run projects on the ground.

The law societies in Kenya and Uganda are also actively involved in the drafting of national legal aid policies since they have a seat in the government bodies which have been handed the task of creating such policies.

Paralegals play an important role in the provision of legal aid in the region. None of the countries covered have adopted legislation or national policies regulating the work of paralegals, but some of the countries (Kenya and Uganda) are currently drafting legislation and/or national policies on legal aid, which will incorporate the work of paralegals. This being said, pilot projects run by the state in Kenya as well as Uganda already use paralegals to promote different forms of legal aid. Paralegals are usually not allowed to represent clients before the courts in the countries covered in this report. However, in Kenya, while presently allowed to offer legal representation in some specific areas of law, a constitutional provision, which is yet to be implemented, could be interpreted as allowing paralegals to generally intervene in court proceedings on behalf of the accused or victims.

In all of the countries covered in this report, a variety of other modes of providing legal aid are used. In some of the countries (Kenya and Tanzania), law school clinics play a role in legal aid, and across the region national human rights commissions are established to advance legal awareness and conduct human rights training and advocacy work.

### **Fact box 2: Comparing the state brief systems in East Africa**

#### **Criminal cases**

**Kenya:** Kenya uses a so-called pauper brief system, where private lawyers are paid by the state on a case-by-case basis to assist and represent the accused in criminal cases if they cannot afford a lawyer on their own. The system, which is administered by the High Court, only covers capital offence cases (murder trials or treason in the High Court). The scheme has limited funding and lawyers are paid significantly less compared to what they would normally charge in a similar case. This causes that mostly young and inexperienced lawyers are appointed, and possibly results in a lack of commitment on the side of lawyers to engage actively in these cases. The new constitution may lead to changes in the state brief system, as a provision requires the state to pay for legal assistance and representation in criminal cases “if substantial injustice would otherwise result”. A pilot NALEAP project administered by the local LSK branch concerning legal education, assistance and representation in capital offence

cases has been put in place in Mombasa, which replaces the pauper brief system in that city.

**Uganda:** Uganda uses a state brief system, where private lawyers are paid by the state on a case-by-case basis to assist and represent the accused in criminal cases if they cannot afford a lawyer on their own. The system only covers cases where the accused can be sentenced to life imprisonment or death. The scheme is administered by the Court Registrars of the High Court and the Chief Magistrate Courts, who decide which lawyers should be called for, but lawyers are not compelled to appear. The lawyers used under this system are paid only a small fee.

**Tanzania:** Tanzania mainland uses of state brief system, where private lawyers are paid by the state on a case-by-case basis to assist and represent the accused in criminal cases if they cannot afford a lawyer on their own. The scheme is applicable where the High Court or Magistrate Courts finds it desirable in the interests of justice that the accused should have legal aid in the preparation and conduct of his defence, but in reality the state brief system is only used in capital offence cases (murder and treason). The lawyers appointed are paid only modestly and they are often given little opportunity to prepare the defence. No state brief system has been established in Zanzibar, but based on a tradition the Chief Justice of Zanzibar requests lawyers, which are paid on a case-by-case basis by the judiciary, to defend the accused in serious criminal cases.

### **Civil cases**

**Kenya:** Kenya does not use a general state brief system in civil cases. However, a number of government-run pilot projects (managed by the NALEAP) have been put in place, offering legal assistance and representation to certain vulnerable groups or in limited geographical areas. In addition, Kenya uses a pauper brief system in civil cases, where the poor are exempted from paying court fees. The scheme is based on a process where the applicant must forward a detailed request to the relevant court, which then conducts a hearing where the applicant needs to provide evidence that he cannot afford the court fees. The court then makes a decision whether the applicant should be considered a pauper. If the pauper plaintiff wins the case and the losing party is required to make a payment to the pauper plaintiff, the court may nevertheless order that the court fees are paid. The pauper brief scheme does not cover the costs of the plaintiff's legal assistance and representation.

**Uganda:** Uganda does not use a general state brief system in civil cases. However, a number of state-sponsored initiatives have been put in place, which facilitate that the poor and vulnerable get access to legal assistance and representation. These include the Justice Centres Pilot Project, which uses lawyers and paralegals to provide free legal advice; a scheme under the Department of Administrator General of the Ministry of Justice, where jurists offer free legal advice and representation in connection with inheritance cases and minors; and projects run by the Law Development Centre, where lawyers and law post graduate students (under the supervision of experienced lawyers) provide during their training in legal practice legal advice and representation to prisoners, children and other vulnerable groups.

**Tanzania:** Tanzania mainland does not use a general state brief system in civil cases. However, litigants are exempted from paying court fees if they have been granted legal aid under the legal aid scheme of the Faculty of Law of University of Dar es Salaam, the schemes offered by TLS, TAWLA, LHRC or the legal aid scheme offered by the Chief Justice. If the plaintiff is successful in his claim the courts will issue an order that the court fees must be paid. There is no state brief system in Zanzibar, but poor litigants can also apply for court fees exemption under certain criteria and procedure as specified by law.

### **Fact box 3: Number of lawyers and paralegals in East African countries and their involvement in legal aid**

#### **Number of lawyers and their involvement in legal aid**

**Kenya:** The total number of legal professionals on the main roll is 8,066 (2009 data). Of these, 4,200 hold a practicing certificate. The male/female ratio is approximately 2/1. The total number of lawyers involved in legal aid activities is not known, but LSK registered around 300 lawyers providing pro bono work during the annual Legal Awareness Week over the last 3 years.

**Uganda:** The total number of legal professionals on the main roll is 3,465 (2009 data). Of these, 1,200 hold a practicing certificate. The male/female ratio is approximately 2/1. The total number of lawyers involved in legal aid activities is not known, but the Legal Aid Project of the ULS employs 9 lawyers, 8 assistant legal officers and 8 volunteer lawyers in the 7 clinics it operates across the country. Furthermore, LASPNET has around 34 membership organisations, with at least half of them employing around 3-6 lawyers to provide legal aid. Around 380 lawyers are registered under the pro bono legal aid scheme of the ULS.

**Tanzania mainland:** The total number of legal professionals on the main roll is 1,188 (2009 data). Of these, 897 hold a practicing certificate. The male/female ratio is approximately 5/1. The total number of lawyers involved in legal aid activities is not known, but 382 lawyers were assigned a case in 2009 by the TLS under its pro bono civil legal aid scheme.

**Zanzibar:** The total number of legal professionals on the main roll is 43 (2009 data). Of these, 35 hold a practicing certificate. The male/female ratio is approximately 5/1. Of these lawyers, 10-15 are estimated to be involved in legal aid in one way or another.

#### **Number of paralegals and their involvement in legal aid**

**Kenya:** The total number of paralegals is not known, but the number of trained paralegals is estimated at 2,000 (based on PASUNE records). They are all in different ways expected to be involved in the provision of legal aid.

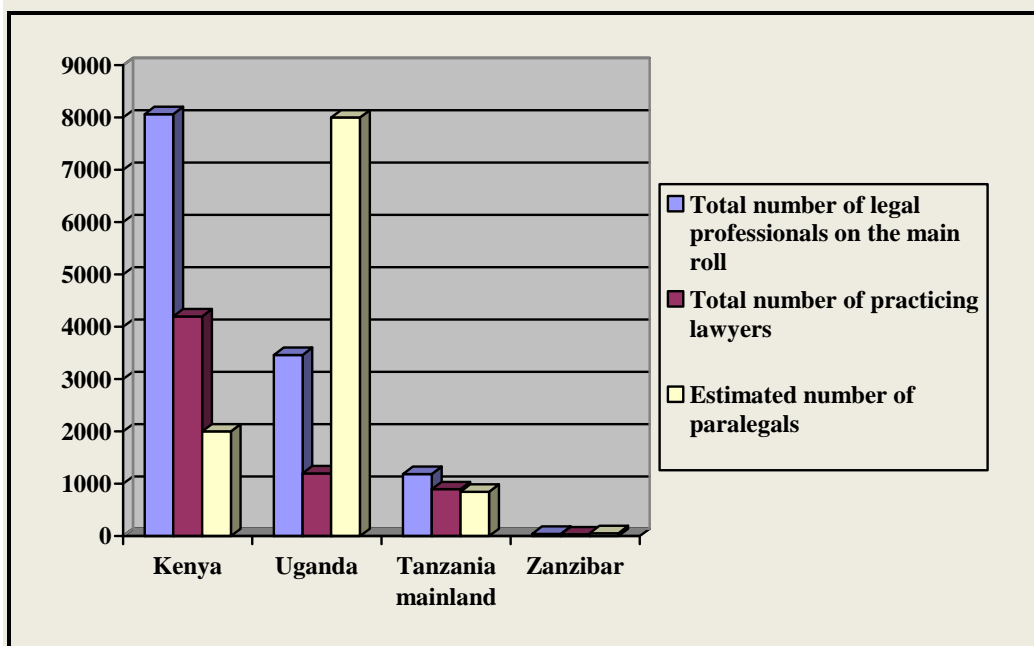
**Uganda:** The total number of persons working as paralegals while in possession of some legal skills is estimated at 8,000. They are all in different ways expected to be involved in the provision of legal aid.



**Tanzania mainland:** The total number of trained paralegals is estimated at 1,770, out of which 850 are actively working as paralegals. They are all in different ways expected to be involved in the provision of legal aid.<sup>135</sup>

**Zanzibar:** The total number of paralegals is 57.

**Figure 1: Number of lawyers and paralegals in East Africa**



## B. The types of legal aid provided in East Africa

### 1. Introduction: Analysing the types of legal aid

When analysing the types of legal aid that are provided in a society, 2 central aspects concern the *forms* of legal services used and the *areas of law* covered by legal aid providers.

The question of form is controversial already because there is a lack of agreement on what services should actually be counted as legal aid. Some argue that legal aid should simply be understood as a question of lawyers (and possibly others) providing the poor and vulnerable with legal advice, assistance and representation in court. The draft Kenyan Legal Aid Policy, for example, defines legal aid as a matter of “offering assistance in drafting of legal documents, representation in court and advice on the law at subsidised cost”.<sup>136</sup> A narrow understanding of legal aid is also used in the Ugandan law. Regulation 4 of the Advocates (Legal Aid to Indigent Persons) Regula-

<sup>135</sup> Tanganyika Law Society (TLS), Women’s Legal Aid Centre (WLAC), *Tanzania – Paralegal Baseline Survey*, August 2010 (on file with author), p. 9.

<sup>136</sup> Legal Profession Kenya.

tions, 2007 defines legal aid as “legal advice or representation by a lawyer, an advocate or a paralegal as the case may be, to a client at no cost or at very minimal cost”.<sup>137</sup> However, many commentators argue that it is necessary to think of legal aid in a broader sense because a number of other services are also relevant for access to justice for the poor and vulnerable. The TLS, for example, defines legal aid as “a service rendered by legal aid providers to a person/group of persons who is/are not able to afford services offered by advocates”, which may include legal advices and court representation as well as public interest litigation and legal education of the public.<sup>138</sup> Others move even further and suggest that such activities as “research and advocacy for reform of harmful traditional practices that negatively impact on their clients, leading to a failure of justice” should be considered legal aid.<sup>139</sup>

A useful outline of the most common forms of legal aid has been offered in a study of access to justice and legal aid in Rwanda.<sup>140</sup> Drawing on this study the key legal aid services can be broke down to the practices of:

- 1) Offering legal representation in court;
- 2) Offering legal assistance for individuals so they can present themselves in court;
- 3) Offering legal assistance for individuals in terms of making conclusions on legal questions relevant for a particular case;
- 4) Providing other forms of legal assistance for individuals, including for example drafting wills and contracts, writing letters to officials, employers, landlords and other contract partners, filing applications (for example in relation to land registration) and accompanying individuals to private or public bodies in making legal claims;
- 5) Facilitating negotiations, providing mediation between disputing parties and supporting clients in connection with ADR mechanisms;
- 6) Giving legal advice on issues of a general nature;
- 7) Conducting advocacy work and campaigning;
- 8) Undertaking strategic public interest litigation;
- 9) Facilitating awareness among the general public concerning the law and legal procedures (legal awareness raising including legal information and education); and
- 10) Conducting training for other legal aid providers and legal sector personnel in general.

When analysing these very diverse forms of legal aid, some observers operate with a distinction between “primary legal aid services”, which includes lawyers’ (or other legal aid providers’) representation of litigants before courts (or ADR mechanisms), and “secondary legal services”, which concerns all other forms of legal aid, such as giving advice, conducting legal awareness raising and facilitating legal training.<sup>141</sup>

<sup>137</sup> State Legal Aid Uganda and Paralegal Uganda.

<sup>138</sup> Legal Profession Tanzania.

<sup>139</sup> Paralegal Tanzania.

<sup>140</sup> The Steering Committee of the Legal Aid Forum (Rwanda) and the Ministry of Justice (Rwanda), *Building the Foundation for Access to Justice in Rwanda: A Report of the Legal Aid Baseline and Needs Analysis Survey*, January 2007 (on file with author), p. 21.

<sup>141</sup> Legal Profession Uganda.

This report endorses a broad understanding of the forms of legal services which can be relevant from a legal aid perspective but also recognises that there are important differences between the forms of legal aid that are used in practice. It is suggested that an overall distinction can be made between the forms of legal aid that seek to help an individual in connection with a *particular legal problem*, including for example legal advice, assistance and representation in connection with a specific legal dispute, and the forms of legal aid that are not directly connected to a person's particular legal problem, but rather concern *a larger group of individuals or possibly all of society*, which may include legal awareness raising, advocacy work, public interest litigation, etc. Consequently, this section is structured so that the first sub-section analyses and compares the legal aid schemes in East Africa that deal with individuals' particular legal problems and the second sub-section analyses and compares the more indirect forms of legal aid that concern groups or society as a whole.

Because identifying the types of legal aid in a society also concerns questions related to the *areas of law covered* (such as criminal law, land law or family law), throughout this section comparisons are made between the legal aid projects in East Africa concerning the areas of law covered. In doing so, the section analyses and compares what actors, including state actors, the legal profession and NGOs and paralegals, are involved in different kinds of legal aid schemes.

## 2. Legal aid for individuals with particular legal problems

In all of the East African countries, legal aid schemes relevant for individuals who need help in connection with a particular legal problem is offered by the state as well as the legal profession and NGOs and paralegals. However, not only are there some major differences between the kinds of services offered by these different actors, but there are also some major differences between the countries.

### *State actors*

All of the countries covered in this report have legal aid schemes that allow defendants, who cannot afford one on their own, to have a defence counsel appointed and paid for by the state. However, as already explained in section 4.A, these schemes only offer legal assistance and representation in the most serious cases and are commonly criticised because they lack the necessary resources to provide the defence counsel with enough time and motivation for preparing the cases.

Beyond the sphere of criminal justice, some of the governments in East Africa have created legal aid schemes that offer legal assistance and representation (and sometimes other legal aid services) free of charge for members of particular vulnerable groups in a variety of civil cases.

This includes the NALEAP projects in Kenya, which have women, children, persons with disabilities and capital offenders as their primary target groups. The pilot projects already operating cooperate with the LSK and various civil society organisations, such as International Federation of Women lawyers (FIDA), CLAN and Kituo Cha Sheria, to offer members of these vulnerable groups the legal assistance and representation they need in connection with specific legal problems and disputes. In ad-

dition to legal representation in the courts, NALEAP projects (the Moi University Law Clinic Pilot Project) use ADR mechanisms to mediate in civil cases. Furthermore, in some civil cases litigants are offered advice on how they can represent themselves in court, rather than having a lawyer appointed. Though one NALEAP project deals with criminal cases specifically (the Capital Offences Legal Aid Pilot Project in Mombasa), most of the projects established by NALEAP focus on a limited set of branches of civil law. In fact, NALEAP is only mandated to deal with family law, law relevant for minors and capital offences. However, though it is not within their mandate, NALEAP projects are also de facto involved in legal aid activities in cases concerning land and labour disputes, areas of law which actually constitute the majority of cases dealt with by NALEAP projects.<sup>142</sup>

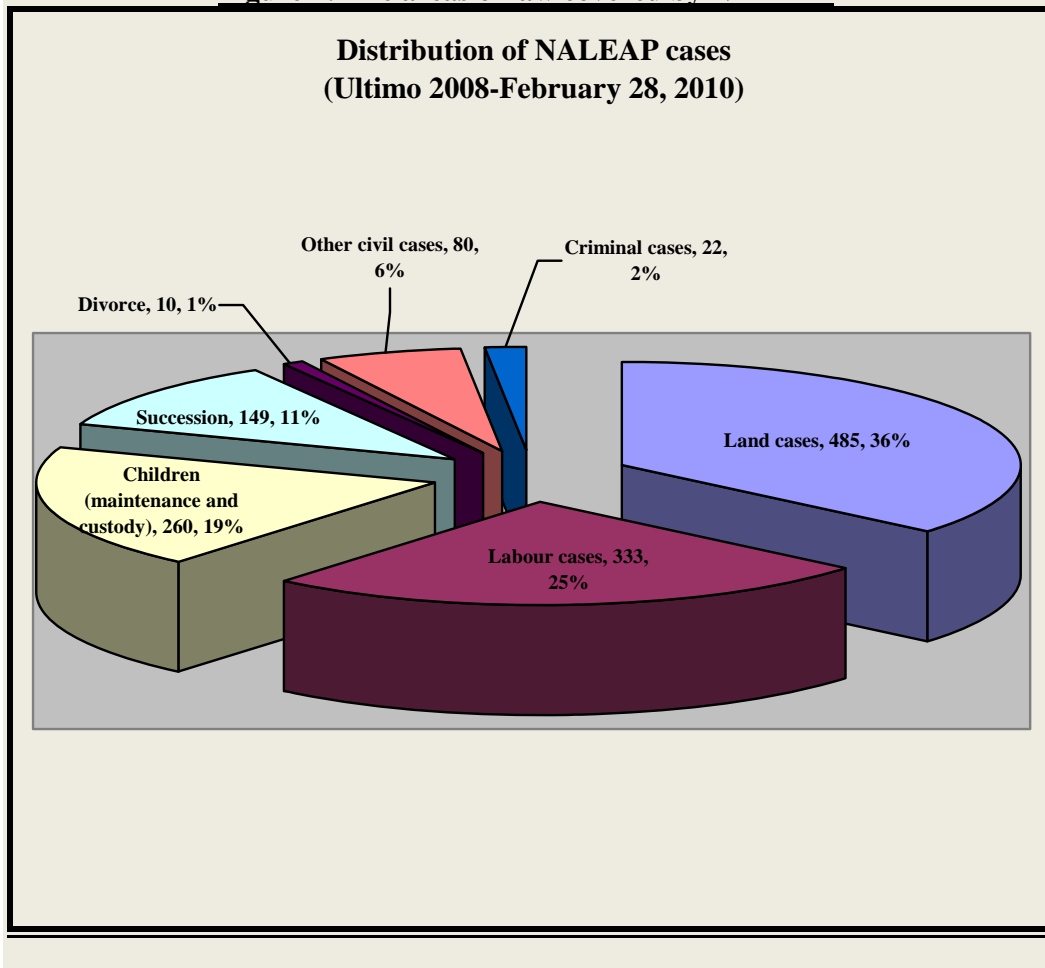
**Table 1: The areas of law covered by NALEAP**

**Number of cases dealt with per area of law by NALEAP  
between ultimo 2008 and February 28, 2010)**

Area of law	2008/09	2010 (until Feb. 28)	Total	Percentage of total cases
Land cases	413	72	485	36 %
Labour cases	218	115	333	25 %
Children (maintenance and custody)	137	123	260	19 %
Succession	102	47	149	11 %
Divorce	4	6	10	1 %
Other civil cases	42	38	80	6 %
Criminal cases	13	9	22	2 %
<b>Total</b>	929	410	1,339	100 %

<sup>142</sup> State Legal Aid Kenya

**Figure 2: The areas of law covered by NALEAP**



Besides these NALEAP projects that tend to target specific vulnerable groups, as noted in section 4.A, Kenya also uses a pauper brief system in civil cases, which however is criticised for being poorly funded and managed.

Like Kenya, Uganda also uses a number of legal aid schemes to target members of *specific groups* in society or only (or primarily) deal with *particular areas of law*. For example, the Legal Aid Clinic of the Law Development Centre is specialised in dealing with cases concerning juvenile justice. The clinic offers a variety of legal aid services in this regard, including help to claimants who need to prepare administrative letters, support for mediation in connection with ADR mechanisms, legal advice and representation in court.<sup>143</sup> Similar forms of legal aid services are offered by the Administrator General Department of the Ministry of Justice, which however primarily deals with cases concerning the administration of estates and succession.<sup>144</sup> Moreover, the ULC, which is also responsible for certifying legal aid providers and approving pro bono projects, has employed 8 lawyers who provide legal services to the poor and vulnerable. These services include legal advice and assistance, court representation and mediation. The ULC focuses specifically on claimants who wish to

<sup>143</sup> State Legal Aid Uganda and Legal Profession Uganda.

<sup>144</sup> State Legal Aid Uganda.

commence disciplinary proceedings against lawyers.<sup>145</sup> Finally, the Ugandan government is preparing for a pilot project called the small claims procedure to facilitate that persons involved in relatively minor disputes are given legal assistance so they can represent themselves without lawyers before the tribunals.<sup>146</sup>

**Table 2: Cases registered and concluded by the Uganda Law Council (2007-10)**

Year	Registered	Concluded	Carried forward	Total
2007	175	122	53	350
2008	212	114	98	424
2009	280	61	219	560
<b>Total</b>	<b>667</b>	<b>297</b>	<b>370</b>	<b>1,334</b>

Besides these area specific initiatives, Uganda has also created a pilot legal aid initiative referred to as the Justice Centres Pilot Project, which does not have specific target groups and is not limited to dealing with particular areas of law, but rather offers the poor access to legal assistance and representation in all areas of civil and criminal law.<sup>147</sup>

In Tanzania mainland, the government has not established projects that offer legal advice, assistance or representation in connection with individuals' specific legal problems in the sphere of civil law. However, the LSRP is supporting the establishment of a Legal Aid Network, which with time is likely to promote such forms of legal aid services.<sup>148</sup> Furthermore, the law faculties in Tanzania, including the School of Law of the University of Dar es Salaam, the Faculty of Law of the Open University of Tanzania and the Moshi University College of Cooperative and Business Studies, offer various forms of legal aid relevant for individuals with particular legal problems through their clinics.<sup>149</sup> In Zanzibar, no state run legal aid scheme relevant for individuals has been put in place.<sup>150</sup>

In addition to some specific state-run project, such as the Moi University Law Clinic Pilot Project in Kenya, the various governments of East Africa support (or will support) ADR mechanisms at a more general level, thus adding a dimension of mediation to the legal aid services provided in these countries. However, the use of ADR varies considerably across the region. In both Uganda and Tanzania, mediation has been used in the courts since the mid 1990s. Tanzania mainland has also introduced CMA, which offers mediation in connection with labour disputes.<sup>151</sup> In Kenya, on the other

<sup>145</sup> State Legal Aid Uganda.

<sup>146</sup> State Legal Aid Uganda.

<sup>147</sup> State Legal Aid Uganda.

<sup>148</sup> Legal Profession Tanzania.

<sup>149</sup> Legal Profession Tanzania.

<sup>150</sup> Legal Profession Zanzibar and Paralegal Zanzibar.

<sup>151</sup> State Legal Aid Uganda and Legal Profession Tanzania.

hand, the Rules Committee of the High Court is yet to implement the ADR rules that have been introduced by the Civil Procedure Act.<sup>152</sup>

It should be noted finally, that in all of the East African countries, a national human rights commission is set up, which among other legal aid services offers legal advice when citizens suffer from human rights abuses.

In sum, there are some significant differences concerning the extent to which and how the governments in East Africa are directly involved in legal aid schemes which benefit individuals with particular legal problems. Where all of the states covered in this report have established systems that, albeit to a very limited extent, provide legal assistance and representation in criminal cases, the level of engagement in civil law legal aid schemes varies considerably, and where such schemes have been put in place, the areas of law covered also differ from country to country. However, rather than dealing with legal aid in civil cases as such, there is a tendency for most state-run projects to focus on one or more particular areas of law, such as family law or law relevant for minors and/or to focus on particular vulnerable groups.

### *The legal profession*

In terms of the *forms* of legal aid provided, the legal profession's rendering of legal aid relevant for persons with particular legal problems is quite similar in the East African countries. Lawyers in all of these countries offer mediation, legal advice, drafting of legal documents and other forms of assistance as well as legal representation in court as part of the legal aid schemes established by the law societies.<sup>153</sup>

The fact that in all 3 countries the poor and vulnerable may be offered such services free of charge (or with a minimum fee), however, does not mean that the services provided are identical in terms of the areas of law covered. In order to understand these differences, it is first necessary to point out that the legal profession's involvement in legal aid takes 3 overall forms in East Africa. Firstly, lawyers deliver legal aid in connection with state brief programmes, where private lawyers are paid by the state to take particular types of cases. Secondly, as a consequence of requirements in the law or rules adopted by the legal profession, lawyers offer legal aid free of charge as pro bono services in particular types of cases without being compensated by the state. Thirdly, lawyers sometimes offer legal aid as part of their employment with NGOs or other actors. Besides Zanzibar, in all of the countries covered in this report lawyers offer legal aid according to all of these 3 models. However, the areas of law covered vary significantly between the countries.<sup>154</sup>

As has already been noted in section 4.A, besides Zanzibar, all of the East African countries use a state brief system, where private lawyers are paid (modestly) by the state to assist and represent the accused in serious criminal cases (primarily capital offence cases). However, in none of the countries covered in this report is exact data

<sup>152</sup> State Legal Aid Kenya.

<sup>153</sup> Legal Profession Kenya, Legal Profession Uganda, Legal Profession Tanzania and Legal Profession Zanzibar.

<sup>154</sup> Legal Profession Kenya, Legal Profession Uganda, Legal Profession Tanzania and Legal Profession Zanzibar.

available concerning the number of such state briefs handled by the legal profession per year, making it difficult to compare the extent to which the legal profession is involved in criminal cases under these state brief systems.<sup>155</sup>

In any case, it must be recalled that besides dealing with criminal cases in connection with these state brief systems, the legal profession carries out pro bono work facilitated by the law societies, which may also involve criminal cases. Only in Tanzania does the pro bono work of lawyers *not* involve criminal cases (as the law society has decided to focus on civil cases).<sup>156</sup> Of the 500 legal aid cases (supporting a total of around 2,000 individuals) that has been handled by members of LSK on a pro bono basis during the annual Legal Awareness Week over the last 3 years, 20 percent of the cases concern ‘other areas of law’, a category that includes criminal cases. In other words, the lawyers in Kenya deal with less than 100 criminal cases on a pro bono basis per year, but as mentioned it is not clear how many cases are dealt with by lawyers through the state brief system or as part of their employment for NGOs.<sup>157</sup> The legal profession in Uganda appears to be significantly more involved in legal aid in criminal cases compared to the 2 other countries: In 2006, the legal profession dealt with 4,650 criminal cases either on a pro bono basis or through the use of clinics run by the law society where lawyers are employed, in 2007 the figure was 1,818 and in 2008 the figure was 1,647.<sup>158</sup>

In addition, there appears to be some differences concerning the kinds of criminal cases in which the legal profession offer legal services free of charge. As follows from the above, the lawyers in Tanzanian mainland are only involved in capital offence cases as part of the state-run pauper brief system, a delimitation which seems to follow from the “limited financial and human resources available to the Law Society”.<sup>159</sup> Despite the limited engagement of the legal profession in Kenya with legal aid in criminal cases, lawyers offer their clients support at the various stages of criminal proceedings, an effort that requires lawyers to engage with the police and prison authorities as well as the courts. Besides capital offence cases, particular areas of concern for the legal profession in Kenya include domestic violence and children in conflict with the law. On the other hand, the lawyers in Kenya seemingly refrain from dealing with petty offences due to a perception within the legal profession “that the suspects are enemies of the society and should not get aid”.<sup>160</sup> Less information is available concerning the types of criminal cases dealt with by the legal profession in Uganda.<sup>161</sup>

Furthermore, the legal professions in East Africa are involved in legal aid in connection with criminal cases due to the fact that NGOs sometimes employ lawyers to work side by side with jurists and paralegals in connection with providing mediation,

<sup>155</sup> Legal Profession Kenya, Legal Profession Uganda, Legal Profession Tanzania and Legal Profession Zanzibar.

<sup>156</sup> Legal Profession Tanzania.

<sup>157</sup> Legal Profession Kenya.

<sup>158</sup> Legal Profession Uganda.

<sup>159</sup> Legal Profession Tanzania.

<sup>160</sup> Legal Profession Kenya.

<sup>161</sup> Legal Profession Uganda.



legal advice, assistance and possibly representation in court.<sup>162</sup> Though it is evident that this form of legal aid work is significant across the region due to the number of NGOs employing lawyers and jurists, the relative scope of such legal aid work in the 3 countries covered in this report remains unknown.

The legal profession's involvement in civil law legal aid schemes varies significantly across the region.

2 areas generally covered across the region concern family law and land law. In Kenya as many as 60 percent of the cases dealt with on a pro bono basis by members of the LSK relate to family law (here understood to cover matrimonial disputes as well as inheritance and succession),<sup>163</sup> in Tanzania mainland 15 percent of the cases concern family law,<sup>164</sup> and though exact data is not available for Uganda, family law is also mentioned as one the key areas of law dealt with in this country.<sup>165</sup> For the last couple of years, the single most important type of cases for the legal profession in Uganda concerns land law, whereas cases involving this area of law make up 20 percent of the total number of cases dealt with in both Kenya and Tanzania.<sup>166</sup> Other areas of law dealt with on a pro bono basis in the region include contract law, tort law, property law, labour law and human rights law.<sup>167</sup>

The areas of law covered by the legal professions' pro bono work in East Africa must be looked at in light of the target groups identified by the law societies. In Kenya, the legal profession targets "groups that are economically vulnerable, in lawful custody, or living with disability or HIV/AIDS, or a child or elderly person". When deciding what members of these groups should receive legal aid services, the legal profession considers the following issues:

- Whether the case "raises an issue of general public interest with respect to a certain cadre of rights or has a potential to impact jurisprudence"
- "Whether the case constitutes a particularly grave violation of human rights or hardship"
- "Whether the case has a potential for publicity to serve a wider educational purpose"
- Whether the case concerns a person "who is economically vulnerable based on the minimum wage as gazetted from time to time"
- "Whether the case concerns a person in lawful custody or living with a disability or HIV/AIDS or a child or elderly person"
- The nature of the sentence which may be imposed in criminal cases<sup>168</sup>

Some of the same considerations are made in Uganda, where the legal profession mainly targets "poor and vulnerable men, women and children and special interest

<sup>162</sup> Legal Profession Tanzania.

<sup>163</sup> Legal Profession Kenya.

<sup>164</sup> Legal Profession Tanzania.

<sup>165</sup> Legal Profession Uganda.

<sup>166</sup> Legal Profession Kenya, Legal Profession Uganda and Legal Profession Tanzania.

<sup>167</sup> Legal Profession Kenya, Legal Profession Uganda, Legal Profession Tanzania and Legal Profession Zanzibar.

<sup>168</sup> Legal Profession Kenya.

groups such as the disabled”. However, the legal profession in Uganda also focuses on detainees and prisoners, who are perceived worthy of assistance due to the severe conditions in detention facilities and prisons.<sup>169</sup> In Zanzibar, the law society’s pro bono services seem to focus specifically on cases where there is thought to be a general public interest.<sup>170</sup> In Tanzania mainland, the legal profession seems to focus less on particular groups.<sup>171</sup>

The gender distribution of the beneficiaries of legal aid varies considerably. In Kenya 60 percent are women, in Tanzania the “majority” are women, in Uganda only 41 percent are women and in Zanzibar only 10 percent of the beneficiaries of ZLS’ pro bono services are women (but 90 percent of ZAFELA’s beneficiaries are women and children).<sup>172</sup>

It is difficult to compare the total number of cases and/or individuals assisted on a pro bono basis by the legal profession in the East African countries, but there are indications that the numbers vary considerably between the countries. In Kenya, over the last 3 years a total of around 500 cases have been dealt with by members of the LSK on a pro bono basis during the annual Legal Awareness Week (providing legal aid to around 2,000 individuals).<sup>173</sup> The legal profession in Uganda appears to provide legal aid to a much larger number of individuals in need. During 2006, 2007 and 2008 more than 24,000 persons have received assistance from members of the legal profession (data includes the 1,180 persons who received legal aid services during the legal aid week in 2008). However, most of the lawyers’ legal aid work has been provided under the ULS clinics under the Legal Aid Project, while the ULS pro bono scheme (which only started in October 2008) covers so far an average of 225 cases per annum (for a similar number of persons assisted).<sup>174</sup> Tanzania mainland has data covering 2009 and 2010, a period in which members of the legal profession handled a number of 382 cases per annum in relation to the TLS pro bono civil legal aid scheme (providing legal aid to around 800 individuals on a yearly basis).<sup>175</sup>

It is difficult to make comparisons concerning the number of lawyers involved in pro bono services in the region as the data available are from the law societies’ pro bono work or schemes, thus not reflecting the total number of legal professionals involved in pro bono services for example through NGOs and other actors. However, in Kenya, around 300 lawyers have been involved in the law society’s pro bono work during the annual Legal Awareness Week over the last 3 years.<sup>176</sup> In Uganda, the ULS pro bono pilot scheme, which commenced in October 2008, is now involving around 380 law-

<sup>169</sup> Legal Profession Uganda.

<sup>170</sup> Legal Profession Zanzibar.

<sup>171</sup> Legal Profession Tanzania.

<sup>172</sup> Legal Profession Kenya, Legal Profession Uganda, Legal Profession Tanzania and Legal Profession Zanzibar.

<sup>173</sup> Legal Profession Kenya.

<sup>174</sup> Legal Profession Uganda.

<sup>175</sup> Legal Profession Tanzania.

<sup>176</sup> Legal Profession Kenya.

yers.<sup>177</sup> In Tanzania mainland 382 lawyers participated in the law society's pro bono civil legal aid scheme in 2009.<sup>178</sup>

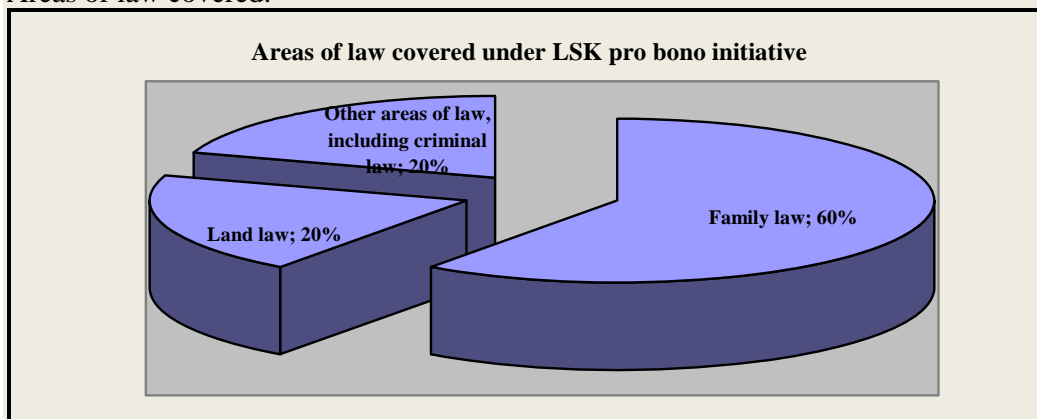
**Table 3: Total number of legal aid cases handled by members of the law societies in East Africa and distribution by main area of law<sup>179</sup>**

**Kenya (LSK data):**

Total number of pro bono *cases* dealt under LSK's Legal Awareness Week per year on average: 167

Total number of *persons assisted* pro bono under LSK's Legal Awareness Week per year on average: 667

Areas of law covered:



**Uganda (ULS and LAP data)**

Total number of *cases* dealt with under ULS' pro bono initiative per year on average: 225

Total number of *persons assisted* pro bono under ULS's pro bono initiative per year on average: 225

Total number of *persons assisted* under ULS, including ULS' pro bono initiative and clinics under ULS' Legal Aid Project, per year on average: 8,004

**OBS: Data includes lawyers' compensated legal aid work in ULS clinics<sup>180</sup>**

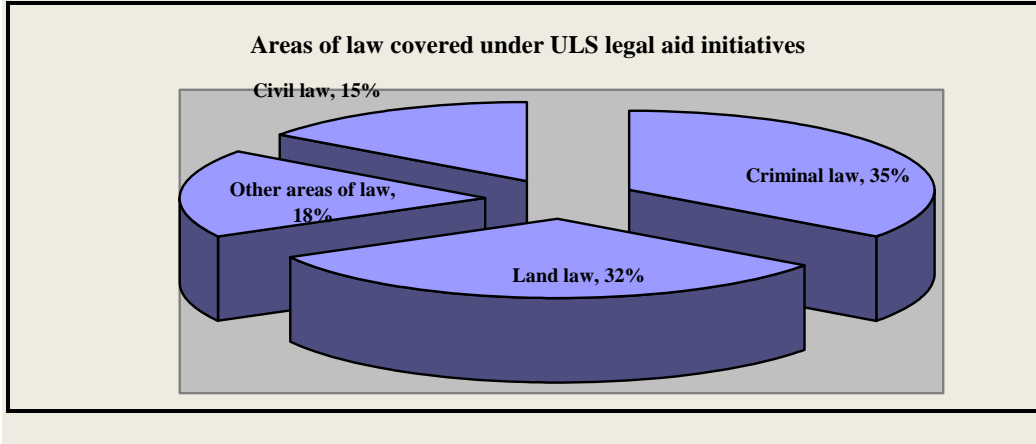
<sup>177</sup> Legal Profession Uganda.

<sup>178</sup> Legal Profession Tanzania.

<sup>179</sup> The figures are difficult to compare as the level of detail provided by the informants varies considerably. In some instance, the figures cover cases received during the period of the Legal Aid or Legal Awareness Week specifically. In some other cases, the figures include compensated legal aid work undertaken by members of the legal profession. No data is available for Zanzibar.

<sup>180</sup> This means that this data cover pro bono work undertaken by individual members of the ULS under the pro bono legal aid scheme of the ULS as well as compensated work undertaken by members of the ULS

Areas of law covered:

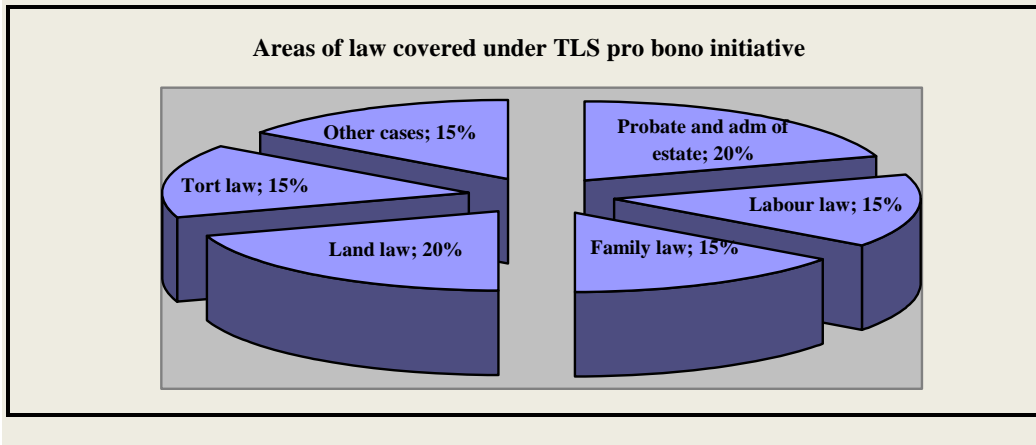


**Tanzania mainland (TLS data)**

Total number of *cases* dealt with under TLS' pro bono initiative per year on average: 382

Total number of *persons assisted* under TLS' pro bono initiative per year on average: 800

Areas of law covered:



In addition to the law societies' pro bono work, lawyers in some East African countries are involved in legal aid services through the work of civil society organisations, university law clinics and other institutions. In Kenya, lawyers are involved in NALEAP projects, such as the Nakuru Children's Justice Pilot Project and the Moi University law Clinic Pilot Project in Eldoret.<sup>181</sup> In Uganda, lawyers participate in the legal aid work of organisations such as FIDA, which focuses on family law cases; the Legal Aid Clinic of the Law Development Centre, which focuses on juvenile justice; the Legal Action for Persons with Disability; the Public Defender's Association; the

---

who work with the clinics under the law society's Legal Aid Project. This data is therefore not directly comparable with the data for the other countries.

<sup>181</sup> Legal Profession Kenya.

Platform for Labour Action; and the Refugee Law Project of Makerere University.<sup>182</sup> Lawyers in Tanzania are also employed by civil society organisations and other institutions in order to provide legal aid services relevant for persons with particular legal problems. These institutions include for example the LHRC, NOLA, TAWLA, Arusha Women Legal Aid and Human Rights Centre (AWLAHURIC), WLAC, Action for Justice in Society (AJISO), Lindi Women Paralegal Aid Centre (LIWOPAC), Mtwara Paralegal Centre Company Limited (MPCCL), ZAFELA and the Kilimanjaro Women Information Exchange and Consultancy Organisation (KWIECO).<sup>183</sup>

In sum, the *forms* of legal aid provided by the legal profession with relevance for individuals with particular legal problems are almost identical in the East African countries, but there are some major differences concerning the *areas of law* covered. Although some areas of law, such as family law and land law, are generally covered by lawyers' legal aid work across the region, there are also some major differences. One major difference is that the legal profession in Tanzania mainland does not include criminal cases under the TLS pro bono scheme, whereas it on the other hand seems to work with a more varied set of civil cases compared to the legal professions in Kenya and Uganda. Furthermore, there appears to be some differences concerning the scope of lawyers' legal aid services relevant for persons with particular legal problems, but the data available is insufficient for making any further conclusions.

#### **Fact box 4: Comparing the law societies' pro bono work in East Africa**

**Kenya:** There is no national legislation requiring lawyers to undertake pro bono work, but the LSK has adopted rules which require its members to offer legal assistance and representation free of charge and without compensation from the LSK. The rules do not stipulate what forms of legal aid must be offered and the amount of hours that must be used on this task. In reality, around 300 lawyers are estimated to have offered pro bono services in relation to the annual Legal Awareness Week over the last 3 years.

**Uganda:** National legislation requires lawyers to offer pro bono services. All lawyers are obliged to use at least 40 hours on this task every year, but the law society is yet to implement these rules fully as it currently only operates a pilot pro bono programme for its members. Internal rules of the ULS further spell out what activities are counted as legal aid and what persons qualify for pro bono services. Around 380 lawyers are registered to date under the pro bono legal aid scheme of the ULS.

**Tanzania:** There is no national legislation requiring lawyers to undertake pro bono work, but the TLS has adopted rules which require its members to offer legal assistance and representation free of charge and without compensation from the TLS. The rules however do not stipulate what forms of legal aid must be offered and the amount of hours that must be used on this task. TLS focuses on providing pro bono work in civil cases. In reality 382 lawyers are known to offer pro bono services under the TLS pro bono civil legal aid scheme. There is no legal requirement for lawyers in Zanzibar to undertake pro bono work, but the internal rules of the ZLS indicate that

<sup>182</sup> Legal Profession Uganda.

<sup>183</sup> Legal Profession Tanzania and Legal Profession Zanzibar.

lawyers should offer such services. However, these rules fail to stipulate what is counted as pro bono work and the amount of hours that must be used on this task.

### *NGOs and paralegals*

There are some general features concerning the *forms* of legal aid with relevance for persons with particular legal problems provided by NGOs and paralegals in East Africa. These include:

- Legal advice so clients can prepare for self representation
- Legal assistance and accompanying clients who need to follow up with the police or the courts
- Mediation, conflict resolution and reconciliation between parties (ADR)
- Basic counselling, client support and protection, including informing on the availability of different legal options
- Drafting legal documents or administrative documents, such as letters to various governmental or non governmental agencies
- Tracing of sureties/witnesses
- Helping clients during bail process
- Preparing clients' briefs to be submitted to lawyers or jurists working with the affiliating NGOs on referral basis or referring the client to other legal aid service providers<sup>184</sup>

Besides generally offering these types of legal aid services, each country also has some special features.

In Uganda, paralegals are present at police stations around the country on a daily basis in order to attend to the “early morning suspects’ parades to identify cases that might require their intervention”. This presence facilitates that paralegals can offer the suspects prompt assistance and advice upon arrest, it helps paralegals to engage with the police in order to change their practices if negatively affecting the rights of the suspects, it ensures that the police forwards the suspects file to court on time and it allows the paralegals to screen the cases so those suitable for traditional justice mechanisms or ADR are transferred to these mechanisms of dispute resolution. The paralegals in Uganda also interact with the State Attorney’s Office in order to ensure that the files forwarded by the police are dealt with promptly, that lists of persons who have been detained beyond what the law allows are created etc. Furthermore, the paralegals in Uganda liaise with court officials for a variety of reasons, including getting access to detained persons so they can be informed of their rights, preparing the accused for self representation in court and make judges aware of persons who have been detained beyond the limits of what the law allows.<sup>185</sup>

<sup>184</sup> Paralegal Kenya, Paralegal Uganda, Paralegal Tanzania and Paralegal Zanzibar.

<sup>185</sup> Paralegal Uganda.

Paralegals in Uganda as well as Kenya deal directly with prison authorities, with the purpose of making sure that the relatives, friends and employers of the prisoner are contacted so they can support the prisoner and possibly pay their bails.<sup>186</sup>

In addition to these services, paralegals in Kenya also offer legal representation in particular types of cases. This includes legal representation in certain cases relating to children and in connection with the Advocates Complaint Tribunal.<sup>187</sup>

Compared to the legal aid services offered by members of the legal professions in East Africa, in general paralegals tend to work with a wider spectrum of law branches. As such, civil society organisations which use paralegals in their work tend to work with criminal law as well as a large variety of civil law cases. However, the areas of law covered by these organisations vary, not only by country, but also from organisation to organisation and from region to region within the different countries.

Areas of law which are generally covered by NGOs on the region which use paralegals to offer legal aid include:

- Family law, including succession and inheritance
- Land law
- Human rights law, including victims' rights (especially victims of domestic violence, sex crimes and child abuse)<sup>188</sup>

However, there are also some major differences between the countries covered in this report. Whereas the paralegals in Uganda dedicate around 50 percent of their legal aid work to criminal cases (including questions related to prisoners' rights),<sup>189</sup> paralegals in Tanzania (mainland as well as Zanzibar) only rarely deal with criminal cases.<sup>190</sup> Some specific areas of law apparently covered in only some of the countries include:

- Labour law (Kenya and Tanzania)<sup>191</sup>
- Tenancy law (Kenya)<sup>192</sup>
- Health rights related law (Uganda)<sup>193</sup>
- Refugee law (Uganda)<sup>194</sup>
- Law relevant for dealing with forced marriages (Uganda)<sup>195</sup>
- Contract law (Zanzibar)<sup>196</sup>

<sup>186</sup> Paralegal Kenya and Paralegal Uganda.

<sup>187</sup> Paralegal Kenya.

<sup>188</sup> Paralegal Kenya, Paralegal Uganda, Paralegal Tanzania and Paralegal Zanzibar.

<sup>189</sup> Paralegal Uganda.

<sup>190</sup> Paralegals in Kenya also work with various aspects of criminal law, but the proportion of this area of law is not known. Paralegal Tanzania, Paralegal Zanzibar and Paralegal Kenya.

<sup>191</sup> Paralegal Kenya and Paralegal Tanzania.

<sup>192</sup> Paralegal Kenya.

<sup>193</sup> Paralegal Uganda.

<sup>194</sup> Paralegal Uganda.

<sup>195</sup> Paralegal Uganda.

<sup>196</sup> Paralegal Zanzibar.



Although it is difficult to say anything general about the target groups of paralegals because there is no overall coordinating body nor paralegal policies or standards in force in any of the countries, the different areas of law covered by paralegals must be looked at in light of the target groups established by the civil society organisations that use paralegals in their work. In Kenya, the various NGOs which use paralegals in their work have their own target groups, which include for example women, children, the youth, elders, prisoners and persons living with disabilities, such as HIV/AIDS. Furthermore, there is a group of prison paralegals, which are based directly with their clientele.<sup>197</sup> Paralegal organisations in Uganda seemingly focus less on specific target groups, although many appear to deal mainly with criminal law.<sup>198</sup> In Tanzania mainland, paralegal organisations such as the WLAC and TAWLA focus on providing legal aid to women and children, whereas the LHRC and NOLA provide legal aid to the poor and vulnerable in general.<sup>199</sup> Paralegals in Zanzibar tend to focus on women, children and the disabled people.<sup>200</sup>



*Prison paralegals providing legal information to detainees, 2008, Kenya*

In sum, the paralegals in East Africa provide a wide range of legal aid services, though only rarely are they involved in legal representation. As such, civil society organisations that rely on paralegals supplement the legal aid work of the legal profession and the state, not only because they offer *forms* of legal aid not provided by these actors, such as assistance to detainees and prisoners through their physical presence in police stations and detention facilities, but also because paralegals tend to cover *areas of law* not dealt with by other actors. That being said there is also a significant amount of overlapping, concerning the forms of legal aid services provided by paralegals and other actors as well as the areas of law covered.

<sup>197</sup> Paralegal Kenya.

<sup>198</sup> Paralegal Uganda.

<sup>199</sup> Paralegal Tanzania.

<sup>200</sup> Paralegal Zanzibar.



**Fact box 5: Key paralegal networks, organisations and coordination bodies in East Africa**

**Kenya**

*State level*

The Council of Legal Education: State body that has recently issued paralegal training and accreditation directives, which are inspired by and resemble the standards developed by PASUNE (see below)

The Legal Aid and Awareness Programme (NALEAP): Sector-wide government programme (under the Ministry of Justice) which is in the process of developing a draft policy on legal aid and awareness, which proposes that paralegals are involved in legal advice and awareness through the establishment of justice centres and proposes criteria for paralegal recruitment

The Kenya Prisons Service: State body that has proposed that paralegals should be used to provide legal aid in prisons (and works together with NGOs, especially the Legal Resources Foundation Trust (LRF), to ensure this)

*Networks and coordination bodies*

Paralegal Support Network (PASUNE): Paralegal network that counts 27 paralegal organisations, and is involved in human rights monitoring as well as training of paralegals and developing common standards for paralegals (a draft paralegal policy has already been developed, spelling out the role of paralegals in the administration of justice)

Kenya Paralegal Association (KPA): A paralegal network operating in Nyanza Province

Kenya Paralegal Society (KPS): a new network in Western Kenya that advocates for paralegals' rights (KPS is a member of PASUNE)

*Individual organisations and specific paralegal groups*

The prison paralegals: Paralegals managed by the Muslims for Human Rights (MUHURI), the Catholic Justice and Peace Commission (CJPC) and the Legal Resources Foundation Trust (LRF). The prison paralegals provide direct legal advice and assistance for prisoners, including identifying relatives and friends of the prisoner, and prepare detainees for self-defence and cooperate with lawyers so the suspects of serious crimes may obtain legal representation free of charge

Other organisations that use paralegals in their work: Legal Resources Foundation Trust (LRF), International Commission of Jurists (ICJ), Kituo Cha Sheria, Education Centre for Women in Democracy (ECWD), The Federation of Women Lawyers (FIDA), Coalition on Violence Against Women (COVAW), Plan Interna-

tional/Kenya, Ecumenical Centre for Justice and Peace (ECJP), Centre for Community Law and Rural Development CECLARD), People's Empowerment and Development Services (PEDS) and the Catholic Justice and Peace Commission (CJPC)

## Uganda

### *State level*

Uganda Law Council (ULC): State organ that is currently involved in developing a national paralegal policy (“paralegal service regulations”), which will deal with such issues as qualification criteria, quality standards, selection criteria of clients, fees guidelines for paralegals and affiliate organisations

State bodies that use paralegals in their work: A number of state agencies, such as the Uganda Prison Service, the Uganda Police Force, the Judiciary, and the Directorate of Public Prosecutions, employ paralegals (with a diploma in law) on a full-time basis, and often work in cooperation with the Paralegal Advisory Services (PAS)

### *Networks and coordination bodies*

Legal Aid Service Providers Network (LASPNET): Major paralegal network, with about 30 member organisations that all use paralegals in their work. LASPNET coordinates, harmonises and standardises legal aid services provided by the different service providers especially within the civil society

Uganda Paralegals Society (UPS): A profession-based civil society organisation with its membership composed of paralegals who hold a diploma in Law from the Law Development Centre at Makerere University

### *Individual organisations and specific paralegal groups*

Foundation for Human Rights Initiative (FHRI): Civil society organisation that hosts the Paralegal Advisory Services (PAS), a major paralegal programme in Uganda that focuses on criminal justice, with support from the Legal Aid Basket Fund (currently managed by DANIDA)

Association of Human Rights Organisations (AHURIO): Civil society organisation that works in Western Uganda and uses paralegals to offer legal aid in prisons

Foundation for Development of Needy Communities (FDNC): Civil society organisation that uses paralegals to offer legal aid in prisons

Human Rights Focus: Civil society organisation that works in northern Uganda and uses paralegals in its work

Organisations involved in training of paralegals: Foundation for Human Rights Initiative (FHRI), the Facilitation for Peace and Development (FAPAD), the Legal Aid Clinic of the Law Development Centre, the Uganda Christian Lawyers Fraternity (UCLF), the Legal Aid Project of the Uganda Law Society (ULS), the Human Rights

Focus (HURIFO), MIFUMI Human Rights Development Network (MHRDN) and the Soroti District Associations and NGOs Network (SODANN)

### **Tanzania mainland**

#### *State level*

Legal Sector Reform Program (LSRP): Sector-wide programme managed by the Ministry of Constitutional Affairs and Justice, which in cooperation with the TLS considers establishing a Legal Aid Network (that may in the future formulate policies to govern the work of paralegals in Tanzania mainland)

Directorate for Public Legal Services of the Ministry of Justice and Constitutional Affairs: Recently established state body, whose operation may lead to further policy development in relation to paralegals in Tanzania mainland

#### *Networks and coordination bodies*

Tanzania Network of Legal Aid Providers (TANLAP): Network of legal aid providers, which has among its members the Comprehensive Community Based Rehabilitation in Tanzania (CCBRT), the Disabled Organisation for Legal Affairs and Social Economic Development (DOLASED), the Legal and Human Rights Centre (LHRC), the Tanzania Women Lawyers' Association (TAWLA), the Women in Law and Development in Africa (WiLDAF), the Women's Legal Aid Centre (WLAC) and the National Organisation for Legal Assistance (NOLA). The network is involved in the formulation of common rules and policies to regulate the provision of legal aid by paralegals in Tanzania mainland

Tanzania Paralegals Network (TAPANET): A newly developing network, specifically on paralegals and currently hosted by WLAC, aimed at a uniform training manual and code of conduct together with recognition and coordination of paralegals of all NGOs

#### *Individual organisations and specific paralegal groups*

The Women in Law and Development (WiLDAF-T) Tanzania Chapter: Civil society organisation which has developed a code of conduct for legal aid providers, including paralegals, the implementation of which is however left to individual organisation

The Women's Legal Aid Centre (WLAC): National civil society organisation with a paralegal centre in each of the 21 regions of Tanzania Mainland and providing legal aid to women and children

The Legal and Human Rights Centre (LHRC): Civil society organisation which supports paralegals in the Arusha, Manyara and Mara regions so they can provide legal aid to the poor and vulnerable, particularly in relation to land rights

The Tanzania Women Lawyers Association (TAWLA): Civil society organisation that supports paralegals in the Tanga, Dodoma and Dar es Salaam regions so they can provide legal aid to women and children

National Organisation for Legal Assistance (NOLA): Civil society organisation that runs projects known as the mobile legal aid camps in 9 regions of mainland Tanzania, which uses paralegals to increase access to justice

The Haki Organisation: Paralegal organisation based in Kasulu District, which through support from national legal aid providers such as the National Organisation for Legal Assistance (NOLA) provides legal aid

The Service for Women, Orphaned and the Little One Organisation (SWOLO): Paralegal organisation based in Kyela District, which through support from national legal aid providers such as NOLA provide legal aid

Other paralegal organisations: Lindi Women Paralegal Aid Centre (LIWOPAC), Morogoro Paralegal Centre (MPL), Mtwara Paralegal Centre Company Limited (MPCCL), Mwanza Paralegal Centre (MWAPACE) and Arusha Paralegal Centre for Women and Children (AWLAHURIC)

### **Zanzibar**

Zanzibar Legal Service Centre (ZLSC): The main organisation working with paralegals in Zanzibar

### **3. Legal aid for the general public**

In all of the East African countries, legal aid schemes that focus on aspects of legal aid that benefit groups or society as a whole, rather than individuals who need help in connection with a particular legal problem, have been developed. The forms of legal aid offered by such schemes include for example legal awareness raising, legal training, advocacy work and public interest litigation. Though a number of trends can be identified across the region, there are also some major differences concerning the involvement of different actors in delivering these forms of legal aid.

#### *State actors*

Generally speaking, state actors in the region are only to a limited extent involved in legal aid activities that generally benefit groups or the whole of society. Yet, there is a number of interesting examples of how state agencies attempt to promote legal awareness and other forms of legal aid that benefit the general public.

In Kenya, the NALEAP is involved in projects across the country, such as the Nairobi Children's Court Legal Education and Aid Pilot Project, which aim at raising legal awareness as well as projects, such as the Kisumu Project, that in cooperation with other actors offer training to paralegals.<sup>201</sup>

<sup>201</sup> State Legal Aid Kenya.

In Uganda, a number of different state agencies offer legal aid that is relevant for the general public. This includes community education and workshops concerning the drafting of new laws conducted by the Uganda Law Reform Commission; legal information and awareness projects put in place by the Legal Aid Clinic of the Law Development Centre and the Administrator General Department of the Ministry of Justice; and education of lawyers and general information to the public concerning legal issues undertaken by the ULC.<sup>202</sup>

Furthermore, national human rights commissions across the region offer a number of legal aid services, such as human rights education, awareness programmes and advocacy, which generally aim at increasing the general public's understanding of particular legal issues and improve the protection of human rights.<sup>203</sup>

### *The legal profession*

Though the legal professions in East Africa are involved in legal aid activities that benefit the general public, the forms of legal aid rendered vary considerably between the countries.

Legal aid activities of this nature conducted by the legal profession in Uganda takes place through ULS' Legal Aid Project, where lawyers employed under the clinics offer assistance and representation as well as they conduct human rights outreach programmes, using media campaigns and community workshops. Illustrating the scope of these efforts, an informant from Uganda notes how "in 2006, 8 grassroots sensitisations were conducted with over 800 people benefiting, 3 outside broadcast, 4 radio talk shows plus radio spot messages; in 2007, over 2,500 persons were reached through the 10 community sensitisation programmes that were conducted, radio jingles were aired out on radio as well as several radio talk shows; [and] in 2008, over 10,000 were reached out to in 18 grassroots' sensitisation workshops, 7 radio talk show and 2 paralegal trainings".<sup>204</sup>

Furthermore, the legal profession sometimes works together with state actors to offer legal awareness and training activities. This is the case in Kenya, where the legal education programmes conducted by the High Court Family Division, the Nairobi Children's Court, the Moi University Law Clinic and the Paralegal Advice Office Pilot Project is facilitated by the state (NALEAP), but is based on the cooperation of the LSK.<sup>205</sup>

In Tanzania, the legal profession primarily uses the media to offer legal education for the general public. There are no indications that the legal profession in Tanzania cooperates with state agencies in this regard.<sup>206</sup>

<sup>202</sup> State Legal Aid Uganda.

<sup>203</sup> Legal Profession Kenya, Legal Profession Uganda and Legal Profession Tanzania.

<sup>204</sup> Legal Profession Uganda.

<sup>205</sup> State Legal Aid Kenya and Legal Profession Kenya.

<sup>206</sup> Legal Profession Tanzania.

In addition, some members of the legal profession in Kenya intervene in the legal training provided to civil servants as well as paralegals of 2-3 months duration through the PASUNE and the NALEAP (420 paralegals were trained in 2009).

The legal profession in Uganda is also involved in training of paralegals, including improving their management abilities and providing information on professional standards, through the Legal Aid Project.<sup>207</sup>

In Tanzania mainland, no such training modules have been put in place, but the legal profession invites members of the judiciary as well the Attorney General's Chambers to participate in TLS internal training seminars. Moreover, the establishment of a TLS Gender Desk and Policy and Research Desk will facilitate that legal training for the media, the judiciary and others will be conducted in the future.<sup>208</sup>

Questions related to training, including cooperation between the different actors, are further discussed in section 4.D.2.

In all of the countries covered in this report, the legal profession is involved in public interest litigation.<sup>209</sup> While the exact scope of these efforts cannot be compared between the countries due to lack of information, some examples of this form of legal aid are provided. In Uganda, the following examples are mentioned:

- “In 2007, the Uganda Law Society filed a private prosecution case of Ivan Nkwasiabwe prosecuting security officer who had assaulted lawyers on duty. The case was taken over by DPP and dismissed for want of prosecution, though efforts are being made to proceed in civil litigation against the office of DPP”
- “In 2008, the case of ULS vs. Attorney General was constitutional appeal no 1/2006 and was successfully heard in favour of ULS, in which court by unanimous decision and declared unconstitutional the trial of civilians who are not subject to military law in court martial”<sup>210</sup>

In Tanzania, only 1 public interest suit has been conducted by the legal profession. This suit challenged the constitutionality of the mandatory nature of the death penalty. However, with a newly introduced Legal Aid Unit, the TLS attempt to create synergies between the Unit and the Human Rights and Legal Assistance Committees to identify cases for strategic litigation.<sup>211</sup> No information is available concerning the nature of public interest litigation in Kenya and Zanzibar.

Finally, the legal professions across the region have established legal aid or awareness days, where the public is informed of legal aid schemes and may sometimes benefit from on-the-spot legal aid. In many cases paralegals and other legal aid pro-

<sup>207</sup> Legal Profession Uganda.

<sup>208</sup> Legal Profession Tanzania and Paralegal Tanzania.

<sup>209</sup> Legal Profession Tanzania, Legal Profession Uganda and State Legal Aid Kenya.

<sup>210</sup> Legal Profession Uganda.

<sup>211</sup> Legal Profession Tanzania.

viders are invited to participate in these legal aid days, but the level of formalised co-operation differs from country to country.<sup>212</sup>



*Legal Awareness Week, 2009, Kenya – Lawyer receiving a beneficiary and providing legal aid*

#### **Fact box 6: Comparing the legal aid and awareness days organised by the legal professions in East Africa**

**Kenya:** Since 2008, the LSK has organised an annual Legal Awareness Week, where lawyers and other legal aid providers offer free legal services to members of the public. During the Legal Awareness Week in September 2009, more than 130 lawyers had registered, and around 300 members of the public received free legal aid. Though organised by the LSK, the initiative draws on the cooperation of other legal aid providers, including the NALEAP (which participated in Nairobi and Eldoret), as well as civil society organisations and paralegals.

**Uganda:** In 2008, the ULS organised the first National Legal Aid Week, where lawyers and other legal aid providers attempted to make the public aware of the legal aid services rendered, and invited members of the public to receive on-the-spot legal aid services in Kampala. Since then, the concept has been replicated by the LASPNET, an annual Legal Aid Week being held every year in various regions of the country and gathering the diversity of legal aid providers.

**Tanzania mainland:** Since 2007, the TLS has organised an annual Legal Aid Day. Since 2009, other legal aid providers, including civil society organisations and paralegals, have participated in the arrangement. The Legal Aid Day offers on-the-spot legal aid to the poor and vulnerable, in urban and rural areas. To screen applicants, the TLS is assisted by law school students. In 2009, where the Legal Aid Day was held in 10 different regions of Tanzania mainland, the overall theme of the arrange-

<sup>212</sup> Legal Profession Kenya, Legal Profession Uganda and Legal Profession Tanzania.



ment was children's rights and human rights. Of the 1,426 applicants for legal aid during the 2009 Legal Aid Day, 718 received some form of legal assistance. In 2010, the Legal Aid Day focused on areas where lawyers are few but the demand for legal aid high. Prior to the Legal Aid Day, the legal profession attempts to inform the general public about the event through print, radio and TV spots.

**Zanzibar:** There is no legal aid or awareness arrangement of this type.

### *NGOs and paralegals*

NGOs and paralegals in East Africa undertake a series of legal aid initiatives that benefit the general population. These activities tend to differ somewhat from what is provided by state actors and the legal profession.

Conducted across the region, legal aid activities of such nature include legal awareness and civic education (including through the legal aid / awareness days or weeks mentioned above), advocacy work on legal issues relevant for communities, research concerning access to justice and related issues, monitoring of government service delivery and the public's involvement in the field of justice, and training of other paralegals.<sup>213</sup>



*Legal Aid Week, 2009, Uganda – Legal aid providers meeting with a beneficiary asking for legal information and advice*

In particular, paralegals seem to concentrate on advocacy and activities that aim at increasing public awareness of human rights issues, such as women's and children's rights. An example from Tanzania illustrates this well: "With the relaxation of the Parliamentary Standing Rules (2007 version) that allows members of the public to give their views on Bills tabled in Parliament for first reading, there is an increase in

<sup>213</sup> Paralegal Kenya, Paralegal Uganda, Paralegal Tanzania and Paralegal Zanzibar.



NGO participation in the advocacy for law reform. In this regard, it was established that certain paralegals have been involving themselves in the advocacy work for law reform, particularly in relation to laws affecting their particular clients: e.g. the Law of the Child Act (2009). Although this activity is usually spearheaded by the affiliating or partner NGOs with competent lawyers, paralegal involvement has been enriching the NGO lobbying efforts to a great extent. Besides this activity, paralegals have also been engaging themselves in advocacy work for reform of harmful traditions/cultural practices that adversely impact on their beneficiaries at the local or community level. This include working closely with District Councils, which are vested with the function to ‘modify’ repugnant laws under section 12 of the Judicature and Application of Laws Act, which was given judicial consideration in *Elizabeth Stephen & Another v. A.G.* . In this regard, some paralegals have been lobbying councillors to ‘modify’ some of the repugnant customary laws in a bid to bring about equality of men and women and justice to all members of their community”.<sup>214</sup>

While there are many common areas of involvement, some legal aid activities conducted by paralegals with relevance for the general public, appear to be country specific. In Tanzania and Kenya, for example, paralegals are involved in reporting on human rights issues in the country to international and regional human rights bodies, such as the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination Against Women and the African Committee of Experts on the Rights and Welfare of the Child.<sup>215</sup>

#### 4. Some final remarks on the types of legal aid in East Africa and linkages between the various legal aid providers in this regard

There are a number of similarities between the countries in region but also some important differences in terms of the *forms* of legal aid services provided and the *areas of law* covered by different actors.

As for the types of legal aid services that are relevant for individuals with particular legal problems, it is a common feature across the region that only to a limited extent is the state directly involved in supporting legal aid services in the sphere of criminal justice. Concerning civil cases, both the governments of Kenya and Uganda support some state legal aid initiatives targeting particular areas of law and/or specific vulnerable groups, such as women or children, but only to a limited extent is the state involved in legal aid schemes of a more general nature. It is important to note that these state-run projects tend to rely heavily on the involvement of other actors, including the legal profession, NGOs and paralegals.

Beyond being involved in some of these projects, the legal professions of East Africa also offer legal aid services in other ways. Most importantly, the legal professions carry out pro bono work that benefits access to justice for the poor and vulnerable. Although family law and land law are generally covered well by the legal professions’ pro bono work, there are also some significant differences across the region concerning the areas of law covered by the legal profession. Where for example in Tanzania, lawyers are generally less involved in offering pro bono work in criminal

<sup>214</sup> Paralegal Tanzania.

<sup>215</sup> Paralegal Tanzania.

cases (mainly because the TLS pro bono scheme focuses on civil cases specifically), this area of law makes up a more significant part of the pro bono work in Kenya and Uganda.

NGOs and paralegals in East Africa play important roles for helping individuals with particular legal problems. Like the legal profession, these actors are active in the areas of family law and law. Yet, they tend to cover a broader area of law, for example by being present in police stations and also prisons to assist detainees, and by offering services such as preparing clients for self-defence and tracing witnesses, which are not provided by other actors.

In terms of legal aid services which target the society more broadly, legal aid providers in East Africa have put in place a number of relevant mechanisms. While state bodies are generally not heavily involved in this type of legal aid, a number of state-supported projects with limited reach have been established in Kenya as well as Uganda. Many of these projects draw on the expertise offered by other stakeholders, including the legal profession, NGOs and paralegals. The legal profession also facilitates legal awareness in the general population using a number of methods, such as conclusion of legal aid / awareness days or weeks, and the profession is involved in public interest litigation. Furthermore, an interesting interplay between the legal profession and other legal sector actors exist in Kenya and Uganda, where the law societies intervene in training sessions for paralegals. Compared to the other actors, NGOs and paralegals in East Africa appear to be significantly more involved in legal aid services relevant for the general public. For example, paralegals across the region conduct advocacy work as well as raising legal awareness in communities, especially concerning human rights issues.

### **C. The accessibility of legal aid in East Africa**

#### 1. Introduction: Examining accessibility

A number of studies discuss how access to justice can be measured. As such, the perception usually is that there are 3 general ways in which access to justice can be improved. Maurits Barendrecht identifies these in the following way:

1. Individualised legal aid and legal advice (pro bono, subsidised legal services, public defender models);
2. Improving accessibility of individual or group procedures (at courts, in informal justice systems, in every day justice practices, or ADR); and
3. Empowerment through legal needs related information (legal information, codification, public legal education, negotiation and conflict management skills).<sup>216</sup>

This section focuses on the question of how accessible individualised legal aid schemes are. To do so it is necessary to consider how to establish relevant parameters

<sup>216</sup> Barendrecht, Maurits, *Legal aid, accessible courts or legal information? Three access to justice strategies compared*, Tisco Working Paper Series on Civil Law and Conflict Resolution, <http://www.plenet.org.uk/data/files/legal-aid-accessible-courts-or-legal-information-threestrategies-maurits-barendrecht-2010-281.pdf>.

for measuring accessibility. The general population's access to legal aid schemes depends on a variety of factors, some of which have already been discussed in preceding sections. For example, accessibility depends on the extent to which different areas of law are covered by legal aid schemes. Beyond the issues that have already been discussed in this report, 3 aspects of legal aid seem of particular importance when analysing accessibility.

Firstly, it is necessary to analyse what criteria are utilised when selecting the beneficiaries of legal aid and other potential obstacles for gaining access to legal aid schemes. This includes discussing the eligibility criteria put in place by the various legal aid providers as well as discussing whether requirements of self-payment are used. To the extent eligibility criteria are used in such a way that large segments of the poor and vulnerable are excluded from benefiting from legal aid, this is obviously a problem for accessing legal aid schemes. Similarly, requirements of self-payment and other forms of economic burdens related to using legal aid schemes can be a significant obstacle for access to justice for the poor and vulnerable.

Secondly, it is necessary to analyse whether legal aid providers are available in all parts of the country. If legal aid providers are mainly located in particular areas or regions this may hamper access to legal aid in other areas. Analysing accessibility of legal aid therefore requires an examination of how the various providers of legal aid are distributed across the country, and whether areas which are poorly covered by one particular actor are prioritised by other actors.

Thirdly, it is not enough that legal aid schemes actually exist; they must also be advertised in a way that enables the poor and vulnerable to identify and use them. Information campaigns and outreach programmes constitute important ways of promoting awareness of the existence of legal aid schemes as well as knowledge of what legal aid schemes are relevant for a particular legal problem.

In the following, these aspects of accessibility are compared, not only country by country but also by looking at how the different actors compare with each other.

## 2. Eligibility criteria and requirements of self-payment

In general, the countries covered in this report only to a limited extent use formal eligibility criteria for legal aid mechanisms. However, some criteria for selection tend to be used in practice, but these vary significantly depending on what different legal aid providers deem appropriate. Almost all of the legal aid schemes offered in East Africa are free of charge, though in many cases clients have to pay for transport and incidental costs, such as photocopying and filing fees.

### *State actors*

There are no general policies concerning eligibility criteria for state-run legal aid schemes in Kenya or Uganda, but some individual programmes have (or will) establish guidelines.

The NALEAP programme in Kenya does not presently use one common set of eligibility criteria. However, the draft Legal Aid Bill is likely to introduce formal guidelines in this regard, which will include an assessment of:

- 1) Whether the case raises an issue of general public interest with respect to a certain cadre of rights or has a potential to impact jurisprudence;
- 2) Whether the case constitutes a particularly grave violation of human rights or hardship;
- 3) Whether the case has a potential for publicity to serve a wider educational purpose;
- 4) The nature of a potential sentence;
- 5) The level of economic vulnerability; and
- 6) Whether the applicant has a disability.

The NALEAP projects, which draw on its own staff as well as the pro bono service offered by lawyers and the legal aid services offered by paralegals, do not charge any fee from those benefiting from the legal aid projects. Those who benefit from the state brief system in criminal cases (which in practice concerns defendants in capital offence cases before the High Court) do not have to pay for the lawyer assigned, whereas the state brief system in civil cases is based on a complicated application procedure and only covers court fees etc. but not the costs of legal assistance.<sup>217</sup>

As in Kenya, there is no uniform policy in Uganda concerning what factors must be taken into account when selecting the beneficiaries of state-run legal aid schemes. Who should be provided with legal aid by the ULC, the Department of Administrator General of the Ministry of Justice, the state brief system as well as the UHRC is simply decided on the basis of an interview conducted by one of the employees of these different institutions. The Justice Centres Pilot Project uses a means and merit test to determine whether the claimant lacks the necessary economic means as well as it is examined whether the case is of such nature that it deserves legal support. In particular, the justice centres focus on cases that are deemed to have a general impact in local communities (test cases). Besides the ULC, which requires a small fee (2,000 USH – less than 1 USD) to open a file, the legal aid services offered by the Ugandan government are free of charge.<sup>218</sup>

Eligibility criteria for the state brief system covering criminal cases in Tanzania mainland are established in accordance with the law.<sup>219</sup> A person is eligible for legal aid if:

- 1) It appears to the certifying authority that it is desirable to avail him or her with legal aid in the interests of justice;
- 2) The legal aid is for the purpose of the preparation and conduct of his or her defence or appeal, as the case may be;
- 3) The applicant's means are insufficient to enable him to obtain such aid on his own; and

<sup>217</sup> State Legal Aid Kenya.

<sup>218</sup> State Legal Aid Uganda.

<sup>219</sup> Legal Aid (Criminal Proceedings) Act [Cap 21 RE 2002].

- 4) A certificate has been issued by the certifying authority that the accused ought to have such legal aid.

However, the practical relevance of these criteria is limited as in reality the accused only benefit from this legal aid scheme in capital offence cases.<sup>220</sup>

### *The legal profession*

The extent to which formal eligibility criteria are used by the legal profession varies significantly, but generally some criteria are used in practice.

The legal profession in Kenya does not apply one uniform test to determine whether an individual should be eligible to receive legal aid. Rather, lawyers simply use “their own judgement in each and particular case after listening to the client”. Though not formalised, however, in offering pro bono services the legal profession is said to generally consider the following criteria:

- 1) Whether the case raises an issue of general public interest with respect to a certain cadre of rights or has a potential to impact jurisprudence;
- 2) Whether the case constitutes a particularly grave violation of human rights or hardship;
- 3) Whether the case has a potential for publicity to serve a wider educational purpose;
- 4) Whether the case is based on the nature of the sentence (length of sentence, fines or the nature of the sentence imposed by the court);
- 5) Whether the case is of someone who is economically vulnerable based on the minimum wage as gazetted from time to time by the Government through the Ministry of Labour or other remedial circumstances; and
- 6) Whether the case is of someone in lawful custody or living with disability or HIV/AIDS or a child or elderly person.

The legal aid services offered by lawyers in Kenya are free of charge, though usually the claimant has to pay his own transport costs as well as costs related to photocopying and other expenses related to handling the case.<sup>221</sup>

In Uganda, the Advocates (Legal Aid to Indigent Persons) Regulations, 2007 stipulates that whether and how a person should be provided with legal aid is decided at the discretion of the legal aid provider, who must however take into account the needs of the person concerned and the resources available. In reality, the lawyers in Uganda tend to apply a “means and merits test” when deciding who should be entitled to benefit from the profession’s pro bono services. Accordingly, it is examined whether the client has the means to afford a lawyer on his own as well as an examination of the case takes place in order to determine if it is “worthy defending and has a high chance of succeeding if it goes for litigation, [but] merits also cover vulnerability and matters of public interest”.<sup>222</sup>

<sup>220</sup> Legal Profession Tanzania.

<sup>221</sup> Legal Profession Kenya.

<sup>222</sup> Legal Profession Uganda.

The legal aid services provided by lawyers in Uganda are free of charge, and the Legal Basket Fund pays filing fees etc, in this way keeping the client free from covering any costs related to the case. However, civil society organisations that employ lawyers to offer legal aid may in some cases charge a small fee from their clients.<sup>223</sup>

Unlike Kenya and Uganda, the law society in Tanzania mainland has established formal rules to guide who should be entitled to the profession's pro bono services. These criteria include:

1. Applicants must be natural persons and residents of Tanzania;
2. Each applicant shall undergo an oral interview to determine his status and eligibility;
3. Applicants from outside Dar es Salaam shall submit their applications to a representative of TLS' Legal Assistance Committee;
4. The relevant representatives shall in turn forward their recommendations to the Legal Assistance Committee after interviewing the applicants;
5. The financial ability of an applicants will be primary factor;
6. An applicant of limited financial ability with a plausible legal problem will be considered;
7. For the avoidance of doubt, limited financial ability means those whose average monthly income is below the minimum wage (as set out by the Government, currently 120,000 TSH - approximately 82 USD); whether formally employed or not; and
8. The status of applicants will be determined on the basis of the facts as revealed during the interview and/or from any other source.

The interview, mentioned in point 2, examines the following:

1. Employment status;
2. Income status;
3. Whether any property is owned by the applicant;
4. If the applicant pays taxes, and if so how much;
5. Marital status;
6. Number of dependants or person (s) who support the applicant;
7. Age; and
8. Education status.

The legal aid services offered by lawyers in Tanzania mainland are free of charge, and all incidental costs are covered by the legal profession. Some civil society organisation that employ lawyers, such as the LHRC, charge a small fee (2,000 TSH - approximately 1.4 USD) to cover administration costs.<sup>224</sup>

In Zanzibar, the legal profession has not adopted any formal criteria for eligibility in connection with pro bono services, and no information is available concerning how lawyers actually decide who should receive legal services free of charge. Where or-

<sup>223</sup> Legal Profession Uganda and Paralegal Uganda.

<sup>224</sup> Legal Profession Tanzania.

rganisations such as ZAFELA provide legal aid free of charge, the ZLS require litigants to make a contribution.<sup>225</sup>

### *NGOs and paralegals*

None of the countries covered in this report have adopted uniform eligibility criteria concerning NGOs' and paralegals' legal aid services.

Despite the absence of such formal and uniform rules, according to an informant of this report, paralegals in Kenya tend to focus on poor persons; vulnerable groups, such as women, children, the elderly and persons living with disabilities (including HIV/AIDS); persons who are marginalised politically or geographically; prisoners of conscience; and victims of human rights violations. It is not possible to establish how paralegals in practice decide what members of these groups should be entitled to legal aid. The legal aid services offered by NGOs and paralegals in Kenya are free of charge, but clients usually have to pay their own transport as well as incidental costs such as photocopying and filing fees.<sup>226</sup>

In Uganda, the rules governing lawyers' legal aid are also applicable to other legal aid providers, including NGOs and paralegals, making it up to the individual organisation to decide who should be entitled to receive legal aid, though these organisations are required to take into account the needs of the person concerned and the resources available to the legal aid provider. In practice, the main criterion of eligibility for paralegals' legal aid concerns the applicant's inability to pay on his own. However, there appears to be significant variations in practice concerning how the organisations using paralegals reach their decision. The legal aid services provided by NGOs and paralegals in Uganda are free of charge, though in cases where the paralegals lack funding, the client has to pay incidental costs such as photocopying and filing fees.<sup>227</sup>

The NGOs and paralegals in Tanzania mainland similarly tend to use a "means test", in some cases leading the organisations to apply a rule that persons with a monthly income above a minimum wage of 50,000 TSH (approximately 34 USD) are not entitled to legal aid services. Furthermore, NGOs and paralegals in Tanzania mainland tend to focus on vulnerable groups, such as women, children and the elderly. In practice, NGOs and paralegals in Tanzania usually use either a registration form or an oral interview to decide whether these criteria are met. NGOs that use paralegals in Tanzania mainland do not require any form of self-payment from their clients, but in most cases incidental costs such as photocopying and filing fees must be paid by the client.<sup>228</sup>

No information is available concerning eligibility criteria in Zanzibar, but paralegals are prohibited from requiring any payment from their clients.<sup>229</sup>

<sup>225</sup> Legal Profession Zanzibar.

<sup>226</sup> Paralegal Kenya.

<sup>227</sup> Paralegal Uganda.

<sup>228</sup> Paralegal Tanzania.

<sup>229</sup> Paralegal Zanzibar.

### 3. Geographical coverage

The geographical cover of legal aid schemes in East Africa varies highly, usually depending on what type of legal aid provider the scheme is connected to. As such, state-run legal aid projects as well as the legal aid services offered by the legal profession tend to mainly cover urban areas, whereas paralegals operate much more extensively in rural sides.

#### *State actors*

The geographical coverage of state-run legal aid project in East Africa varies considerably, with some having established only a very limited number of offices, others working on a pilot phase in a particular region or city while others again are available in various provincial towns due to the establishment of regional offices.

In Kenya, the pauper brief system in criminal cases is connected to the High Court. This means that all provinces except for the North Eastern Province are covered. As already noted, NALEAP presently operates on a pilot project basis. As a result the geographical coverage of these projects is quite limited. Only in 5 cities (Nairobi, Mombasa, Kisumu, Nakuru and Eldoret) have such pilot projects been established, in effect leaving the Central Province, the Eastern Province, the North Eastern Province and the Western Province without access to NALEAP run legal aid schemes.<sup>230</sup>

In Uganda, where compared to Kenya, a larger number of state agencies are involved in providing legal aid, the picture is more blurred. Some bodies, such as the ULC, have not established regional offices, in consequence forcing claimants to make their way to the Ministry of Justice and Constitutional Affairs in the capital if they wish to interact with legal aid providers. Other actors, such as the judiciary which is responsible for managing the state brief system, is attempting to decentralise their services. Though courts are increasingly being established in rural sides, some areas, including in particular the conflict affected north, remain poorly covered. The Human Rights Commission has established 8 regional offices, but is still considered inaccessible in many districts. The Justice Centres presently only operate on a pilot basis, which means that 2 offices in east and northern Uganda have been established, but when the project becomes fully operation it is intended to cover all jurisdictions of Uganda (a centre will be connected to each court).<sup>231</sup>

In Tanzania mainland, the state is predominantly involved in providing legal aid through the state brief system in criminal cases, which in theory operates in connection with the High Court as well as Subordinate Courts, thus covering major cities and towns across the country.

#### *The legal profession*

Across the region, the legal profession tends to concentrate in urban centres, leaving much of the rural population out of access to the legal aid services provided by lawyers.

<sup>230</sup> State Legal Aid Kenya.

<sup>231</sup> State Legal Aid Uganda.



In Kenya, lawyers' legal aid is generally provided through the branches of the law society. As the LSK has only established offices in Nairobi, Mombasa, Kisumu, Nakuru, Eldoret and the Mount Kenya region (Meru and Nyeri), it is difficult for the inhabitants of other towns and the rural population to access the law society and benefit from lawyers' pro bono services.<sup>232</sup>

A similar problem exists in Uganda, where due to the concentration of lawyers in major cities and towns, most of the rural population is effectively without access to the pro bono services offered by the legal profession. In fact, a recent study (2004) revealed that the majority of districts do not have a single lawyer present. The legal aid provided by lawyers and jurists who work for civil society organisations is also hampered by the fact that most of these organisations have established their offices in the major cities. Areas particularly neglected include Karamoja, Bundibyo, the shore islands of Lake Victoria and parts of northern Uganda such as the West Nile region.<sup>233</sup>

Like the other East African countries, the legal aid provided by the legal profession in Tanzania mainland serves primarily the urban population. Lawyers' legal aid is predominantly facilitated by the TLS, which has established offices in 8 towns (Arusha, Dar es Salaam, Dodoma, Kilimanjaro, Mbeya, Mwanza, Tabora and Tanga). However, 95 percent of the legal aid cases dealt with in 2007 originated in Dar es Salaam, thus indicating a significant problem for making the legal profession's services accessible outside the capital. Although civil society organisations that use lawyers and jurists to offer legal aid services undertake outreach work to make the rural population aware of their existence, they are still mainly based in urban centres, hampering the actual access to the services offered. Regions where access to lawyers' legal aid is severely restricted include Kigoma, Mara, Shinyanga, Lindi and Mtwara.<sup>234</sup> In Zanzibar, the legal profession is said almost exclusively to deal with the urban population.<sup>235</sup>

Key reason mentioned by the informants of this report for the legal profession's concentration in urban centres concerns that it is perceived inconvenient to relocate to rural sides and that there is generally a lack of infrastructure serving these areas across the region.<sup>236</sup>

#### *NGOs and paralegals*

The main difference between organisations using paralegals and other legal aid providers in East Africa is that these organisations tend to place paralegals across the country, including rural sides. That being said, some areas in East Africa continue to be very poorly covered by legal aid providers, including paralegals.

In Kenya, the average number of paralegals in each of the 210 constituencies is 10. In part, this coverage appears to be the result of a PASUNE policy that divided the coun-

<sup>232</sup> Legal Profession Kenya.

<sup>233</sup> Legal Profession Uganda.

<sup>234</sup> Legal Profession Tanzania.

<sup>235</sup> Legal Profession Zanzibar.

<sup>236</sup> Legal Profession Kenya, Legal Profession Uganda and Legal Profession Tanzania.

try into 9 regions and encouraged paralegal legal aid schemes to be established in all of them. Nonetheless, northern parts of Kenya continue to have very few paralegals, allegedly resulting that the residents in some rural sides need to travel as far as 150 kilometres to reach a paralegal.<sup>237</sup>

While paralegals in Uganda also cover the rural sides significantly better than the legal profession and state-run legal aid projects, certain areas remain in dire need of the legal aid services offered by paralegals. The Northern Region as well as the Central Region are said to be fairly well covered, but few paralegal organisations operate in the Western Region and the Eastern Region. In particular, the Karamoja Region (which is in part located in the northern geographical region and in part in the eastern geographical region) and the Lake Victoria islands are left almost entirely without paralegals, therefore making the population in these areas largely dependent on traditional justice systems.<sup>238</sup>

All of the 21 regions of Tanzania mainland are served by paralegal centres. Yet, these centres tend to be based in the main regional town, which may in some cases result that the rural population needs to travel several hundred kilometres to reach a paralegal.<sup>239</sup> In Zanzibar, all the 50 constituencies have a paralegal physically present.<sup>240</sup>

#### 4. Information and outreach strategies

While generally speaking the different legal aid providers in East Africa have put in place some form of a strategy to make the general population aware of their existence and in other ways attempted to inform on the services provided, there are some significant differences between the countries and between different actors.

##### *State actors*

The NALEAP programme in Kenya is still in the process of developing a national legal awareness strategy as well as an outreach strategy. NALEAP is also yet to develop a website. Activities conducted so far to make the general population aware of the legal aid schemes offered by the programme include participation in LSK's Legal Awareness Week in Nairobi and Eldoret, and establishing "open days" in connection with its pilot projects, a measure that is perceived important since subsequently more people have approached the NALEAP offices. In addition, NALEAP officials are presently considering how to increase awareness of the services offered and generally make them more accessible. This includes discussing the possibility of opening an office in all of the 8 provinces, use paralegals to reach the population in remote areas and promote traditional justice systems.<sup>241</sup>

In Uganda, the various state actors involved in legal aid have developed their own information and outreach strategies. To increase awareness, the JLOS produces annual reports, a website has been established and brochures describing its activities have

<sup>237</sup> Paralegal Kenya.

<sup>238</sup> Paralegal Uganda.

<sup>239</sup> Paralegal Tanzania.

<sup>240</sup> Paralegal Zanzibar.

<sup>241</sup> State Legal Aid Kenya.

been handed out. The ULC uses print and electronic media to inform the public of its legal aid activities and to invite Ugandans to submit applications for using these services. There are plans to conduct national awareness workshops “to enlighten the public about the activities of the Law Council”. However, an informant of this report argues that the ULC has proved ineffective in raising awareness of the council’s work, as many clients continue to approach other legal aid providers in connection with legal problems that should correctly have been addressed to the council. The UHRC also attempts to inform the general public of its legal aid services, for example by using flyers and brochures, providing information on its website, conducting workshops, holding an “annual open day forum” and participating in radio programmes that are transmitted in local languages. These measures are deemed quite effective in raising awareness of human rights issues in general as well as the legal aid services provided by the commission.<sup>242</sup>

### *The legal profession*

The extent to which the legal profession has developed information and outreach strategies varies considerably between the countries, but in practice many of the same means are used to make the general public aware of lawyers’ legal aid services.

Though the legal profession in Kenya has not adopted an information or outreach strategy, a number of initiatives used in practice aim at increasing awareness in the general population concerning the legal aid services offered. Besides having an “open door policy”, individual members of the law society inform the public of lawyers’ legal aid services, for example using the media, and as already mentioned the LSK organises a Legal Awareness Week each year, which aims at informing the public of different legal aid schemes offered by the profession.<sup>243</sup>

A number of strategies have been put in place by the legal profession in Uganda to inform the general public of its legal aid services. For example, to inform the public, the ULS uses media campaigns, community workshops, brochures, flyers, posters and booklets. Furthermore, the legal profession actively seeks to establish linkages with other local service providers, such as district coordinators and religious leaders, as well as legal aid providers, including JLOS institutions, such as the public prosecutor’s department, the police, the courts and prisons, in order to make officials within these agencies aware of the legal aid work conducted by lawyers. As in Kenya, the legal profession in Uganda initiated a Legal Aid Week (which is now conducted by LASPNET), where lawyers and other legal aid providers “showcase the services rendered and invite clients to an open ground to receive on spot legal aid services”. Another outreach strategy adopted by the legal profession concerns the establishment of the Legal Aid Project, now operating from 7 offices across the country in order to get closer to the population. Finally, the legal profession has put in place an outreach policy, according to which lawyers visit prisons to offer pro bono services, “mobile clinics” have been established to make the legal aid services more accessible and community workshops are organised. Despite the use of these strategies and policies,

<sup>242</sup> State Legal Aid Uganda.

<sup>243</sup> Legal Profession Kenya.

much of the population is still perceived to lack the information necessary to benefit from the legal aid services offered by the legal profession in Uganda.<sup>244</sup>

The legal profession in Tanzania mainland has not adopted an information or outreach strategy, and little is done in practice to inform the public of the legal aid services provided by lawyers. However, a number of efforts have been made to inform Tanzanians of the Legal Aid Day hosted by the TLS, including using media spots, but these efforts are not deemed particularly efficient. The lack of an information and outreach strategy in Tanzania is likely to be remedied with the TLS' establishment of a Legal Aid Unit this year (2010).<sup>245</sup>

The legal profession in Zanzibar relies on an information strategy, where the public is made aware of its legal aid services, using measures such as disseminating brochures, conducting seminars, advertising through radio and television as well as the holding of different arrangements (in connection with international attention days), including a Human Rights Day, a Women Day and an African Child Day. According to an informant of this report, these measures have proved effective in increasing public awareness of the legal aid services offered by the legal profession.<sup>246</sup>

#### *NGOs and paralegals*

The information and outreach strategies deployed by civil society organisations that use paralegals in their work vary from organisation to organisation, though in practice many of the same measures are utilised.

The organisations in Kenya seemingly make great efforts to inform the public of the legal aid services provided. However, the measures utilised depend significantly on the organisation in question. Community paralegals use “the public chiefs baraza’s, religious congregations, paralegal graduations and legal aid days” to inform local communities on how they can benefit from the work of paralegals. The prison paralegals, on the other hand, mostly rely on “strategic stakeholder meetings, legal aid days and offices within the prison establishment”. In addition, paralegals tend to use specific jackets so they can be recognised in communities. Furthermore, paralegals are sometimes interviewed in radio shows which are broadcasted in the local language, in this way informing the local community of different legal issues and the services provided by paralegals. In terms of outreach, measures adopted include the opening of so-called community resource centres and paralegal advisory desks (initiatives that have been created by paralegals on their own but encouraged by PASUNE), which make it easier for the local population to approach paralegals. These centres and desks also frequently have a small library attached.<sup>247</sup>

As in Kenya, information and outreach strategies deployed by paralegal organisations in Uganda differ from organisation to organisation. Some paralegals partner with community based associations to use the media for information, a measure that is deemed quite effective. Other measures utilised include information brochures and

<sup>244</sup> Legal Profession Uganda.

<sup>245</sup> Legal Profession Tanzania.

<sup>246</sup> Legal Profession Zanzibar.

<sup>247</sup> Paralegal Kenya.

billboards. Furthermore, some paralegal organisation use websites to inform communities of the legal aid services offered, and open house sessions are commonly offered. Many paralegals liaise with service providers, such as local council officials to increase awareness of the legal aid schemes in the public service. Another way in which the Ugandan paralegals reach the local population concerns the use of mobile clinics, where “identified local communities are targeted for a specific period on such pertinent issues that affect them as a distinct society”. Though many members of the public still lack the necessary information concerning legal aid provided by paralegals, the use of these different information and outreach strategies is generally seen as helpful for raising public awareness of these services.<sup>248</sup>

The paralegal organisations in Tanzania mainland also use different measures to increase awareness in communities of the legal aid services provided. The most common method concerns disseminating brochures, flyers, posters etc. Due to the related costs, media spots are only rarely used. An informant of this report notes: “The notion of provision of legal (aid) services by paralegals in Tanzania mainland is still at its infant stage and thus evolving. All the existing paralegals are still dependent on their affiliate organisations, with few now moving towards having full autonomy away from their affiliate organisations. This being the case, the idea of formulating a strategy on ensuring outreach of legal aid services has been, until recently, premised around carrying out of such outreach activities as training and advocacy only. For example, all paralegals consulted in connection to this study have, at times, been engaged in such outreach activities”. As in Uganda, the paralegals in Tanzania mainland use mobile legal aid camps, which serve the purpose of reaching clients where they are as well as cutting costs for the paralegals. Although there are still some problems related to making the general population aware of the legal aid services offered by paralegals, one informant of this report notes how the impact of carrying out “outreach activities for paralegal work cannot be understated”.<sup>249</sup>

Only little information is available concerning the paralegals in Zanzibar, but the ZLSC uses radio and television announcements, public forums as well as liaising with local leaders and civil servants to inform the public of legal aid services provided.<sup>250</sup>

##### 5. Some final remarks concerning accessibility and linkages between the various legal aid providers in this regard

There are some significant problems concerning the accessibility of legal aid schemes in East Africa. Notably state actors as well as the legal profession are usually present almost exclusively in the major urban centres, making it difficult or even impossible for the poor and vulnerable in rural areas to access the legal aid schemes offered by these actors. Where the information and outreach strategies deployed by these actors to varying degrees may have increased awareness of the legal aid schemes available, these efforts seem to be insufficient for promoting their accessibility. Generally speaking there appears to be a need for relying more extensively on information and outreach strategies, and possibly draw on best practices from other legal countries, as well as there seems to be a need for a further decentralisation of the legal aid schemes of-

<sup>248</sup> Paralegal Uganda.

<sup>249</sup> Paralegal Tanzania.

<sup>250</sup> Paralegal Zanzibar.

ferred by the state and the legal profession. Some positive developments include the establishment of legal awareness days or weeks across the region, which draw on various legal aid providers in attempting to advance knowledge of the legal aid services available.

In terms of physical presence as well as the information strategies used, the paralegals in East Africa are significantly more accessible compared to the other legal aid providers. The lack of overall coordination of the work of paralegals, however, may mean that best practices are not sufficiently shared between different paralegal organisations and across countries. Despite generally being present in urban centres as well as rural areas, all of the countries in the region have provinces or areas that are not well covered by paralegals, presumably constituting a major obstacle for access to justice for the residents in these areas.

As such, access to the legal aid schemes in East Africa seems not to be significantly hampered by the use of overly restricting eligibility criteria. However, some efforts to further consider how coherence can be ensured when deciding who should benefit from particular legal aid schemes might prove useful. Most of the legal aid schemes in East Africa can be used free of charge, though in some instances the beneficiaries of legal aid must cover incidental costs, which may in reality constitute an obstacle for the poor and vulnerable to access these services.

#### **D. Use of measures to ensure quality legal aid**

##### 1. Introduction: Analysing measures that aim at ensuring the quality of legal aid services

Importantly, this section does not claim to measure the quality of legal aid services as such, but rather analyses what measures are utilised by the various legal aid providers to maintain or improve the quality of the services delivered.

To do so, this section analyses the level of training offered to the various legal aid providers (and how the different legal aid providers offer training to each other); general measures, such as code of conducts, utilised by legal aid providers to ensure high standards; and the nature and scope of monitoring mechanisms put in place in connection with the delivery of these services. Though these 3 aspects are not the only ones relevant for discussing how the various legal aid providers in the region attempt to maintain or improve the quality of the legal aid services delivered, they are certainly important and may provide useful insights on central differences between the legal aid providers, including the state, the legal profession and NGOs and paralegals, as well as the analysis will point to trends and differences between the countries. This section of the report also offers examples of impact of legal aid, which may further highlight the strengths and weaknesses of particular legal aid schemes used in East Africa.

##### 2. The level of training offered legal aid providers

Most of the legal aid providers in East Africa are trained specifically with the purpose of strengthening their ability to offer quality services. Generally speaking, there is a

significant amount of interplay between the different legal aid providers when organising and conducting training modules. Many training courses draw on the expertise of various legal sector actors, and in a number of cases, the seminars, workshops and other forms of training offered by a particular actor, such as the legal profession, encourages other actors, such as paralegals or the employees of state-run legal aid schemes, to participate. That being said, there are also some significant differences concerning the scope and nature of training offered legal aid providers in East Africa.

#### *State actors*

There are a number of similarities between Kenya and Uganda in terms of the state's involvement in training for legal aid providers. In both of the countries, initial as well as continuous training is offered, and actors external to the state are invited to participate in various training programmes.

Lawyers, jurists and paralegals working for the NALEAP projects in Kenya are offered specific initial training to “deepen their understanding of access to justice in general and legal aid in particular”. The training course offered by the government, which lasts for 1 week, is individualised to fit the particular programme which the lawyer, jurist or paralegal works for. Topics that may be covered include ADR and thematic areas of law, such as juvenile justice or law particularly relevant for dealing with gender issues.<sup>251</sup>

Besides this initial training course, continuous training is offered to the lawyers, jurists and paralegals working for NALEAP, in this way attempting to enhance their knowledge of such topics as volunteerism and sensitisation.<sup>252</sup>

To facilitate this training, the NALEAP projects not only rely on its own instructors, but depending on the topic taught, also receive assistance from such organisations as UNICEF and FIDA. In addition, NALEAP personnel participate in various training courses offered by other central actors in the legal system in Kenya, including UN agencies, the KNHREC and civil society organisations, such as FIDA, the Centre for Legal Aid and Research and CLAN. On the other hand, external actors, including for example pro bono lawyers, employees of the children's department and members of civil society organisations, are invited to participate in the training seminars hosted by NALEAP.<sup>253</sup>

As in Kenya, state institutions in Uganda organise initial training programmes for legal aid providers connected to the state, including employees of the UHRC, the ULC, the Department General of the Ministry of Justice, the Law Development Centre and the Justice Centres. The judicial personnel in Uganda receive initial training at the Judicial Studies Institute, where experienced members of the legal profession are invited to lecture on various issues.<sup>254</sup>

<sup>251</sup> State Legal Aid Kenya.

<sup>252</sup> State Legal Aid Kenya, Legal Profession Kenya and Paralegal Kenya.

<sup>253</sup> State Legal Aid Kenya, Legal Profession Kenya and Paralegal Kenya.

<sup>254</sup> State Legal Aid Uganda.

State institutions in Uganda also offer continuous training modules for their employees. For example, the judiciary with the support of donor partners and the JLOS has organised training on war crimes and corruption. Unlike what is the case in Kenya, state institutions in Uganda do seemingly not use the expertise of external organisations or institutions to facilitate training for the personnel of state-run legal aid schemes.<sup>255</sup>

As in Kenya, other stakeholders in the legal system occasionally benefit from the training seminars offered by the state. For example the ULC recently organised a workshop which aimed at raising awareness of pro bono regulation, an event that was attended by lawyers and other actors in the legal system.<sup>256</sup>

### *The legal profession*

Across the region, members of the legal profession are offered training organised by the legal profession itself, and in some instances lawyers are invited to participate in seminars, workshops and other forms of training hosted by other actors in the legal system. While the rules governing initial training vary considerable between the countries, there is generally a requirement for lawyers to undertake some form of continued training once having joined the bar. Furthermore, in most of the East African countries, lawyers are involved in the training of other actors, including paralegals.

In Kenya, new lawyers attend a training seminar known as the “Continuing Legal Education” (as the name suggests, the seminar is also used for continuous training). The seminar is held once a year. Furthermore, before lawyers are allowed to practice independently they are required to undertake an internship for 2 years. Besides the continuous training offered by the “Continuing Legal Education” programme, an initiative called “Continuing Legal Education Calendar”, operated by NALEAP and NGOs in cooperation, provides continuous training to lawyers in Kenya, an offer that 450 lawyers have so far accepted. Each seminar offered by this programme lasts between 2-7 days, during which lawyers are trained in procedural and substantive law as well as such themes as coordination and quality service delivery. In order to be allowed to practice the subsequent year all lawyers in Kenya are required to attend some of the courses offered through the “Continuing Legal Education” programme. While the programme is run by the legal profession itself, teachers include lawyers with particular expertise as well as university professors, visiting resource persons and NGO experts.<sup>257</sup>

The legal profession in Kenya is also involved in training of other legal sector personnel, including employees of the state-run legal aid schemes and paralegals. Training seminars are held countrywide through the PASUNE and the NALEAP and appear to be well attended (420 paralegals benefited from the training in 2009).<sup>258</sup>

As in Kenya, the lawyers in Uganda are required to undertake some theoretical and practical training before they are allowed to practice. This training takes place at the

<sup>255</sup> State Legal Aid Uganda.

<sup>256</sup> State Legal Aid Uganda, Legal Profession Uganda and Paralegal Uganda.

<sup>257</sup> Legal Profession Kenya.

<sup>258</sup> Legal Profession Kenya.



Law Development Centre, where besides being trained in procedural and substantial law, lawyers acquire knowledge of professional ethics and the legal framework relevant for providing legal aid. Moreover, the Law Development Centre cooperates with civil society organisations, a measure that allows the lawyers who attend the training seminars to gain practical experience and understand what problems are relevant for various communities. In addition to this training, a number of other measures have been put in place to enhance lawyers' knowledge of legal and practical problems, some of which seem to have particular relevance for the delivery of legal aid. For example, there is an internship programme, where "young aspiring lawyers are attached to legal service providers' institutions and acquire practical experience in legal aid service provision". The institutions affiliated to this intern programme include the legal aid clinic of the Law Development Centre, the Refugee Law Project of Makerere University, professional associations such as ULS' Legal Aid Project as well as NGOs such as FIDA and the Public Defenders Association of Uganda.<sup>259</sup>

As in Kenya, there is a requirement for lawyers in Uganda to undertake continuous legal training. The ULC has delegated the responsibility for providing this training to the ULS. The courses offered by ULS draw on the expertise of a variety of actors, including practicing lawyers, academics, judges, registrars and international visitors. Besides these courses and seminars, the ULS has recently established a so-called mentorship programme, where lawyers with specific expertise in a given area of law give lectures for the younger members of the profession.<sup>260</sup>

In addition to the training offered by the legal profession itself, a number of civil society organisations are involved in training lawyers. For example, *Avocats Sans Frontières* conducts training seminars for lawyers on the theme of torture. Government bodies are also involved in training Ugandan lawyers. For example, the ULC hosts seminars that aim at informing lawyers about their pro bono obligations, and the JLOS offers training on topics as diverse as case backlog reduction strategies, strategies to improve service delivery, human rights and criminal justice. Furthermore, some international donors, such as the EU, are involved in training activities, including a programme that grants scholarships for lawyers to train specifically for the human rights related field and so-called 'training for trainers programmes'.<sup>261</sup>

As in Kenya, the legal profession in Uganda participates in the training of other legal sector personnel. The establishment of a Legal Aid Project under the auspices of the ULS is important in this connection as it runs a programme where paralegals receive short training seminars. The Legal Aid Project also houses a "Capacity Strengthening Programme", where lawyers as well as jurists and paralegals are trained in advocacy and mediation skills, enabling them to train others in these fields of expertise. This programme is perceived as having laid the ground for the establishment of LASP-NET, which is thought to have enhanced the quality of legal aid services in the country.<sup>262</sup>

<sup>259</sup> Legal Profession Uganda.

<sup>260</sup> Legal Profession Uganda.

<sup>261</sup> Legal Profession Uganda.

<sup>262</sup> Legal Profession Uganda and Paralegal Uganda.

In Tanzania mainland, a number of initiatives ensure that lawyers are provided with practical training prior to their enrolment in the bar association. Already during the LLB, students are required to take 3 months' practical law training, where legal institutions or private companies host the students. As opposed to what is the case in the other East African countries, however, there is no requirement for lawyers to participate in any form of initial training before joining the bar.<sup>263</sup>

In terms of continued training offered to the lawyers who have already joined the bar, the requirements in Tanzania mainland in many ways resemble the practices used in the other East African countries: all members of the law society are required to participate in various scheduled seminars during the year. These seminars, which are organised by the TLS and offered at the regional level, provide training in various legal fields and areas relevant for the legal profession, such as client management.<sup>264</sup>

Besides the training facilitated by the TLS the lawyers in Tanzania mainland benefit from training organised by other actors in the legal system. For example, jurists working in the private sector, including the banking sector, the medical sector and accountancy, provide various forms of training for lawyers. However, unlike what is the case in Kenya and Uganda there seems to be less of a formalised cooperation with state agencies in terms of providing training to the lawyers in Tanzania mainland.<sup>265</sup>

Furthermore, Tanzania mainland sets itself apart from Kenya and Uganda in the sense that the legal profession is not formally involved in the training of other actors in the legal system. That being said, other legal sector personnel are free to participate in the seminars organised by the TLS, and in the future, media professionals, judicial personnel and others are likely to benefit from training seminars organised by the Gender Desk and the Policy and Research Desk of the TLS.<sup>266</sup>

In Zanzibar, the law society (ZLS) provides limited training for jurists who wish to join the bar association (2 days). The training offered appears to focus mostly on civil procedure. Furthermore, the ZLSC offers initial training for lawyers, though also of limited duration and scope. In addition, High Court appointed lawyers receive training conducted by the Attorney General. In order to practice as a lawyer, one needs to be attached to a senior lawyer or the Attorney General. As in the other East African countries, continued training is provided for by the law society (ZLS). This training focuses on procedural law as well as substantive law, including human rights law. Moreover, the ZAFELA occasionally carries out training seminars, where lawyers and other legal sector personnel receive instruction in criminal law. To some extent, the legal profession seems to be involved in the training of other actors in the legal system, such as paralegals, police officers and others.<sup>267</sup>

<sup>263</sup> Legal Profession Tanzania.

<sup>264</sup> Legal Profession Tanzania.

<sup>265</sup> Legal Profession Tanzania.

<sup>266</sup> Legal Profession Tanzania.

<sup>267</sup> Legal Profession Zanzibar.

## *NGOs and paralegals*

Paralegals across the region are offered various forms of training, including initial training and training seminars that aim at keeping already deployed paralegals up to date with new developments and further strengthen their ability to offer quality legal aid services. However, the level of coherence and the use of common standards for the training of paralegals vary considerably in the 3 countries covered in this report, and there are also important differences concerning the extent to which external actors are involved in the training of paralegals.

Since 2002 the main paralegal network in Kenya (PASUNE) has offered an initial training programme that paralegals are required to join. A curriculum has been developed to ensure training in a broad spectrum of legal areas as well as management and other practical skills. The topics covered by the PASUNE paralegal training programme include:

- 1) Paralegalism;
- 2) Introduction to law and the sources of law;
- 3) Constitutional law;
- 4) Human rights;
- 5) Democracy;
- 6) Governance;
- 7) Voting, elections and management of elections;
- 8) Gender;
- 9) Gender based violence;
- 10) Child rights;
- 11) Labour law and relations;
- 12) Law of tort;
- 13) Law of contract;
- 14) Land law;
- 15) Succession and inheritance;
- 16) Crimes and criminal procedure;
- 17) Civil procedure;
- 18) Alternative dispute resolution (ADR);
- 19) Environment and Natural resources Management;
- 20) Human rights Institution building;
- 21) Training Techniques;
- 22) Monitoring and Evaluation methods;
- 23) Research, pre training assessments and surveys;
- 24) Proposal Writing and Fundraising;
- 25) Programme Management;
- 26) Recording and Report Writing; and
- 27) Participatory theatre.

New topics, such as HIV/AIDS, are likely to be included in the near future. The training programme uses participatory adult learning methods, including role plays, group work and simulations. Drawing on the input of the paralegals themselves, a paralegal training manual/handbook was developed in 2006 to complement the curriculum. The curriculum as well as the handbook appears to have had significant impact in Kenya

and in the region. The handbook has been disseminated to other civil society organisations in Kenya that use paralegals in their work, and is apparently “used heavily by the paralegals as reference materials”. Furthermore, the Kenya School of Law has been provided with copies of the curriculum as well as the handbook, in this way informing “the current directives by the Council of Legal Education”. The training material developed by PASUNE has also had impact in the sense that paralegal organisations in other countries across the region, including Tanzania and Rwanda, draw on it, and organisations such as the ICJ, Kituo Cha Sheria and the LRF, the latter being responsible for the training of prison paralegals in Kenya, seem to “almost strictly follow the PASUNE model”.<sup>268</sup>

Since 1998 the LRF has offered initial training for its prison and community paralegals. Each seminar lasts around 6 weeks and the seminars are offered with 2-3 months intervals. The paralegals are expected to subsequently develop an action plan “that is aimed at providing civic education and advice in their various communities”. Having completed the training on all of the subjects developed by PASUNE (as described above), the paralegals connected to LRF need to pass an exam (that includes a written as well as an oral part). The test concerns theoretical knowledge as well as an assessment of how the law can be applied in practice. Once the exam has been completed, the paralegal receives a certificate, a badge and a special uniform that identifies the person as a paralegal.<sup>269</sup>

In addition to these forms of initial training, a number of civil society organisations, including ICJ, FIDA, LRF, COVAW and CRADLE, organise continuous training. PASUNE generally believes that “refresher training should be undertaken twice annually”, and training seminars of 1-2 days duration are conducted on various topics depending on what the paralegals themselves deem necessary and relevant. In addition, annual seminars are held to ensure that paralegals are kept up to date with recent developments in the legal framework. These seminars usually last for 2-5 days. However, compared to the initial training modules, the continuous training programmes are perceived less systematic and in reality many paralegals seem not to benefit from it, a problem that appears to be caused by lack of resources and the fact that each organisation using paralegals tends to develop its own programme.<sup>270</sup>

Another way of ensuring that paralegals are sufficiently trained concerns dissemination of legal information publications conducted by some NGOs working with paralegals, such as the LRF.<sup>271</sup>

Besides the training provided by the legal profession as described above, external actors are generally not extensively involved in the training of paralegals, which in part seems to be the result of the limited recognition of paralegals in Kenya. Nonetheless, state institutions such as the judiciary and the Ministry of Security as well as international organisations, including Safer World, Plan International and Care, occasionally offer training to paralegals on topics such as peace and security, gender based vio-

<sup>268</sup> Paralegal Kenya.

<sup>269</sup> Paralegal Kenya.

<sup>270</sup> Paralegal Kenya.

<sup>271</sup> Paralegal Kenya.

lence and development. One problem that has been stated by an informant of this report is that the training offered does not fully conform to the PASUNE curriculum.<sup>272</sup>

Unlike Kenya, there is no uniform or general training programme in place for providing paralegals with initial training in Uganda. Rather, different organisations, including the FHRI, UCLF, FAPAD, the Legal Aid Clinic of the Law Development Centre and the Legal Aid Project of the ULS, offer various training courses that aim at empowering paralegals “to help in addressing the needs/problems of communities, establish the root causes and then inform decision makers on aspects that effectively design a ‘justice programme’ that tackles the multiple causes of the injustice”. The training programmes tend to rely on lectures and focus group discussion, and tests need to be completed. The duration of the training sessions is usually around 1-4 weeks, and a formal certificate is generally offered upon completion of the training. On average, each organisation provides training for around 50 paralegals annually. The trainers used by the various organisations for these modules are normally employees of the organisation itself.<sup>273</sup>

As is the case with the initial training programmes for paralegals in Uganda, continuous training is also facilitated by a variety of organisations, seemingly without coordinating the curriculum. Topics covered by the continuous training seminars are diverse, including such areas as human rights, approaches to dispute resolution and “pathways in mediation so that paralegals effectively can meet changing expectations”. Each seminar usually lasts around 1-2 weeks, and the frequency of training varies between 6 months and 1 year. Relying on lectures and teaching methods such as role plays, group work, presentation and field visits, around 20-50 paralegals join each seminar.<sup>274</sup>

Despite the lack of overall coordination and cooperation between paralegal organisations in connection with training activities, certain paralegal organisations, including the PAS, HURIFO, MHRDN and SODANN share their experiences and help training the paralegals of other organisations. Besides being attended by paralegals, in many cases the organisers of these training modules also invite community development officers, local leaders in villages, probation officers, local defence units, women and youth groups and others. As opposed to the initial training programmes, the instructors of continuous learning programmes are often drawn from outside the organisation itself and sometimes use legal experts to inform paralegals on such issues as bail applications, court procedures, business and entrepreneur skills, social counselling etc.<sup>275</sup>

Besides the participation of the legal profession in the legal training provided to paralegals (as described above), other actors are also from time to time involved in the training of paralegals. For example, the Legal Aid Clinic of the Law Development Centre offers initial training for paralegals by conducting a 2-weeks seminar on topics such as civil procedure, land law, criminal law, family law, labour law, commercial law, the law of torts, etc. Each training module, which is based on a combination of

<sup>272</sup> Paralegal Kenya.

<sup>273</sup> Paralegal Uganda.

<sup>274</sup> Paralegal Uganda.

<sup>275</sup> Paralegal Uganda.

lectures, focus group discussions, presentations and field visits, is attended by 15-30 paralegals, who are then provided with a certificate upon completing the course. Moreover, state institutions, such as the Uganda Police Force, the Directorate of Public Prosecutions, the Uganda Prison Services and the judiciary, provide continuous training to paralegals, especially concerning their procedures of work and changes in the legal framework. Typically somewhere between 20 and 50 paralegals from different organisation attend these seminars and workshops, which tend to last between 2 and 5 days. Certificates are usually provided for those who join the training.<sup>276</sup>

Although the initial training of paralegals in Tanzania mainland is not based on one uniform or general curriculum or manual, compared to Uganda there appears to be a higher level of constituency and coherence from organisation to organisation. This might be caused by the existence of a formal agreement between TANLAP members that encourages cooperation. The initial training programmes, which are usually conducted over a period of between 1-4 weeks followed by “supportive supervision carried out by lawyers or jurists from the affiliate or partner NGO”, covers a large variety of topics, including:

- Land law
- Labour law
- Inheritance law
- Women and children’s rights
- Legislation relevant for sexual offences
- Legal drafting
- Public interest litigation
- Paralegalism and access to justice
- Strategic management
- Office management
- Proposal and report writing
- Monitoring and evaluation

Teaching methods vary from organisation to organisation, but common measures include role plays, discussion groups and other forms of participatory learning. When completing an initial training course, paralegals are sometimes offered a certificate. Reportedly, the initial training offered to paralegals in Tanzania mainland is generally appreciated by the beneficiaries, as they are said to gain confidence, knowledge, bargaining power as well as recognition in the communities they serve.<sup>277</sup>

Some civil society organisations also conduct continuous training for paralegals. This training does apparently not differ substantially in nature or scope from the initial training programmes.<sup>278</sup>

Paralegals from other organisations as well as members of the legal profession and other interested stakeholders are usually invited to participate in the training offered by the various NGOs involved in training activities.<sup>279</sup>

<sup>276</sup> Paralegal Uganda.

<sup>277</sup> Paralegal Tanzania.

<sup>278</sup> Paralegal Tanzania.

Contrary to what is the case in Kenya and Uganda, no external actors, such as the state legal aid initiatives, the legal profession or international organisations, offer “direct or tailor-made training initiatives for paralegals” in Tanzania mainland.<sup>280</sup>

No information is available concerning the training policies and practices relevant for paralegals in Zanzibar.

### 3. Other mechanisms used to ensure quality in the provision of legal aid

Besides offering continuous training, some of the legal aid providers in East Africa have established mechanisms that aim at ensuring quality in the delivery of legal aid. However, the use of such safeguards varies considerably between the different legal aid providers as well as it varies from country to country, and there are some significant differences between the countries concerning the level of interaction between the various legal aid providers.

#### *State actors*

The way in which measures are utilised to ensure quality in the provision of legal aid in connection with state-run legal aid schemes varies significantly between Kenya and Uganda, which in part seems to be the result of the lack of an overall supervisory body with a mandate to generally regulate the provision of legal aid in Kenya.

Information concerning the use of mechanisms that aim at ensuring high standards for the delivery of legal aid by state-run projects in Kenya is sparse. However, a system has been implemented by the NALEAP, which is relevant for achieving a high standard in the provision of legal aid. A common system covering all of the NALEAP projects has been put in place, where clients are provided with an “appointment card” that identifies the name of the legal aid provider as well as remarks concerning the case and the time and date for any subsequent appointments. The details of the card are recorded in the client register and the legal aid provider is required to keep on file a summary of the case. Moreover, legal aid providers involved in state-run projects are required to deliver progress reports on the cases that have been referred to them, and a framework is currently being developed to ensure that legal aid providers “uphold high ethical and professional standards in conducting their matters”.<sup>281</sup>

In Uganda, the government has created a number of initiatives that aim at achieving quality in the provision of legal aid. The supervisory role of the ULC has led this institution to establish professional standards and adopt rules that regulate the provision of legal aid in general. For example, the Advocates Professional Conduct Regulations S.I.267-1 requires that lawyers personally handle their cases, and also regulates under what circumstances a lawyer may withdraw from a case. In addition, the ULC has adopted the Advocates Legal Aid Service to Indigent Persons Regulation, which – in an attempt to avoid that unqualified persons offer legal aid – requires legal aid providers to register with the council. To get registered, the legal aid provider needs to

---

<sup>279</sup> Paralegal Tanzania.

<sup>280</sup> Paralegal Tanzania.

<sup>281</sup> State Legal Aid Kenya.

have a separate room for meetings with clients, a measure that is intended to ensure privacy. The legal aid provider is also required to have a “reasonable collection of reference legal materials, including a full set of Revised Laws of Uganda” as to ensure that legal aid is properly based on an assessment of legal material relevant for the case. Furthermore, legal aid providers at the level of civil society organisations must be registered with the NGO Board and have among its staff at least 1 person who has a law degree. According to an informant of this report, these measures constitute an effective bulwark against legal aid providers misusing their mandate, for example because the rules prevent the establishment of NGOs simply with the purpose of acquiring funding or for other illegitimate reasons. Another measure used by the ULC to lift the standard of legal aid concerns annual inspections of legal aid providers, which aim at investigating whether the information provided to the council is correct and if the legal aid providers act in accordance with the law. However, the number of inspections carried out is quite limited. In 2009, 26 legal aid providers were inspected. The ULC has also established a disciplinary committee mandated to discipline “errant advocates operating in contravention of the expected legal standards”. Finally, the ULC plans to adopt a so-called Legal Aid and Pro Bono Monitoring and Evaluation Framework to “identify and recommend the models of service delivery to be used”.<sup>282</sup>

### *The legal profession*

The extent to which the legal profession has adopted safeguards and other measures to ensure a high standard of the legal aid offered varies considerably between the countries covered in this report.

In Kenya, there are no internal or external mechanisms in place to ensure that high standards are maintained with regard to lawyers’ legal aid provision. However, lawyers and jurists who work for NGOs are usually obliged to follow standards of conduct, and the Disciplinary Committee of the LSK may impose sanctions on lawyers if they fail to live up to these standards. In practice, however, such sanctions are rarely used, reportedly because the committee is afraid of “discouraging lawyers from giving legal aid”.<sup>283</sup>

In Uganda on the other hand, the legal profession has adopted best practices concerning the provision of legal aid and lawyers are required to submit reports on a regular basis concerning their performance to the ULS coordinating staff, with data and information compiled and submitted to the Legal Aid and Pro Bono Committee of the law society, and any recommendations forwarded to the ULS Governance Council (the Executive Council) for their policy guidance. Furthermore, the law society encourages beneficiaries of legal aid to report poor service delivery through the coordinating/management staff of ULS’ pro bono initiative or ULS’ Legal Aid Project. External mechanisms to ensure that lawyers provide quality legal aid rely on the ULC according to its regulatory and supervisory role in the area of legal services (as described above on state actors).<sup>284</sup>

<sup>282</sup> State Legal Aid Uganda.

<sup>283</sup> Legal Profession Kenya.

<sup>284</sup> Legal Profession Uganda.



Similarly to Uganda, the legal profession in Tanzania mainland has adopted internal rules to ensure quality in the provision of legal aid services. According to the law society's internal rules of ethics, lawyers are expected to treat clients equally, whether they are paying clients or beneficiaries of legal aid. An Ethics of Advocates Committee is established to deal with unprofessional conduct or unethical practices. Nonetheless, an informant of this report argues that it is a top priority to revise the rules governing standards of the legal profession in delivering legal aid. As in Kenya, no external bodies are involved in ensuring that lawyers offer quality legal aid.<sup>285</sup>

The quality of the legal profession's provision of legal aid in Zanzibar is supported by a code of conduct adopted by the law society, but as in Kenya and Tanzania mainland, no external mechanisms exist to facilitate that the standards are maintained.<sup>286</sup>

### *NGOs and paralegals*

Whereas the civil society organisations using paralegals in their work generally appear to use significant resources on training programmes, only to a limited extent have these organisations created other measures that aim at ensuring the quality of the legal aid delivered, and in none of the East African countries are external bodies involved directly in ensuring the quality of legal aid provided by paralegals.

In Kenya, one measure mentioned by an informant of this report concerns "exchange and learning visits among the paralegal units", a practice that seems to be generally encouraged by the NGOs that use paralegals. Furthermore, a significant number of civil society organisations that use paralegals in their work have adopted a code of conduct. No external bodies appear to be involved in ensuring quality in paralegals' provision of legal aid.<sup>287</sup>

Similarly, the quality of legal aid offered by paralegals in Uganda is not supported by general internal or external regulations or mechanisms. However, some individual organisations have adopted standards and guidelines concerning how legal aid must be provided in practice, and some organisations have created administrative mechanisms for helping paralegals to understand and implement these standards.<sup>288</sup>

While general regulation of how to ensure quality in paralegals' legal aid work is also absent in Tanzania mainland, most civil society organisations that use paralegals are reported to have adopted rules or guidelines on this issue. Besides dealing with issues of training and eligibility of clients, these guidelines are also said to ensure "that high standards are maintained in regard to their provision of legal aid", though the extent to which mechanisms aimed at ensuring quality are actually adhered to remains unknown. In addition to adopting such guidelines, paralegal organisations use coaching and mentoring to enhance the quality of legal aid, and an Annual Paralegal Forum has been established, which is said to "provide an opportunity for paralegals to enhance

<sup>285</sup> Legal Profession Tanzania.

<sup>286</sup> Legal Profession Zanzibar.

<sup>287</sup> Paralegal Kenya.

<sup>288</sup> Paralegal Uganda.

the quality of their services [through] exchange of knowledge and experience amongst themselves”.<sup>289</sup>

No information is available concerning the use of quality ensuring measures for paralegals in Zanzibar.

#### 4. Monitoring mechanisms

As such, the level of monitoring of legal aid providers in East Africa is quite limited. Few of the legal aid schemes established are monitored by external bodies, but in some cases individual organisations require submission of progress reports and in other ways monitor the legal aid work of their employees. However, there are some significant differences between the countries, not least in terms of how the legal profession’s pro bono work is monitored.

##### *State actors*

Only to a limited extent have monitoring mechanisms been created to examine state-run legal aid schemes in Kenya and Uganda.

However, there are some examples of the state’s legal aid programmes being monitored. For example, the law establishes that the Steering Committee of Kenya’s NALEAP projects must submit quarterly reports to the Ministry of Justice, providing a summary of all “outdoor activity” of the legal aid projects. These reports are not only used for analytical purposes in the ministry and for ranking the performance of NALEAP, but also offer a research tool for NALEAP as they allow comparisons be made between the projects and a platform for recommending different actions on legal aid to the decisions-makers. Presently, no external bodies are otherwise involved in monitoring NALEAP activities, but this is likely to change with the development of a strategic plan for NALEAP.<sup>290</sup>

In Uganda, monitoring mechanisms are established for some of the state-run legal aid schemes. The legal aid activities of the ULC are monitored internally as the subcommittee on legal aid is required to periodically report on its activities to the ULC. Though no other state bodies are involved in monitoring the council’s work, a form of external monitoring takes place as the council is required to provide periodic progress reporting to its donor partners. The legal aid work of the UHRC is monitored internally in the sense that the head office undertakes periodic inspection visits to the regional offices and oversees activities in the field. As is the case with the ULC, the commission is required to deliver periodic progress reports to its donor partners.<sup>291</sup> The extent to which other state-run legal aid schemes are monitored remains unknown.

<sup>289</sup> Paralegal Tanzania.

<sup>290</sup> State Legal Aid Kenya.

<sup>291</sup> State Legal Aid Uganda.

### *The legal profession*

The nature and extent to which lawyers' legal aid activities are monitored vary considerably across the region. In some countries, internal as well as external monitoring mechanisms are put in place, while in others there is no monitoring at all.

The latter is the case in Kenya, where neither internal nor external mechanisms have been established by the law society to monitor the legal profession's provision of legal aid.<sup>292</sup>

In Uganda, the law society has established a unit that (besides being responsible for overall coordination of access to justice) monitors lawyers' provision of legal aid. This is being done especially by relying on feedback from the beneficiaries of legal aid. Furthermore, some amount of external monitoring of the legal profession's legal aid activities takes place as the ULS prepares periodic reports to donors. As already mentioned, the ULC (through its legal aid committee) conducts regular control visits to all legal aid providers in Uganda, including lawyers, and the council's disciplinary committee oversees the work of the legal profession by examining complaints against individual lawyers, which may lead to disciplinary measures being utilised when complaints are merited.<sup>293</sup>

In Tanzania mainland, internal monitoring of lawyers' legal aid activities takes place as the TLS has created a "unique record-keeping and filing system", where lawyers who provide legal aid are required to submit to the TLS a folder entailing a client intake sheet, a legal aid certificate and comments on the case once the case is completed. Furthermore, the future establishment of a Legal Aid Network through the LSRP is likely to lead to increased monitoring of the legal profession's legal aid activities.<sup>294</sup>

As in Kenya, lawyers' provision of legal aid in Zanzibar is not monitored at all by the law society.<sup>295</sup>

### *NGOs and paralegals*

As such, the monitoring of the legal aid work conducted by civil society organisations that use paralegals in their work is limited. In reality, the monitoring that takes place is a consequence of policies adopted by individual organisations, not the result of general regulation or external involvement.

There is a limited amount of monitoring of the legal aid activities of paralegals in Kenya. The lack of systematic monitoring is said to flow from the fact that most paralegals work independently from the organisation that trained them. However, in cases where a paralegal is employed directly by a major civil society organisation, the paralegal is usually required to submit monthly reports to the programme officer of that organisation, including a summary of the cases handled and "community trends that

<sup>292</sup> Legal Profession Kenya.

<sup>293</sup> Legal Profession Uganda.

<sup>294</sup> Legal Profession Tanzania.

<sup>295</sup> Legal Profession Zanzibar.

they may think is important for the institution to know”. These reports usually provide a foundation for the organisation to develop more comprehensive reports. Furthermore, some specific monitoring takes place in connection with the work of prison paralegals: The prison paralegals are required to submit a detailed report to the affiliate organisation concerning the daily prison population, the nature of the cases dealt with, the duration of custody and the action taken by the paralegal. In addition to this internal monitoring, some of the community-based organisations (CBOs) that use paralegals and are affiliated with major civil society organisation, such as the ICJ, are required to attend meetings with the partnering organisation to elaborate on the progress made.<sup>296</sup>

As in Kenya, the civil society organisations in Uganda that use paralegals in their work have usually established monitoring mechanisms, where paralegals are required to submit periodic reports and performance assessment to programme officers. These reports, which are usually made on a quarterly basis, tend to include information on the number of persons assisted, the nature of the interventions made, challenges faced and proposed action for improving the work. In many cases, Ugandan NGOs that use paralegals have established benchmarks for success, making it possible to monitor each paralegal’s work. Besides the general monitoring work of legal aid providers undertaken by the ULC, there are no external mechanisms for monitoring the work of paralegals in Uganda.<sup>297</sup>

Generally speaking, the paralegals in Tanzania mainland are considered to be less organised compared to the paralegals in the other East African countries. As a result it has been stated that “the question of internal monitoring mechanism is still daunting”. While some civil society organisations using paralegals have developed monitoring mechanisms, there are reasons to believe that well organised systems for internal monitoring of paralegals’ legal aid activities are fewer compared to the other countries in the region. However, some amount of monitoring seems to take place for the paralegals working under NOLA, LHRC, WLAC and TAWLA auspices.<sup>298</sup>

Having analysed the various measures used to ensure quality legal aid, the report now turns to the question of how legal aid schemes impact on the lives of the beneficiaries.

## 5. Examples of impact

Examining the impact of legal aid schemes is a complicated task, and this report does not purport to provide for a comprehensive analysis of how the legal aid schemes in East Africa actually impact on the lives of citizens. The examples given in the following are merely intended to illustrate some of the concrete work undertaken by various legal aid providers in the region, and what impact these providers think their work has. The examples used should not be understood as if they are necessarily unique for the country in question, nor should the examples given be taken as an indication that the positive impact of legal aid is generally greater for particular legal aid providers or in particular countries.

<sup>296</sup> Paralegal Kenya.

<sup>297</sup> Paralegal Uganda.

<sup>298</sup> Paralegal Tanzania.

### **Example 1: State-run legal aid schemes (Kenya)**

The NALEAP programme is thought to have improved access to legal aid for the members of certain vulnerable groups:

*“Though it is too early to assess impact, lives have been changed through the legal interventions made by NALEAP as well as legal awareness provided. People who would otherwise have no access to legal representation or information have benefited from the same, for example widows have been assisted to acquire letters of administration relating to their deceased husbands’ property. It is worth noting that many widows in Kenya get disinherited by their in-laws upon losing their husbands. Obtaining grant of letters of administration provides them access to justice. Another group that has benefited are children especially in getting court orders for their maintenance [which] has improved their well being”.*<sup>299</sup>

### **Example 2: The legal profession (Uganda)**

A lawyer in Uganda outlines a series of impacts of the legal profession’s legal aid work, including examples of public interest litigation:

*“There has been public interest litigation such as Uganda Law Society vs. Attorney General, Constitutional Appeal No 1/2006 in which the trial of civilians in court martial was declared unconstitutional. This means that majority of Ugandan who would be subject to military law by virtue of being found in possession of guns or suspected to have guns will be saved of experiencing the rash of military courts.*

*The case Attorney General vs. Susan Kigula and 417 other suspects, Supreme Court, Constitutional Appeal No 3 of 2006 originally filed in the constitutional court by FHRI on behalf of the respondent in which the supreme court gave the court discretion to determine whether to sentence convicts to death or otherwise and set time limits for execution to take place, is yet another ruling that will have impact on so many of the convicts from the gallows and by discretion of court will suffer less penalty. The result is that it is no longer mandatory to sentence all those convicted of capital offence to death penalty, the courts now have discretionary powers to give death sentence or life imprisonment.*

*In FIDA vs. Attorney General, Constitutional Petition No 3 of 2006, FIDA (U) Association of Women Lawyers sought to challenge the specific requirement for women to prove adultery combined with another ground for purposes of divorce, whereas men only had to prove adultery, thus establishing different grounds of divorce for men and women which is discriminatory on the basis of gender. The petition was successful and the result is that women can now file for divorce basing on one matrimonial offence or wrong, including for the sole reason of adultery.*

*All these cases and others are handled by lawyers on behalf of the lead organisation which brings the cause of action against the government.*

<sup>299</sup> State Legal Aid Kenya.

*[...] Most of the public interest cases cited above were filed for purposes of seeking orders and declarations arising out of contravention of the constitutional provisions or they were seeking interpretation of specific constitutional or statutory provisions. For example, the case on the death penalty was in respect of the violation of a right to human dignity and right to life; the one on court martial was in respect of interpretation of the principle of double jeopardy and the specific provisions of the Uganda UPD Act that spells out what is meant by a service offence; the one filed on divorce sought to seek declaration on equality before the law and equality in marriage as enshrined in the constitutions. A further reading of the above cases would throw more light on the basis upon which these cases were decided by the courts, but in any case as the constitution provides, any custom that is inconsistent with the constitution or established law, the constitution or the law prevails.*

*The cases cited above originated from the constitutional court and went on appeal to the supreme court, which means that at the court of first instance the parties that lost were not satisfied, but upon the decision of the supreme court, which is the highest court of record in Uganda, they had to agree to accept the verdict as it is. The implementation process requires the Law Reform Commission to move for the amendment of the specific laws that are either declared unconstitutional. It also means that the lower courts have to abide by the decision of the supreme court, say in case of court martial; they cease to charge and try civilians in the court martial. The case of Kigula, has tremendously contributed to reduction of the psychological torture of victim on death row, or those that are charged with capital offences since it reduced the mandatory sentencing powers of court to those that are discretionary.*

*The contribution of the legal aid and or pro bono lawyers in such matters is measurable: they cause a strategic change in the law that affect a cross section of the people of Uganda. Indeed in the case of Uganda Law Society vs. Attorney General, Constitutional Appeal No. 1/2006, courts awarded costs both at the constitutional court and supreme court in recognition of the efforts done by such public interest lawyers and of course given the publicity of these cases, it goes without saying that the efforts of the lawyers are indeed recognised and appreciated in the public forum”.*

The lawyer also gives some examples of persons who have benefited from the free legal assistance and representation offered by the legal profession:

*“Annette is a woman who came desperately to LAP after her husband had secretly sold without her consent land and house of which she had contributed to its acquisition. She was eventually evicted from the house and had no place to stay with her children while her husband had gone into hiding. Through legal representation by LAP, she was restored back into her property.*

*Faith like many others had been assisted to obtain letters of administration to the estate of her late husband through representation by LAP;*

*Aids, the widow had also been robbed of her entitlement into her husband’s estate, and also had 10 cows that had not been excluded from her husband’s estate. Through intervention by LAP, her share of the Kibanja was passed to her and passed over her*

*cows which the executor of the will had included into the inventory of the properties of the deceased husband”*

The efforts of the legal profession have been recognised by the UHRC:

*“LAP received an award in 2008 for recognition of its contribution to the promotion and protection of human rights from the Uganda Human Rights Commission. The Commission is the organ responsible for monitoring and enforcement of human rights in Uganda. The recognition goes without saying that it is an appreciation of change as caused by the legal profession intervention in the area of access to justice and human rights”.*<sup>300</sup>

### **Example 3: Paralegals (Tanzania mainland)**

As the legal profession in Uganda, a paralegal organisation in Tanzania mainland is able to point to some concrete examples where citizens have benefited from the legal aid provided (in this case by WLAC):

*“Mama Hawa from Dodoma shared a successful story of probate.*

#### *Dodoma paralegal unit:*

*“As you know I am a widow, started Mama Hawa. After the death of my beloved husband all our marital properties were grabbed by my in-law. I reported my case to the Paralegal Unit and they assisted me and now I am granted a letter to administer my late husband’s estate. That was not the end of the story says Mama Hawa, my brother in law disputed the judgment by claiming that I was not a legal wife and the dispute was transferred to the district court where I was again denied the right to inherit. The unit assisted me in filing the appeal to the high court where I was granted half of my deceased husband’s property and the remaining part of the properties was divided among my children. I cannot find the right words to thank the Paralegal Unit and WLAC; I have gained back my humanity” – said Mama Hawa.*

*The Dodoma case was followed by the Morogoro story on inheritance which involved one Angela.*

#### *Morogoro paralegal unit:*

*Angela was left with one child after that death of her husband. Her father-in-law alleged that the deceased owed him 5 corrugated iron roofing sheets and the plot where the house was built. He then demolished the house and removed the iron sheets. This case was referred to a Primary court where the judgment was entered in favour of the father in-law. She went to the Morogoro Paralegal Unit seeking for assistance.*

*The Paralegal Unit responded with moral and financial assistance to file for a Memorandum of Appeal. The appellate court quashed the Primary Court’s decision and ordered the father-in-law to rebuild the house. Currently the Unit is assisting Angela to make follow-ups on a loan from Faraja Trust Fund so as to sustain her life and that of her child.*

<sup>300</sup> Legal Profession Uganda.

*In Shinyanga, a case on property rights was presented to the evaluation team.*

*Shinyanga paralegal Unit:*

*One Jane cohabited with a man for 6 years. The man evicted her from the matrimonial home empty-handed because she was barren. When efforts to reconcile the 2 parties by relatives and Conciliatory Board<sup>301</sup> were not bearing any fruits, Jane referred the matter to the Paralegal Unit. Here she was assisted with the filing of a petition for divorce in court. Finally, Jane got her rights - the court granted the divorce and ordered that all jointly acquired movable and not movable properties be distributed to both parties.*

*In Arusha a story on Grace's probate and administration case was presented to the evaluation team by the Paralegal Unit coordinator herself.*

*Arusha Paralegal Unit:*

*A husband to a woman called Grace died back in 1999 in Arusha town. Grace's brother-in-law and other members of the deceased, who lived in Iringa town, were failing the widow's efforts to apply for a letter of administration of the deceased's estate. Grace's story continues, "...I had to come to the Paralegal Unit for legal advice, and the Unit wrote a letter to my brother-in-law (copied to the village and ward officers in Iringa asking them to help with my application for the letter of administration in Arusha by providing all the necessary documentations i.e., clan minutes, death certificate, etc. The documents were released and since 2001 I was appointed as the administrator of the said estate." In Mwanza a civil case was reported as summarised below.*

*Mwanza paralegal unit:*

*The case is about Mr. Hamis who died in 1984, leaving behind 2 wives and young children, Said being one of them. Said was a son of the first wife. The decease left a house that was to be inherited by the children when they attain the age of majority. The second wife in association with her brother-in-law sold the said house. When Said attained the age of majority he came to learn that the house had been sold. He went to the Paralegal Unit in Mwanza for help.*

*The Unit supported Said in filing for a case at the high court in Mwanza reclaiming the house. Part of the Unit support was to obtain a letter of request from the District Commissioner to the high court exempting Said from paying court fees. Said won the case".*

These case studies are taken from the WLAC Evaluation Report. The report notes that:

*"The cases show that paralegal units have facilitated not only access to the legal facilities and justice, but also to property, means of production for economic growth,*

<sup>301</sup> A Marriage Conciliatory Board is established under section 102 of the Law of Marriage Act (1971), Cap. 29 R.E. 2002; and they include ward marriage conciliation boards, religious boards like the Muslim Council of Tanzania (popularly known as BAKWATA – *Baraza la Waislamu Tanzania*).



*livelihood and poverty reduction for women and children. Widows, orphans and divorcees seem to have been the most affected group.”<sup>302</sup>*

It is concluded that *“The provision of legal aid by paralegals in Tanzania Mainland has a two-thronged impact. First, they immensely contribute to the improvement of the legal sector within the context of the Legal Sector Reform Programme. Secondly, they contribute towards reduction of poverty amongst the downtrodden”*.

*NB: Names of individuals have been altered for confidentiality and privacy purposes.*

#### **Example 4: Paralegals (Uganda)**

A paralegal in Uganda points to a number of significant impacts of the work undertaken by NGOs and paralegals in the country. First the advocacy work of these organisations appears to have had concrete results:

*“Through the advocacy of paralegals, there are more State Attorneys who were recruited for fast case management”*.

Some specific comments are made in connection to the functioning of the criminal justice system:

*“The remand population in prisons has reduced from 63% of the prison population to 56% over the last 4 years.*

*There is improving coordination among the criminal justice institutions for faster case disposal where paralegals are the link”*.

The paralegal continues by pointing out that the outreach strategies adopted have had clear results, while also emphasising the impact of linking various legal aid providers:

*“Many community outreach strategies are adopting the use of paralegals as an emerging trend for providing effective and sustainable legal aid services among the grassroots.*

*The programme reports of the many affiliate organisations detail a number of scenarios that depict meaningful impact.*

*Most of the interventions by paralegals have not been done without involving available state mechanisms for justice delivery. The work of paralegals has therefore been to link the existing service provider institutions in the Justice, Law and Order Sector with the indigents that demand for these services in a way that enhances opportunities of better access. This, for example, has enabled more applications for bail, increased self-representation, and thereby reduced on prison congestion as well as improved on case disposal”*.

<sup>302</sup> Paralegal Tanzania.

### Example 5: Paralegals (Kenya)

As in Tanzania and Uganda, the work of NGOs and paralegals in Kenya appears to have had a direct impact in some crucial aspects. The informant points out how the work of paralegals has:

- *“Reduced pre trial detention periods in various prisons nationally”*
- *“Increased remand prisoner confidence during their self representation in court”*
- *“Reduced and or control high prison population congestions i.e. Nairobi Remand and Industrial Area Prison”*
- *“Increased peoples’ awareness on matters of rights i.e. Post election violence and response many people spoke of ‘Haki Yetu’ meaning our rights”*
- *“Increased cases of reporting of sexual violence cases”*
- *“Increased engagement with the branch Law Society of Kenya in providing para-legal services and legal aid”*

#### 6. Some final remarks concerning measures utilised to ensure quality legal aid and linkages between the various legal aid providers in this regard

By analysing a series of measures utilised by the various legal aid providers in East Africa, this section has pointed to some strengths and challenges for the quality of the various legal aid schemes in the region. 3 factors which are generally important for maintaining or enhancing quality concern the level of training offered legal aid providers, the extent to which other measures, such as code of conducts, are utilised by the legal aid providers to secure quality services and the extent to which legal aid schemes are monitored.

The legal aid providers in East Africa are offered various forms of training seminars, which in many cases include initial as well as continuous training. Generally speaking, there is a high level of cooperation between the various actors in legal aid provision in connection with these training activities. Such cooperation includes using external actors as instructors as well as it concerns a general openness in allowing the members of external institutions to participate in the training offered. However, there are some significant differences between the countries. In Tanzania mainland, for example, the legal profession seems to be less involved in such forms of cooperation that may lift the level and quality of training for other actors. The extent to which paralegals receive organised training varies highly, which may pose a threat to their ability to deliver quality legal aid services.

Generally speaking, the legal aid providers in East Africa only to a limited extent utilise other measures to ensure the quality of the services delivered. The lack of overall coordination bodies in some of the countries appears to present a challenge for the quality of legal aid across the region. One exception to this is in Uganda where the ULC has established general standards for legal aid providers as well as the council conducts field visits to control whether legal aid providers fulfil the standards established by the council, a measure that seems important for strengthening the quality of legal aid.

Furthermore, the general absence of effective monitoring mechanism seems to present a challenge for the quality of legal aid services in the region. Other than Uganda where the ULC monitors the work of legal aid providers, including the legal profession, there is generally a lack of formal links between the various legal aid providers so as to ensure that external bodies are involved in maintaining high standards. However, even in Uganda where some amount of external monitoring takes place, it is argued that “the general perception is that the majority of legal aid providers do not provide quality legal aid services and this is precipitated by lack of regular monitoring and supervision of their activities by the [Uganda] Law Council”.<sup>303</sup> The extent to which the lack of external monitoring mechanisms presents a problem for the quality of legal aid is not obvious. On the one hand, some amount of external control and supervision would seem to encourage legal aid providers to deliver quality legal aid, and may provide a bulwark against misuse of mandates. On the other hand, external involvement, in particular in the form of state supervision and control, may threaten the independence of certain legal aid providers, most notable the legal profession and civil society organisations. There seems therefore to be a delicate balance, where some amount of external monitoring will benefit the quality of legal aid, but such monitoring must be established in cooperation with the legal aid providers in question in order not to contravene with other important principles.

## **E. The legal aid providers’ perceptions of each other**

### **1. Introduction: Why analyse legal aid providers’ perceptions of each other**

Whereas the sections above have analysed formal and informal linkages between the various legal aid providers in East Africa, the question of how these actors generally perceive each other has only been touched upon peripherally. However, as a key purpose of this report is to understand to what extent and how the legal aid providers cooperate and coordinate their work, it is also necessary to analyse how they perceive each other. The lack of cooperation and coordination in some areas, which has been pointed to in the sections above, may in part be due to legal aid providers’ resistance towards each other. This may include perceptions that other legal aid providers are not sufficiently qualified, that they are generally unwilling to cooperate, that their existence poses a threat to other legal aid providers’ existence or ability to compete, etc. On the other hand, some of the examples of effective cooperation and coordination between the various legal aid providers discussed in the sections above may have been strengthened due to generally positive perceptions between these actors.

This section thus analyses what perceptions the different informants of this report have of other legal aid providers, in this way highlighting an aspect that is important for understanding why in some cases there is a high level of cooperation and coordination between the various legal aid providers, but in other cases not.

<sup>303</sup> State Legal Aid Uganda.

## 2. Perceptions of state actors' commitment to offer quality legal aid and willingness to cooperate with other legal aid providers

Though there are some significant differences between the countries, it is clear from the above sections that the governments in East Africa only to a limited extent are directly involved in providing legal aid. There can be a multitude of reasons for this limited involvement, but according to the informants of this report, one important problem is that the governments in East Africa are simply not sufficiently committed to offering legal aid to the poor and vulnerable. Perceptions of the degree of commitment on the sides of governments to cooperate with other legal aid providers vary significantly across the region, making it difficult to identify a general trend in this regard.

### *Kenya*

The informants of this report argue that the government in Kenya lacks sincere commitment to promote legal aid. One informant notes that there is “too little government commitment to legal aid provision”,<sup>304</sup> while another argues that “the general perception by the civil society and general public is that the state has not made the political choice to provide quality and reliable legal aid in Kenya”.<sup>305</sup> According to this informant, the lack of commitment on the side of the Kenyan government is evident not only from “the fact that financial and human resources are limited”, but also from the failure to adapt an appropriate legal framework for facilitating legal aid, especially in the sphere of civil law.<sup>306</sup> These views partly seem to explain why the state brief systems used in Kenya are generally considered inefficient, and may also be relevant for understanding why a general legal aid policy has not yet been adopted. Whether the launching of NALEAP (which as noted in other sections draws on the expertise of other legal aid providers) will remedy some of these problems remains to be seen.

Adding to these problems, the other legal aid providers in Kenya also point out that the government has not proved sufficiently willing to acknowledge the efforts made by these actors to provide legal aid. One informant notes that “there is non-recognition of efforts of legal professionals” on the side of the Kenyan government.<sup>307</sup> Another informant points out that state agencies' willingness to cooperate with civil society organisations and paralegals frequently fall short when these actors are not portraying state agencies as they expected or hoped for: “As long as there is a mutual and respectable working relationship between the paralegals and the respective institutions all goes well. However, where paralegals put pressure or follow-up a sensitive issue or criticise the institution, then a lot of the communication channels and access points are shut some permanently while others temporarily. This means that the paralegals are forced to renegotiate the working relation all over again with some conditionality being registered”.<sup>308</sup>

<sup>304</sup> Legal Profession Kenya.

<sup>305</sup> Paralegal Kenya.

<sup>306</sup> Paralegal Kenya.

<sup>307</sup> Legal Profession Kenya.

<sup>308</sup> Paralegal Kenya.

## *Uganda*

While a somewhat more positive picture emerges in Uganda, criticism is also being raised that there is a lack of will on the side of the government to allocate sufficient resources to legal aid. One informant of this report notes in connection with the state brief system that “the challenge is that the state scheme is poorly remunerated and a poorly appeal to young lawyers, limited commitment to provide quality services in some instance, yet the need is so overwhelming”.<sup>309</sup> Further with regard to this system, another informant notes that “many paralegals have made the observation that especially the state briefs have lacked follow up between lawyers and suspects which makes the system inadequate as well as some cited cases where some suspects may not be brought to court on hearing dates due to either political reasons or some form of fraudulent motives”.<sup>310</sup> As in Kenya, the limited commitment of the government to promote legal aid to the poor and vulnerable may explain why state-run legal aid schemes only reach a small proportion of those in need, and why lawyers in some cases appear reluctant to participate in the state brief system.

In terms of state institutions’ willingness to cooperate with other legal aid providers, there might be a greater willingness to promote such cooperation in Uganda compared to Kenya. One informant notes how “there are numerous linkages emerging between paralegal schemes/their affiliate organisations and the state’s/state legal aid initiatives for provision of legal aid in ways that have generally improved on perception of each other”. Partly agreeing with this observation, a member of the legal profession states: “The lawyers have good working relationship with other institution like police and prisons. They don’t need permission to enter the said places to offer services, but challenges remain with state run security detention centres such as the Chief Military intelligence centres”.<sup>311</sup>

## *Tanzania*

As follows from the above sections, the government in Tanzania is only to a very limited extent directly involved in the provision of legal aid. As noted by one informant, “in many western jurisdictions, for example, the onus to provide legal aid lies with the state, whereas in Tanzania, it is the civil society, which has taken the lead”.<sup>312</sup> To enhance the government’s involvement in legal aid as well as to promote increased cooperation between the various legal aid providers, the establishment of a Legal Aid Network is considered vital by other legal aid providers. One informant notes: “A potential future linkage between the legal profession and other legal aid service providers might exist if the [...] Legal Aid Network is established, in which case legal aid services will be better coordinated and guided by a code of conduct”.<sup>313</sup>

From the information provided by the informants of this report, it is difficult to say much about the current willingness of state agencies to cooperate with other legal aid providers. However, one informant notes that “most paralegals consulted have indi-

<sup>309</sup> Legal Profession Uganda.

<sup>310</sup> Paralegal Uganda.

<sup>311</sup> Legal Profession Uganda.

<sup>312</sup> Legal Profession Tanzania.

<sup>313</sup> Legal Profession Tanzania.

cated that the police and social welfare officials usually do consult paralegals whenever they have in their custody persons who need legal aid services. Paralegals also involved these civil servants in some of their public awareness raising events, such as workshops and seminars – either as participants or as resource persons on topics of their specialty.”<sup>314</sup> There seems therefore not to be a general problem as in Kenya, where state agencies are often reluctant to cooperate with civil society legal aid providers. However, it must be kept in mind that unlike paralegals in Kenya and Uganda, the paralegals in Tanzania have difficulties intervening in detention centres.

As for Zanzibar, the general lack of involvement of the government in the provision of legal aid is pointed to as a problem by the informants of this report. In addition, there seems to be significant problems concerning state agencies’ willingness to cooperate with other legal aid providers. One informant argues: “There are so many challenges in regards to the current cooperation including the following: There is no state legal aid law, rule or procedures. Therefore the current cooperation is unofficial so there is a risk that it gets ruined at any time; the state does not contribute at all to the legal profession’s budgets; and the worse threat is that since the state is the one who awards registration of the legal profession, this is the one who can take it back at any time, and the legal profession remains with no security”.<sup>315</sup> The same informant, however, implies that certain government institutions are cooperating well with other legal aid providers, stating that “the police and lawyers are the friends of the court, i.e. the relationship between the police, lawyers and prison as an institution is good and the legal profession has a very good understanding of the Judiciary functioning and system”.

### 3. Perceptions of the legal professions’ commitment to offer quality legal aid and willingness to cooperate with other legal aid providers

While the extent to which lawyers are willing to cooperate with other legal aid providers appears to vary considerably across the region, a general criticism raised by the other legal aid providers is that lawyers are generally not sufficiently committed to offering pro bono services.

#### *Kenya*

In terms of cooperating with the government, the perception is that the LSK as an institution has shown commitment to promote the NALEAP projects, but many lawyers are perceived as still not being willing to offer legal aid services without being compensated. One informant argues: “The LSK leadership and membership currently has shown commitment in supporting NALEAP. However, there is need for more lawyers to understand the concept of volunteerism and corporate social responsibility so that more eligible cases can benefit from their service”.<sup>316</sup> That being said, improvements in lawyers’ commitment to participate in these projects are said to have taken place due to workshops carried out by NALEAP, aimed at sensitising lawyers on volunteerism.<sup>317</sup>

<sup>314</sup> Paralegal Tanzania.

<sup>315</sup> Legal Profession Zanzibar.

<sup>316</sup> State Legal Aid Kenya.

<sup>317</sup> State Legal Aid Kenya.

The legal profession's willingness to cooperate with paralegals is criticised by an informant of this report, who notes that "jurists generally and practising lawyers in particular feel particularly threatened by the role of paralegals. The feeling is that they fear that they may be competing for the same livelihood matters through the clientele".<sup>318</sup> While some amount of cooperation between the legal profession and paralegals actually takes place in Kenya, these perceptions may partly explain why the level of formalised coordination and cooperation between these actors remains quite low.

The perception among other legal aid providers is that lawyers generally lack the will to offer quality legal aid free of charge. One informant argues that there is "a tendency of the lawyer giving priority to clients who pay".<sup>319</sup> Another informant raises a more profound criticism: "The general public regards lawyers as greedy, unreasonable and complicate matters in court. They would prefer to have lawyers locked away from their matters if they could be able to self represent themselves. The public finds lawyers complicated and only run to lawyers as a last result".<sup>320</sup> The picture painted here seems to fall in line with the fact that a quite limited number of cases are handled on a pro bono basis by the legal profession in Kenya.

### *Uganda*

Only limited information is available concerning the level of commitment of lawyers to cooperate with other legal aid providers. However, one informant notes in general terms: "Most paralegals/their affiliate organisations tend to perceive other legal aid service providers as doing a great job in regard to provision of legal aid but wish to see more deliberate opportunities of working together".<sup>321</sup> On the other hand, as earlier stated some problems are pointed to in connection with the cooperation between state agencies and lawyers.<sup>322</sup> As in Kenya, these perceptions may partly explain the inefficiency of the state brief system.

In terms of the legal profession's commitment to offer pro bono services, a critical, although compared to Kenya arguably slightly more positive, picture emerges. One informant notes that "the Uganda Law Society [...] are able to provide legal aid to the people and fill in the gaps created by an adequate fulfilment of the State's obligation to provide legal aid".<sup>323</sup> The same informant argues, however, that "it is certain that there are members of the legal profession (especially the young jurists/lawyers who feel they need to make more money) who consider legal aid as forced labour while others have welcomed the initiative and have pledged their support".<sup>324</sup> The informant continues: "most jurists/lawyers do not give quality legal services to indigent clients. The legal profession is looked at by most people as a business and not a means to enable others attain justice, as a result, paid up clients get better legal services than the poor or indigent clients".<sup>325</sup> Another informant argues that "there is a general percep-

<sup>318</sup> Paralegal Kenya.

<sup>319</sup> State Legal Aid Kenya.

<sup>320</sup> Paralegal Kenya.

<sup>321</sup> Paralegal Uganda.

<sup>322</sup> Paralegal Uganda.

<sup>323</sup> State Legal Aid Uganda.

<sup>324</sup> State Legal Aid Uganda.

<sup>325</sup> State Legal Aid Uganda.

tion that the members of the legal profession are not committed to the provision of legal aid in Uganda since there is little benefit accrued in comparison with prospects of private practice”.<sup>326</sup>

### *Tanzania*

Quite limited information is available concerning other legal providers’ perception of lawyers’ willingness to cooperate and their commitment to offering legal aid services. While an informant from the legal profession suggests that “the legal profession is ready, willing and able to cooperate with other legal aid service providers in developing a legal aid regime, which is most conducive to the needs of the poor and disadvantaged persons in Tanzania”,<sup>327</sup> another informant is more critical: “From the discussion conducted with most paralegals/their affiliate organisations, there is [a] general perception amongst them that the provision of legal aid by members of the legal profession on *pro bono* basis under the TLS Legal Aid Scheme is not satisfactorily carried out”.<sup>328</sup> The informant continues: “They state that most members of the legal profession are overwhelmed by the paying clients and tend to neglect *pro bono* (or legal aid) clients. Besides, experience gathered from my own experience as member of the legal profession is that most members of the legal profession are opposed to the *pro bono* arrangement under the TLS because the clients do not pay for the services rendered although most cases in which they are involved require certain amount of money to be incurred. This is so further because, private lawyers do survive on a fee. This means that for them to succeed, they have to try as much as possible to avoid *pro bono* cases, which require them to use their own money even in such trivial incidental costs as filing fees and transport to and from courts”.<sup>329</sup>

No information is available concerning how other legal aid providers perceive the legal profession in Zanzibar.

#### 4. Perceptions of paralegals’ commitment to offer quality legal aid and willingness to cooperate with other legal aid providers

Perceptions of paralegals’ ability to provide quality legal aid services vary across the region, but other legal aid providers frequently argue that the limited legal training offered to paralegals together with the lack of a proper paralegal framework (including coordination and some level of regulation) constitute problems for the quality of their legal aid services.

### *Kenya*

From the information provided by other legal aid providers in Kenya it follows that these actors recognise that paralegals can play certain roles in the provision of legal aid. However, the lack of coordination and the level of training offered paralegals are perceived an obstacle to effectively offering legal aid services. One informant argues: “The State recognises the fact that with proper training and facilitation, paralegals can

<sup>326</sup> Paralegal Uganda.

<sup>327</sup> Legal Profession Tanzania.

<sup>328</sup> Paralegal Tanzania.

<sup>329</sup> Paralegal Tanzania.



enhance access to justice through creation of legal awareness, provision of legal advice and ADR services. With the limited number of lawyers, particularly in rural areas, training paralegals will enhance our objectives”.<sup>330</sup> However, the same informant argues that it is a problem that “paralegals do not have a standard framework that governs their operations [and] that they only have basic legal knowledge”.<sup>331</sup> A member of the legal profession ascertains: “They are effective but require continuous training”.<sup>332</sup>

### *Uganda*

The perception among paralegals themselves in Uganda might be that they are not well regarded by other legal aid providers. A paralegal in Uganda argues: “Many lawyers tend to consider paralegals as largely incompetent and probably with intentions of substituting the legal professionals with cheap paralegal services. There is need to educate some jurists (including lawyers) on the benefits of such linkages although proper guidelines are also needed for the paralegals in the provision of their services to ensure proper guidance and regulation”.<sup>333</sup> Speaking about paralegals as well as other legal aid providers, an informant connected to the state confirms this picture: “The general perception is that the majority of legal aid service providers do not provide quality legal aid services and this is precipitated by lack of regular monitoring and supervision of their activities by the Law Council”.<sup>334</sup> However, a member of the legal profession seems generally positive towards the role of paralegals in offering legal aid services. Though it is implied that increased coherence of their training and government involvement in the regulation of their activities are needed, it is also noted that “the legal profession has found paralegals relevant in so far as provision of secondary services (which include advisory support, legal and human rights awareness programmes as well as information distribution through IEC materials) is concerned especially in places where there are no lawyers”.<sup>335</sup> The use of paralegals, it is noted, should focus on informing the public of legal issues “and build their capacity to demand the service in absence of lawyers”.<sup>336</sup> The informant continues: “As long as they are well regulated, lawyers/ULS find no problem with paralegals being part and parcel of the access to justice programme. The PAS initiative housed by FHRI has been tested and recognised to have had a positive contribution in criminal justice programmes as they interface with the DCCs”.<sup>337</sup> Nonetheless, the same informant warns that paralegals can be “capable of misleading the society if not well monitored or regulated, by say impersonating as lawyers and going beyond their mandates within unsuspecting communities”.<sup>338</sup>

<sup>330</sup> State Legal Aid Kenya.

<sup>331</sup> State Legal Aid Kenya.

<sup>332</sup> Legal Profession Kenya.

<sup>333</sup> Paralegal Uganda.

<sup>334</sup> State Legal Aid Uganda.

<sup>335</sup> Legal Profession Uganda.

<sup>336</sup> Legal Profession Uganda.

<sup>337</sup> Legal Profession Uganda.

<sup>338</sup> Legal Profession Uganda.

## *Tanzania*

In stark contrast to the paralegals in Uganda, the paralegal informant in Tanzania mainland suggests that there is a “very good general perception of paralegals/their affiliate organisations in regard to other legal aid service providers’ provision of legal aid, because they see the latter as their close ally for referral of the complex cases, capacity building and advocacy”.<sup>339</sup> This picture is partly confirmed by a member of the legal profession, though a number of conditions are made for recognising paralegals as legal aid providers: “The legal profession’s perception on the paralegals’ provision of legal aid is that paralegals should be included as a cadre of legal aid providers, as a matter of course, to ensure timely and accessible justice for all. However, the legal profession is of the opinion that for paralegals to be recognised as a cadre of legal aid providers there must be:

1. A baseline survey of paralegals to understand their current make up, distribution and type of work conducted – this survey is currently ongoing under the LSRP;
2. Clear parameters established about the work of paralegals – where possible, their mandate may extend to the primary courts. This might be articulated through legislation;
3. Compilation of a standardised training curriculum for paralegals followed by a thorough training;
4. Mechanisms to monitor and hold paralegals accountable for actions contrary to the parameters described above. This might also be articulated through legislation”.<sup>340</sup>

Some general challenges for the paralegals in Tanzania mainland are further mentioned by the same informant. The informant explains: “the government recently requested that the Law Society and other legal aid providers submit a concept note in Kiswahili to speak long on the current scope of work and geographic distribution of paralegals and the reasons for seeking their legal recognition. Since the submission of the concept note, no information has been forthcoming from the government; and paralegals are currently providing services in different parts of the country but they remain unregulated and there is no standard training curriculum, which ensures some minimum quality of the services they should provide to the public”.<sup>341</sup>

It should be noted finally that according to the paralegal informant from Tanzania mainland, there is a good relationship between paralegals and NGOs in the country: “Regarding the relationship between paralegals and non-state actors, there is a very good working relationship whereby paralegals have been thriving using this relationship”.<sup>342</sup>

Limited information is available concerning perceptions of the legal aid work of paralegals in Zanzibar. However, one informant argues that there are some significant challenges for strengthening the cooperation between the legal profession and parale-

<sup>339</sup> Paralegal Tanzania.

<sup>340</sup> Legal Profession Tanzania.

<sup>341</sup> Legal Profession Tanzania.

<sup>342</sup> Paralegal Tanzania.

gals. It is argued that “there are so many challenges for future cooperation with paralegal such as:

- Lack of a national policy on paralegal and legal aid in general
- Inadequate sources of funding
- Maintenance team work
- Recognition of paralegals
- Sustainability<sup>343</sup>

As such, this informant has a positive perception of the role of paralegals in providing legal aid: “Paralegals are the agents of change, they are social engineers and they play an important role in the society. They are very useful because they work with the community they live with and make them to be near to the society. They help legal profession in their duties and responsible. So paralegals are accepted and appreciated by lawyers who consider them very helpful including to the legal profession since lawyers are in small number in Zanzibar and society needs access to justice”.<sup>344</sup>

#### 5. Some final remarks concerning legal aid providers’ perceptions of each other and the implications for cooperation and coordination of their work

As such, many of the legal aid providers in East Africa seem to have a certain amount of prejudices against each other. In particular, the legal profession and paralegals often seem to be opposed to each other, which may explain why these actors in some cases fail to (or only to a limited extent) cooperate and coordinate their work. While the informants of the legal profession generally agree that paralegals should play a role in providing legal aid, some of these informants also appear critical to key features of paralegalism in East Africa, such as limited training and the lack of coordination mechanisms. Turned around, the paralegal informants of this report tend to paint a highly critical picture of the legal professions’ legal aid work and their willingness to cooperate. The paralegals sometimes observe that lawyers are opposed to their work, because they feel threatened by the competition, a problem that would obviously seem to frustrate the level of cooperation between these actors, but might be remedied by increased knowledge of the different roles these actors can play in the provision of legal aid.

The fact that the legal professions’ pro bono work is heavily criticised by the paralegals should perhaps be viewed in light of the general opposition between these 2 groups, but it is also noteworthy that there is a high level of consistency in the critique raised across the region. Few lawyers are seen as committed to the task of legal aid, as they are seen to prefer working for fee paying clients. Arguably, the perceptions that there is a lack of commitment among members of the legal professions in the East African countries to offer the poor and vulnerable legal services free of charge is reflected by the relative low number of cases handled on a pro bono basis by lawyers in many of the countries covered in this report.

<sup>343</sup> Legal Profession Zanzibar.

<sup>344</sup> Legal Profession Zanzibar.

Furthermore, the governments in East Africa are generally criticised for lacking commitment to legal aid as such. This is reflected not only by the fact that the other legal aid providers perceive the state brief systems poorly funded, but also by the fact that national legal aid policies and bills are yet to be adopted. While it is difficult to force about political will to legal aid, pressure from the civil society in the countries as well as donor attention and support for strengthening the governments' involvement in legal aid schemes and their involvement in coordination of legal aid schemes seem crucial measures for improving this.

**Table 4: Main features of legal aid in East Africa and linkages between the various legal aid providers**

Legal aid provider	Issue	Common trends	Distinctive features
Generally	Constitutional provisions concerning access to justice and legal aid	No common trend	<p>Kenya: The new constitution promotes access to justice in legal aid in various ways: Art. 48 states that “the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice”. Art. 50 (2) (h) requires the state to pay for legal assistance and representation in criminal cases “if substantial injustice would otherwise result”. Furthermore, art. 49 (1) (c) and 50 (7) would seem to allow paralegals to intervene in court proceedings on behalf of the accused or victims. According to art. 2 (5) and (6) international treaties as well as customary international law are directly applicable in the country upon ratification.</p> <p>Uganda: Art. 28 (2) (e) of the constitution stipulates that “in the case of any offence which carries a sentence of death or imprisonment for life, [the defendant is] entitled to legal representation at the expense of the State”. Uganda follows the dualist system, according to which international instruments only become part of the domestic legal order after parliament implements them (art. 123).</p> <p>Tanzania: The constitution does not deal directly with legal aid, but art. 13 (6) (a) stipulates: “To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely: when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned”. Tanzania follows the dualist system, according to which international instruments only become part of the domestic legal order after parliament implements them (art. 63 (3)).</p>

Generally	National legal aid policy / bill	Not yet adopted and implemented	Kenya: A national legal aid policy and bill is presently being developed by NALEAP in an inclusive process that involves various actors in the legal system.
			Uganda: A national legal aid policy is presently being developed by JLOS in an inclusive process that involves various actors in the legal system.
			Tanzania: No national legal aid policy or bill is under development.
Generally	Body for supervision / coordination of legal aid and key promoters of cooperation	Limited supervision and coordination, but some amount of co-operation	Kenya: No supervisory / coordinating body has been established. NALEAP draws on the expertise of other legal aid providers in its pilot projects. The legal profession organises a National Legal Awareness Week, where other legal aid providers are invited to participate. There is a high level of interaction between the various legal aid providers in organising and facilitating training.
			Uganda: ULC registers and to some extent supervises / monitors legal aid providers. Various state-run legal aid initiatives draw on the expertise of other legal aid providers. The legal profession initiated a National Legal Aid Week (now undertaken by LASPNET), where other legal aid providers are invited to participate. There is a high level of interaction between the various legal aid providers in organising and facilitating
			Tanzania: No supervisory / coordinating body has been established. The level of cooperation remains relatively limited due to the fact that the state is less active in the area of legal aid compared to the other countries. The legal profession organises a Legal Aid Day, where other legal aid providers are invited to participate. There is some amount of interaction between the various legal aid providers in organising and facilitating train-
State	State brief system in criminal cases	Limited scope and poor funding	Kenya: A state brief system covers capital offence cases at the High Court, but the system is poorly funded and lawyers are criticised for failing to offer quality legal aid.
			Uganda: A state brief system covers capital offence cases and cases where the defendant can be sentenced to life, but the system is poorly funded and lawyers are criticised for failing to offer quality legal aid.
			Tanzania (mainland): A state brief system covers capital offence cases, but the system is poorly funded and lawyers are criticised for failing to offer quality legal aid.

State	Legal aid in civil cases	Limited scope, and where present usually on pilot basis or only covering certain categories of cases	Kenya: NALEAP runs a number of pilot projects of limited geographical coverage, which draw on the expertise of other legal aid providers. In addition, there is a pauper brief system, which exempts certain persons from paying court fees in civil cases.
			Uganda: Various state bodies, including the ULC, the judiciary (the Justice Centres Pilot Project), the Department of Administrator General of the Ministry of Justice and the Law Development Centre, are involved in legal aid initiatives (usually of limited scope), which draw on the expertise of other legal aid providers.
			Tanzania: No programmes / initiatives have been established. Court fees exemption is possible under certain criteria.
Legal profession	Pro bono services	Pro bono services exist in all of the countries, but is generally limited to urban areas and the quality is often criticised	Kenya: Lawyers are obliged to undertake pro bono work according to internal rules of LSK (but requirements are not specified and pro bono work is not yet systematic). The scheme covers criminal and civil cases. No specific monitoring takes place.
			Uganda: Lawyers are obliged to undertake pro bono work according to the law (the specific requirements are not fully implemented and pro bono work is not yet systematic, but ULS has a coordinating desk responsible for organising the pro bono work to be undertaken by lawyers in relation to cases identified at the level of the 7 law society clinics). The scheme covers criminal and civil cases. Some amount of internal and external monitoring takes place.
			Tanzania: Lawyers are obliged to undertake pro bono work according to internal rules of TLS (but requirements are not specified and pro bono work is not yet systematic). The scheme covers only civil cases. Some amount of internal monitoring takes place.

Paralegals	Regulation / recognition of paralegals	No or limited regulation takes place by the state, but some amount of internal regulation	Kenya: No regulation by the state (but regulation will be developed in national legal aid policy and bill). Some amount of coordination (including uniform training manual) takes place through paralegal networks (primarily PASUNE at the national level). There is no external monitoring of paralegals' legal aid work, but some amount of internal monitoring takes place. To a limited extent, paralegals are allowed to represent clients in court.
			Uganda: No regulation by the state (but a specific paralegal regulation is being developed by ULC, in addition to the upcoming national legal aid policy). Some amount of coordination takes place through legal aid networks (primarily LASPNET at the national level). Some amount of external and internal monitoring takes place. Paralegals are not allowed to represent clients in court.
			Tanzania: No regulation by the state. Some amount of regulation takes place through legal aid networks (primarily TANLAP and the National Legal Aid Network being established under LSRP, and specifically on paralegals the newly developing TAPANET). There is no external monitoring of paralegals' legal aid work, but some amount of internal monitoring takes place. Paralegals are not allowed to represent clients



## **5. Conclusions and recommendations**

As noted in the introduction, the purpose of the present report is to:

- 1) Identify trends in access to justice and legal aid provision in East Africa, including a description of the main legal aid practices used in the region;
- 2) Identify and describe linkages between the different legal aid providers in the 3 countries covered in the report; and
- 3) Provide recommendations for the stakeholders in legal aid in the region, especially concerning coordination and cooperation between these actors.

Keeping these objectives in mind, some conclusions and recommendations are made in the following.

While a detailed assessment of the extent to which the countries covered in this report fulfil their international obligations related to the provision of legal aid is beyond the scope of this report, some clarifications on this issue are useful at this point because they provide a sound starting point for offering recommendations to the various stakeholders involved in the provision of legal aid.

The primary responsibility for ensuring legal aid in criminal cases rests with the state. This does not necessarily mean that the state must appoint and pay for legal counsel, but rather implies that the state is responsible for ensuring, for example through support to other legal aid providers, that legal aid is actually provided in certain serious criminal cases. As follows from the discussions below, generally speaking, the governments in East Africa would seem not fully to fulfil this obligation.

As noted in section 2, there is an obligation according to the ICCPR and the Banjul Charter for the state to ensure that indigents are provided with effective legal counsel free of charge in serious criminal cases. Though treaty obligations do not make it clear exactly which cases would trigger this obligation besides capital offence cases, various soft law instruments and international declarations would seem to set standards that require legal counsel be provided and paid by the state when the accused cannot afford it in serious criminal cases (beyond capital punishment cases). As the state brief systems in East Africa are in practice usually only used in capital punishment cases, it is questionable whether this limited scope is sufficient to satisfy the state's obligations. The effective limitation to capital punishment cases would also seem to imply that no individual assessment of the case takes place when deciding what persons qualify for the state brief. This poses a problem for compliance with the ICCPR as well as it contravenes with standards laid down in soft law instruments and international declarations.

Furthermore, as described in section 2, international standards require that the legal counsel provided by the state in criminal cases is effective and able to deliver quality legal aid. In part due to the fact that the state brief systems in East Africa are poorly funded, it has been noted in this report that the lawyers appointed are often inexperienced and may lack the necessary motivation for providing quality legal aid, problems that would seem only to be remedied if additional funding is provided. Argua-

bly, addressing these problems is also preconditioned on the governments establishing standards for service delivery in these cases.

As noted earlier in this study, the principle of the independence of the legal profession (a guarantee of the right to a fair trial) as well as the requirement to ensure non-discrimination and objectivity in allocating legal aid resources leads governments to an “arms length” principle in the management of state legal aid. The establishment of independent bodies to run state legal aid services can thus be considered to be a good practice in this regard.

As it has been noted in this report, some of the governments in East Africa seem to pay particular attention to legal aid for children (in the case of Kenya, for example through the establishment of a NALEAP “Nairobi Children’s Court Legal Education and Aid Pilot Project”). Nonetheless, the failure of the East African governments to ensure that children are consistently provided with legal aid in criminal cases would seem to constitute a breach of international standards (the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child).

Generally speaking there appears to be a lack of attention on the sides of governments in the region to ensure that women have effective access to judicial and legal services, including legal aid, a problem that calls to question whether the states fully live up to the requirements laid down in the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Maputo Protocol).

It is also clear that international standards (including the Dakar Declaration, the Lilongwe Declaration and the Kyiv Declaration) urge governments to cooperate with other legal aid providers as well as they urge some form of coordination from the side of the government. Though the governments in East Africa have to (very) different extents put in place legal aid initiatives that are based on cooperation with other legal aid providers (such as the NALEAP in Kenya and some of the state-run projects in Uganda), and though some of the governments (especially the Ugandan through the ULC) facilitate some amount of coordination and supervision of legal aid schemes, it is fair to say that the countries covered in this report would not seem to fully live up to these standards. In particular the complete lack of a state coordination body in Tanzania (mainland as well as Zanzibar) presents a serious problem in this regard. While an obvious reason for these challenges concern the fact that the countries covered in this report are all relatively poor and lack resources, there seems also to be a lack of political will in some of the countries to legal aid in general, and more specifically to facilitating cooperation with other legal aid providers and to take up the task of coordinating legal aid.

Though international standards are not clear concerning the extent to which governments are required to offer legal aid in civil cases, it is nevertheless clear that the state’s direct involvement in providing such forms of legal aid or support to other actors who can facilitate the provision of legal aid in civil cases is crucial for access to justice. However, the governments of East Africa are either not significantly involved in providing legal aid in civil cases (Tanzania), or only cover a small proportion of the instances where the poor and vulnerable need various forms of legal aid in connection with civil law claims (Kenya and Uganda).

Even if international standards place the primary responsibility for providing legal aid with the government, they also stipulate that the legal profession has a responsibility for promoting legal aid services. As it has been explained in this report, the legal professions in East Africa are all involved in legal aid, including pro bono work. However, the actual scope of lawyers' involvement in legal aid remains quite limited in some of the countries covered in this report, and sometimes individual lawyers are seemingly not sufficiently committed to ensuring that pro bono clients receive quality legal aid. In part, these problems appear to be caused by the lack of an effective framework for regulating and expanding pro bono services, either in form of legislation or internal rules of the law societies. Furthermore, a problem might be that in most of the countries (except in Uganda where the ULS employs lawyers specifically for the task of providing legal aid), the law societies do not offer compensation for the legal aid work undertaken by individual lawyers. Likewise, the governments in East Africa only to a very limited extent employ or compensate lawyers for their legal aid work. These 3 factors in combination seem to significantly reduce the scope (and sometimes the quality) of the legal professions' legal aid work. It should be kept in mind that international standards (the Kyiv Declaration) stipulate that the government also has a responsibility for promoting the legal profession's legal aid work, for example by ensuring competitive rates of remuneration.

International standards support the provision of legal aid by other actors, including civil society organisations and paralegals. The ability of these actors to provide quality legal aid significantly depends on the extent to which the state recognises and supports their work. The absence of a national legal aid policy in all of the countries covered in this report represents a problem for recognising and coordinating legal aid work by these providers. Furthermore, in some of the countries covered in this report, there might be a problem on the side of the government to cooperate with these actors. That being said, it should be recognised that in some of the countries (Kenya and Uganda), the government has established legal aid projects that draw on the expertise of the legal profession as well as civil society organisations and paralegals.

Based on this assessment of the level of compliance with international standards as well as other findings of this study, which have been highlighted throughout the report (including the summaries of each sub-section in the main analytical part (section 4)), a number of recommendations are put forward in the following, which are addressed generally to the stakeholders in legal aid in the region.

## Recommendations

### The state level

#### To the governments of East Africa in general

- Recognising that all of the East African states have constitutional provisions relating to access to justice and legal aid, the governments are encouraged to clearly recognise the primary responsibility of the state for providing legal aid.
- Recognising that some of the governments of East Africa have started drafting a national legal aid policy and/or legislation, the governments are encouraged to urgently formulate, adopt and implement a comprehensive national legal policy and related legislation, which:
  - Is based on consultations with the various legal aid providers, including the legal profession, NGOs and paralegals, based on a participatory and transparent process;
  - Recognises the primary responsibility of the state to ensure that the poor and vulnerable are provided with legal aid appropriate to their needs and situation;
  - Establishes an independent national legal aid body, which is composed of all relevant stakeholders in legal aid and is charged with the responsibility to regulate and coordinate the provision of legal aid, taking into account the roles that can be played by state-run legal aid schemes, the legal profession, NGOs and paralegals and other actors and aims at facilitating cooperation between these actors in providing legal aid services, while at the same time recognises the necessity of maintaining the independence of the legal profession and civil society;
  - Grants to the body charged with managing state legal aid programmes a sufficient degree of autonomy in decision making that is necessary to ensure the objectivity of decisions concerning allocation of legal aid in particular cases, as well as transparency in this regard;
  - Endorses a broad understanding of legal aid, so it includes *inter alia* legal representation, various forms of legal assistance, legal advice, legal education and awareness raising, legal training, support for the use of ADR mechanisms, negotiations and mediation in connection with concrete disputes, advocacy work and public interest litigation;
  - Requires that certain standards are met for being registered as a legal aid provider (possibly drawing on the standards developed by the Uganda Law Council);
  - Recognises the right to legal aid and aims at offering the poor and vulnerable quality and accessible legal aid services in both civil and criminal matters, taking into account the needs of various marginalised or disadvantaged groups, including women, children, persons with disabilities, etc;
  - Promotes awareness among the general public, especially the poor and vulnerable, concerning the law and legal procedures, for example by encouraging, supporting and coordinating the work undertaken by the

- legal profession, NGOs and paralegals in this area as well as adopting strategies for making the general public aware of the existence of state-run legal aid schemes and how to use them; and
- Facilitates that mechanisms are put in place to ensure that children (whether as the accused or as the victim) are consistently provided with quality legal aid in all criminal cases, either through state appointed counsel or financial support to other legal aid providers for undertaking this task.
- Recognising the importance of the governments of East Africa having established state brief systems in the sphere of criminal justice, the governments are encouraged to:
    - Increase funding for these legal aid schemes, especially with regard to ensuring that the legal counsel appointed is paid sufficiently to motivate that he/she provides quality legal aid;
    - Put in place mechanisms that ensure that an individual assessment takes place concerning when ‘the interests of justice’ requires that legal aid free of charge is provided in criminal cases (rather than reserving the systems for capital offence cases or other specific categories of cases);
    - Establish standards for the legal aid providers used by the state brief systems, including an obligation for the legal aid provider to use sufficient time on each case handled and report to a supervisory body concerning the actions taken in each case.
  - Recognising the fact that in some cases eligibility criteria are used by state-run legal aid schemes, the governments of East Africa are encouraged to consider if further development of formal eligibility criteria for all of these legal aid schemes should take place, which should avoid creating new barriers for effective access to justice for all, but ensure that those in the greatest need of legal aid, especially the poor and members of vulnerable groups, are the ones benefiting from state-run legal aid schemes.
  - Recognising that some amount of monitoring takes place in connection with certain state-run legal aid schemes, the governments of East Africa are encouraged to establish comprehensive monitoring mechanisms for all of their legal aid schemes.
  - To the extent the law society does not compensate individual lawyers for their legal aid work, the governments of East Africa are encouraged to either put in place a funding scheme that ensures that private lawyers are remunerated for providing these services in criminal as well as civil cases and/or employ lawyers or jurists on its own to ensure that those in need of legal aid can receive such free of charge.
  - In light of the fact that the number of lawyers in the region is too low to facilitate that all of those in need can receive legal representation – and especially in light of the fact that few lawyers are present in rural areas across the region

– the governments of East Africa are encouraged to consider whether legislation should be developed to facilitate that paralegals can provide legal representation in certain categories of cases and/or before certain courts, and if so establish standards for how this form of legal aid must be carried out.

- Recognising that certain initiatives, such as the NALEAP programme in Kenya and various state-run legal aid initiatives in Uganda, have established useful links between various legal aid providers, the governments of East Africa are encouraged to further consider how the level of cooperation between the various legal aid providers can be strengthened, including:
  - Ensuring that other legal aid providers, including members of the legal profession, NGOs and paralegals, when relevant are invited to participate in training seminars carried out by the state projects;
  - Ensuring that other legal aid providers, including members of the legal profession, NGOs and paralegals, when relevant are invited to instruct training seminars carried out by the state projects;
  - Supporting initiatives, such as the national legal aid or awareness days, put in place by other actors aiming at promoting legal aid and cooperation between the various legal aid providers; and
  - Establishing additional measures that can ensure that the expertise of employees of state-run legal aid projects is shared with other legal aid providers, including members of the legal profession, civil society organisations and paralegals.

#### **Additional recommendations for the government of Kenya**

- Recognising the importance of the Kenyan government having established a state brief system that exempts certain categories of claimants in civil cases from paying court fees, the government of Kenya is encouraged to modify the application procedures so it becomes easier for the poor and vulnerable to benefit from the scheme.
- Recognising the importance of the NALEAP projects established by the government to provide legal aid in civil cases, the government of Kenya is encouraged to expand the provision of legal aid in civil cases, either by putting in place a general legal aid scheme so the poor and vulnerable can receive legal aid in all forms of civil cases, and/or by increasingly supporting (including financially) other legal aid providers who offer these kinds of services.
- Recognising the commitment of Kenya to adopting a new constitution in 2010, the government of Kenya is encouraged to implement the new constitution's provisions concerning access to justice and legal aid in such a way that it remains loyal to the spirit of the constitution, thus expanding the scope of state-funded legal aid in criminal cases (art. 50 (2) (h)), and allowing paralegals to intervene in court proceedings on behalf of the accused or victims (art. 49 (1) (c) and 50 (7)).

- Recognising the fact that rules on ADR mechanisms have been adopted by parliament, the government is encouraged to ensure that the High Court urgently implements these rules.

#### **Additional recommendations for the government of Uganda**

- Recognising the importance of the various projects (including the Law Development Centre, the Justice Centres Pilot Project and the Department of the Administrator General under the Ministry of Justice) established by the government to provide legal aid in civil cases, the government of Uganda is encouraged to expand the provision of legal aid in civil cases, either by putting in place a general legal aid scheme so the poor and vulnerable can receive legal aid in all forms of civil cases, and/or by increasingly supporting (including financially) other legal aid providers who offer these kinds of services.

#### **Additional recommendations for the government of Tanzania**

- Recognising that some efforts are currently being undertaken by the Legal Sector Reform Programme, the government of Tanzania is encouraged to urgently establish and make operational a state body that in cooperation with other legal aid providers can establish a national legal aid policy and related legislation and facilitate coordination of the work of legal aid providers.
- The government of Tanzania is encouraged to expand the provision of legal aid in civil cases, either by putting in place a general legal aid scheme so the poor and vulnerable can receive legal aid in all forms of civil cases, and/or by increasingly supporting (including financially) other legal aid providers who offer these kinds of services.

### **The legal profession**

#### **To the legal professions in East Africa in general**

- Recognising the efforts made by the legal professions in East Africa to offer pro bono services to the poor and vulnerable, the law societies in East Africa are encouraged to:
  - Fully implement relevant legislation concerning pro bono obligations and/or specify the internal rules of the law society for lawyers to undertake pro bono work, including laying down requirements concerning the number of work hours that must be dedicated to this task annually, specify what forms of legal services should be counted as legal aid and adopt quality standards concerning how individual lawyers should handle pro bono cases;
  - Encourage private lawyers to fulfil these obligations, for example through awareness raising by the law society on pro bono work;
  - Put in place initiatives, including effective monitoring mechanisms and penalty schemes and/or rules that exclude those who fail to comply with the requirements from having their practising certificate re-

- newed, so as to ensure that lawyers fulfil their obligations to provide pro bono services; and
  - Promote the establishment of law firm offices in rural areas from where legal aid can be provided, for example by offering individual lawyers various forms of benefits when establishing offices in rural areas.
- Recognising the importance of initiatives created by the legal professions in East Africa, including the establishment of national legal aid or awareness days, to advance knowledge in the general public concerning the law, the law societies in East Africa should further promote awareness among the general public, especially the poor and vulnerable, concerning the law and legal procedures, for example by:
  - Using media spots when new laws are adopted;
  - Disseminating user-friendly brochures and other written material on basic features of the law;
  - Conduct workshops in cooperation with civil society organisations in local communities;
  - Encourage the undertaking of studies concerning how best to advance legal awareness in the general public.
- Recognising that the legal professions in East Africa are all involved in public interest litigation, the law societies are encouraged to consider how to expand the scope of this practice as well as considering whether standards should be adopted concerning when and how the legal profession should become involved in this form of legal aid.
- Recognising that certain initiatives launched by the legal professions in East Africa, such as the legal aid or awareness days, have established useful links between members of the legal professions and other legal aid providers, in particular civil society organisations and paralegals, the law societies are encouraged to consider ways in which the level of cooperation between members of the legal profession and other legal aid providers can be strengthened, including:
  - Ensuring that other legal aid providers, including employees of state-run legal aid schemes, NGOs and paralegals, when relevant are invited to participate in training seminars carried out by the legal professions;
  - Ensuring that other legal aid providers, including employees of state-run legal aid schemes, NGOs and paralegals, when relevant are invited to instruct training seminars carried out by the legal professions;
  - Supporting initiatives, such as pilot legal aid projects, put in place by other actors aiming at promoting legal aid and cooperation between the various legal aid providers;
  - Establishing additional measures that can ensure that the expertise of members of the legal profession is shared with other legal aid providers, including employees of state-run legal aid projects, civil society organisations and paralegals;



- Considering whether non-lawyers, including paralegals, should be employed in private law firms to prepare the file, make field visit and investigation, start working on the legal opinion, etc.; and
- Considering whether a referral system can be developed in cooperation with NGOs, so some of the cases usually handled by law firms can be referred to NGOs and paralegals active in the field of legal aid.

#### **Additional recommendations for the legal profession in Kenya**

- The law society in Kenya is encouraged to put in place initiatives that ensure that lawyers are compensated for the legal aid services provided, for example by relying on the clinical model (possibly drawing on the model used in Uganda) where lawyers are employed specifically for the purpose of providing legal aid.
- The law society in Kenya is encouraged to consider whether eligibility criteria for its legal aid schemes should be established, which should avoid creating new barriers for effective access to justice for all, but ensure that those in the greatest need for legal aid, especially the poor and members of vulnerable groups, are the ones benefiting from the legal profession's legal aid schemes (possibly drawing on the criteria established by the legal profession in Tanzania mainland).
- The law society in Kenya is encouraged to adopt internal rules to ensure that lawyers provide quality legal aid, including a code of conduct (possibly drawing on the rules established by the law societies in Uganda and Tanzania mainland).
- The law society in Kenya is encouraged to adopt comprehensive monitoring mechanisms covering the legal aid provided by members of the legal profession (possibly drawing on the methods used by the law society in Uganda).

#### **Additional recommendations for the legal profession in Uganda**

- The law society in Uganda is encouraged to consider whether eligibility criteria for its legal aid schemes should be established, which should avoid creating new barriers for effective access to justice for all, but ensure that those in the greatest need for legal aid, especially the poor and members of vulnerable groups, are the ones benefiting from the legal profession's legal aid schemes (possibly drawing on the criteria established by the legal profession in Tanzania mainland).

#### **Additional recommendations for the legal professions in Tanzania**

- The law societies in Tanzania mainland and Zanzibar are encouraged to put in place initiatives that ensure that lawyers are compensated for the legal aid services provided, for example by relying on the clinical model (possibly drawing on the model used in Uganda) where lawyers are employed specifically for the purpose of providing legal aid.

- The law society in Zanzibar is encouraged to consider whether eligibility criteria for its legal aid schemes should be established, which should avoid creating new barriers for effective access to justice for all, but ensure that those in the greatest need for legal aid, especially the poor and members of vulnerable groups, are the ones benefiting from the legal profession's legal aid schemes (possibly drawing on the criteria established by the legal profession in Tanzania mainland).
- Recognising that some efforts have already been made by the law society in Tanzania mainland, the law societies in Tanzania mainland and Zanzibar are encouraged to adopt comprehensive monitoring mechanisms covering the legal aid provided by members of the legal profession (possibly drawing on the methods used by the law society in Uganda).

### **NGOs and paralegals**

#### **To NGOs and paralegals in East Africa in general**

- Recognising the efforts already made to establish paralegal networks, NGOs in East Africa are encouraged to further promote the establishment of bodies that can ensure that the legal aid work offered by NGOs and paralegals is coordinated and takes place according to quality standards, for example by creating (or further consolidating) a national network that is responsible for adopting unified rules concerning the conduct of paralegals as well as coordinating the roles of the various organisations active in the field of legal aid.
- Recognising that NGOs and paralegals to a much higher degree than other legal aid providers are present in rural areas, NGOs in East Africa are encouraged to consider how marginalised areas, such as northern parts of Kenya, the Western Region and the Eastern Region and other marginalised areas in Uganda and certain areas in Tanzania, can be better covered in these organisations' legal aid work.
- Recognising the huge efforts made by individual organisations to inform local communities of the legal aid services rendered by NGOs and paralegals as well as information concerning the law and procedures in general, these organisations are encouraged to consider if increased coordination between the various organisations might prove useful for advancing legal awareness and knowledge of the legal aid services rendered by the various organisations.
- Recognising that many NGOs have established some form of monitoring mechanism in connection with their legal aid work, networks and individual organisations are encouraged to establish comprehensive monitoring mechanisms in connection with their legal aid work.
- Recognising that certain initiatives launched by NGOs have established useful links between civil society legal aid providers, including paralegals, NGOs are

encouraged to consider ways in which the level of cooperation between these actors and other legal aid providers can be strengthened, including:

- Ensuring that other legal aid providers, including employees of state-run legal aid schemes and members of the legal profession, when relevant are invited to participate in training seminars carried out by NGOs;
- Ensuring that other legal aid providers, including employees of state-run legal aid schemes and members of the legal profession, when relevant are invited to instruct training seminars carried out by NGOs;
- Establishing additional measures that can ensure that the expertise of NGOs is shared with other legal aid providers, including employees of state-run legal aid schemes and members of the legal profession; and
- Considering whether a referral system can be developed in cooperation with NGOs, so some of the cases received by paralegals and NGOs can be referred to lawyers and jurists active in the field of legal aid.

#### **Additional recommendations for NGOs and paralegals in Kenya**

- Given the persistency of human rights violations concerning the detainees in Kenya, NGOs in Kenya are encouraged to consider how paralegals can be deployed at police stations on a daily basis to attend to the suspects immediately (possible drawing on the practice used in Uganda).
- Given the persistency of human rights violations concerning detainees in Kenya, NGOs in Kenya are encouraged to consider how paralegals can engage with the state attorney's office to make sure files are forwarded by the police promptly (possible drawing on the practice used in Uganda).

#### **Additional recommendations for NGOs and paralegals in Uganda**

- Given the lack of coherent training for paralegals, NGOs in Uganda are encouraged to consider how a uniform curriculum and/or handbooks on legal aid can be developed by legal aid or paralegal networks (possibly drawing on the efforts made by PASUNE in Kenya).

#### **Additional recommendations for NGOs and paralegals in Tanzania**

- Given the persistency of human rights violations concerning the persons held in custody and detainees in Tanzania, NGOs in Tanzania are encouraged to consider how paralegals can be deployed at police stations and prisons on a daily basis to attend respectively to the suspects and detainees immediately (possible drawing on the practice used in Uganda and Kenya).
- Given the persistency of human rights violations concerning detainees in the Tanzania, NGOs in Tanzania are encouraged to consider how paralegals can engage with the state attorney's office to make sure files are forwarded by the police promptly (possible drawing on the practice used in Uganda).

- Given the lack of coherent training for paralegals, NGOs in Tanzania are encouraged to consider how a uniform curriculum and/or handbooks on legal aid can be developed by legal aid or paralegal networks (possibly drawing on the efforts made by PASUNE in Kenya).

## 6. Appendixes

### Appendix 1: Questionnaires used for the report

Questionnaire on state legal aid bodies/initiatives	Questionnaire on the legal profession	Questionnaire on para-legals
<p><b>0. GENERAL COUNTRY INFORMATION</b></p> <p><i>(When providing general country information, provide the most recent data available and inform about the source, including when it is from.)</i></p> <p><b>0.1 What is the population of the country?</b></p> <p><b>0.2 Describe the population distribution in regard to urban and rural areas.</b></p> <p><b>0.3 What are the country's main sources of income?</b></p> <p><b>0.4 What is the GDP per capita in USD?</b></p> <p><b>0.5 What is the gini index of income inequality?</b></p> <p><i>(This information is, for example, available in the most recent UNDP Human Development report.)</i></p>		
<p><b>1. THE LEGAL SYSTEM AND THE GENERAL ACCESS TO JUSTICE SITUATION</b></p> <p><b>1.1 The legal system</b> Briefly describe the legal system in the country with focus on the organisational structure of the court system and other</p>	<p><b>1. THE LEGAL SYSTEM AND THE GENERAL ACCESS TO JUSTICE SITUATION</b></p> <p><b>1.1 The legal system</b> Briefly describe the legal system in the country with focus on the organisational structure of the court system and other</p>	<p><b>1. THE LEGAL SYSTEM AND THE GENERAL ACCESS TO JUSTICE SITUATION</b></p> <p><b>1.1 The legal system</b> Briefly describe the legal system in the country with focus on the organisational structure of the court system and other</p>

<p>formal and informal justice systems of relevance for the provision of legal aid.</p> <p><i>(For example, alternative dispute resolution mechanisms, national human rights commissions etc.)</i></p> <p><b>1.2 General access to justice situation</b> Describe the general access to justice situation in the country, including the main strengths and challenges.</p> <p><i>(For example, are the courts well-functioning or overburdened, are there other bottlenecks, has there been any major improvements lately, are there any recent access to justice studies and, if so, what do they report?)</i></p>	<p>formal and informal justice systems of relevance for the provision of legal aid.</p> <p><i>(For example, alternative dispute resolution mechanisms, national human rights commissions etc.)</i></p> <p><b>1.2 General access to justice situation</b> Describe the general access to justice situation in the country, including the main strengths and challenges.</p> <p><i>(For example, are the courts well-functioning or overburdened, are there other bottlenecks, has there been any major improvements lately, are there any recent access to justice studies and, if so, what do they report?)</i></p>	<p>formal and informal justice systems of relevance for the provision of legal aid.</p> <p><i>(For example, alternative dispute resolution mechanisms, national human rights commissions etc.)</i></p> <p><b>1.2 General access to justice situation</b> Describe the general access to justice situation in the country, including the main strengths and challenges.</p> <p><i>(For example, are the courts well-functioning or overburdened, are there other bottlenecks, has there been any major improvements lately, are there any recent access to justice studies and, if so, what do they report?)</i></p>
<p><b>2. REGULATION AND POLICIES</b></p> <p><b>2.0 International legal instruments</b> List and describe international legal instruments supporting the right to legal aid in the country.</p> <p><i>(For example, the African Charter on Human and Peoples Rights, the International Covenant on Civil and Political Rights etc, if this is the case. List specific articles where relevant.)</i></p> <p><b>2.1 National regulation and policies</b> 2.1.1 List and describe all <i>current</i> national legislation, any other state regulation and all state policies on the State’s provision of legal aid.</p>	<p><b>2. REGULATION AND POLICIES</b></p> <p><b>2.1 National regulation and policies</b> 2.1.1 List and describe all <i>current</i> national legislation, any other state regulation and all state policies on the legal profession’s provision of legal aid.</p>	<p><b>2. REGULATION AND POLICIES</b></p> <p><b>2.1 National regulation and policies</b> 2.1.1 List and describe all <i>current</i> national legislation, any other state regulation and all state policies regulating or related to paralegals’ provision of</p>

<p><i>(For example, if there is a state obligation to carry out legal aid, if a state legal aid body has specific guidelines, the establishing law etc.)</i></p> <p>2.1.2 List and describe all national <i>draft</i> legislation, any other draft state regulation and all draft state policies on the State’s provision of legal aid.</p>	<p><i>(For example, if national legislation requires that members of the legal profession carry out pro bono work, a law establishing the law society etc.)</i></p> <p>2.1.2 List and describe all national <i>draft</i> legislation, any other draft state regulation and all draft state policies on the legal profession’s provision of legal aid.</p> <p><b>2.2 Internal rules and policies</b></p> <p>2.2.1 List and describe all <i>current</i> rules and policies agreed upon by the legal profession itself regarding its provision of legal aid.</p> <p><i>(For example, a code of conduct for the legal profession laying down requirements for its provision of legal aid.)</i></p> <p>2.2.2 List and describe all <i>draft</i> rules and policies under consideration or agreed upon by the legal profession itself regarding its provision of legal aid.</p>	<p>legal aid.</p> <p><i>(For example, if national regulation provides for a state legal aid body that is to assist and cooperate with paralegals or any other formal recognition of paralegals, including regulation on qualification criteria, quality standards, selection criteria of clients, fees guidelines for paralegals and affiliate organisations etc.)</i></p> <p>2.1.2 List and describe all national <i>draft</i> legislation, any other draft state regulation and all draft state policies regulating or related to paralegals’ provision of legal aid.</p> <p><b>2.2 Internal rules and policies</b></p> <p>2.2.1 List and describe all <i>current</i> rules and policies agreed upon by paralegals themselves and/or their affiliate organisations regarding their provision of legal aid.</p> <p><i>(For example, an internal code of conduct, qualification criteria, quality standards, selection criteria of clients, fees guidelines for paralegals and affiliate organisations etc.)</i></p> <p>2.2.2 List and describe any <i>draft</i> rules and policies under consideration or agreed upon by paralegals themselves and/or their affiliate organisations themselves regarding provision of legal aid.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>3. ORGANISATION, CATEGORIES AND MONITORING MECHANISMS</b></p> <p><b>3.1 Organisation</b> 3.1.1 Describe how the State’s provision of legal aid is organised. If there is a specific state legal aid body that has been established to organise and/or provide legal aid, please describe this body and how it works.</p> <p>3.1.2 Are there any coordination and/or communication mechanisms in place in regard to the different state legal aid body/initiatives? If so, describe this or these mechanisms.</p> <p><i>(For example, if there is a main state legal aid body in the country and it is responsible for organising the State’s provision of legal aid.)</i></p> <p><b>3.2 Categories</b> Are there different categories of state legal aid providers/initiatives? If so, please describe these categories.</p> <p><i>(For example, whether it includes members of the legal profession, lawyers, paralegals, etc and how they are organised – under NGOs, state agencies etc.)</i></p> <p><b>3.3 Monitoring mechanisms</b> 3.3.1 If any <i>internal</i> mechanisms in place for monitoring the State’s provision of legal aid. If</p>	<p><b>3. ORGANISATION, CATEGORIES AND MONITORING MECHANISMS</b></p> <p><b>3.1 Organisation</b> 3.1.1 Describe how the legal profession’s provision of legal aid is organised.</p> <p><i>(For example, if some of the legal aid is organised by the legal profession’s bar association.)</i></p> <p>3.1.2 Are there any coordination and/or communication mechanisms in place between members of the legal profession in regard to their provision of legal aid? If so, describe this or these mechanisms.</p> <p><i>(For example, if a bar association coordinates the legal aid work carried out by the members of the legal profession.)</i></p> <p><b>3.2 Categories</b> Are there different categories of members of the legal profession providing legal aid? If so, describe these categories.</p> <p><i>(For example, if some are working for the State or for NGO’s, if some work full time with legal aid or only part time, if some are paid or work voluntarily.)</i></p> <p><b>3.3 Monitoring mechanisms</b> 3.3.1 If any <i>internal</i> mechanisms in place for monitoring the legal profession’s provision of legal aid, describe these, indicating by whom, in which way(s), how often,</p>	<p><b>3. ORGANISATION, CATEGORIES AND MONITORING MECHANISMS</b></p> <p><b>3.1 Organisation</b> 3.1.1 Describe how paralegals’ provision of legal aid is organised.</p> <p><i>(For example, if paralegals work through organised NGOs programmes, self-driven initiatives, community-based organisations, project based or pilot initiatives, networks or associations etc. and/or if there is a main body in the country responsible for organising and/or assisting paralegals.)</i></p> <p>3.1.2 Are there any coordination and/or communication mechanisms in place between paralegals and/or between their affiliate organisations? If so, describe this or these mechanisms.</p> <p><i>(For example, if there is a main body in the country responsible for organising and/or assisting paralegals, or if paralegal organisations themselves have established a network.)</i></p> <p><b>3.2 Categories</b> 3.2.1 Describe the different categories of paralegals by describing:</p> <ul style="list-style-type: none"> <li>• How they are recruited</li> <li>• What bodies they work for</li> <li>• Whether they work full time or part time</li> <li>• If they are paid and, if so, how</li> <li>• How they are fa-</li> </ul>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<p>so, describe these, indicating by whom, in which way(s), how often, etc. If possible, attach sample tools.</p> <p><i>(By “internal” is meant by the state legal aid body/initiative itself.)</i></p> <p>3.3.2 If any <i>external</i> mechanisms in place for monitoring the State’s provision of legal aid, describe these, indicating by whom, in which way(s), how often, etc. If possible, attach sample tools.</p> <p><i>(“External” relates to other bodies, for example an international donor.)</i></p>	<p>etc. If possible, attach sample tools.</p> <p><i>(By “internal” is meant among the members of the legal profession themselves, for example if a bar association monitors the legal profession’s provision of legal aid.)</i></p> <p>3.3.2 If any <i>external</i> mechanisms in place for monitoring the legal profession’s provision of legal aid, describe these, indicating by whom, in which way(s), how often, etc. If possible, attach sample tools.</p> <p><i>(“External” relates to other bodies, for example a state legal aid body.)</i></p>	<p>culated in regard to technical and other types of support</p> <p><i>(For example, if some are working for the state legal aid initiatives and others for NGOs, if some are paid in cash and others receive other benefits, if some get their expenses covered etc.)</i></p> <p>3.2.2 What is the general age profile of the paralegals?</p> <p>3.2.3 What is the general level of education of the paralegals?</p> <p><b>3.3 Monitoring mechanisms</b></p> <p>3.3.1 If any <i>internal</i> mechanisms in place for monitoring paralegals’ provision of legal aid, describe these, indicating by whom, in which way(s), how often, etc. If possible, attach sample tools.</p> <p><i>(By “internal” is meant among the paralegals themselves, for example if an organisation of paralegals monitors itself.)</i></p> <p>3.3.2 If any <i>external</i> mechanisms in place for monitoring paralegals’ provision of legal aid, describe these, indicating by whom, in which way(s), how often, etc. If possible, attach sample tools.</p> <p><i>(“External” relates to other bodies, for example a state legal aid body.)</i></p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>4. NUMBERS AND GEOGRAPHICAL COVERAGE</b></p> <p><b>4.1 Numbers</b>  4.1.1 How many state legal aid initiatives were there in 2009?   4.1.2 Approximately how many people working with legal aid were on the State’s pay roll in 2009?   4.1.3 What is the approximate distribution of legal staff in regard to members of the legal profession, lawyers and paralegals attached to the state legal aid initiatives?   4.1.4 What is the approximate gender distribution in regard to the number of people working with legal aid on the State’s pay roll in 2009?</p> <p><b>4.2 Geographical coverage</b>  4.2.1 Describe the geographical coverage of the State’s provision of legal aid.   <i>(For example, by describing the coverage in regions, districts, cities, rural areas etc, divisions into chapters or branches or/and, if possible, give examples in % and/or trends. Provide all relevant information and indicators, so that results can be compared between one country and another.)</i>   4.2.2 Are there some areas that generally are well covered and others that</p>	<p><b>4. NUMBERS AND GEOGRAPHICAL COVERAGE</b></p> <p><b>4.1 Numbers</b>  4.1.1 How many members of the legal profession in the country were on the main roll in 2009?   4.1.2 How many members of the legal profession in the country were carrying a practice certificate in 2009?   4.1.3 If possible, state approximately how many members of the legal profession that provide legal aid services.   4.1.4 What is the approximate gender distribution in regard to the numbers provided above, i.e. in regard to number of members of the legal profession on the main roll, in regard to the number carrying a practice certificate and in regard to the number providing legal aid?</p> <p><b>4.2 Geographical coverage</b>  4.2.1 Describe the geographical coverage of the legal profession’s provision of legal aid.   <i>(For example, by describing the coverage in regions, districts, cities, rural areas etc, divisions into chapters or branches or/and, if possible, give examples in % and/or trends. Provide all relevant information and indicators, so that results can be compared between one</i></p>	<p><b>4. NUMBERS AND GEOGRAPHICAL COVERAGE</b></p> <p><b>4. 1 Numbers</b>  4.1.1 How many paralegals were there approximately in the country in 2009? If possible, mention both the approximate number of organisations and individuals working as paralegals. Mention also the organisation with the highest and lowest numbers of paralegals respectively.   4.1.2 What is the approximate gender distribution in regard to the number of paralegals provided above?</p> <p><b>4.2 Geographical coverage</b>  4.2.1 Describe the geographical coverage of paralegals’ provision of legal aid.   <i>(For example, by describing the coverage in regions, districts, cities, rural areas etc, divisions into chapters or branches or/and, if possible, give examples in % and/or trends. Provide all relevant information and indicators, so that results can be compared between one country and another.)</i>   4.2.2 Are there some areas that generally are well covered and others that are poorly covered? If so, why?</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>are poorly covered? If so, why?</p>	<p><i>country and another.)</i></p> <p>4.2.2 Are there some areas that generally are well covered and others that are poorly covered? If so, why?</p>	
<p><b>5. LEGAL AID PROVIDED</b></p> <p><b>5.1 Definition of legal aid</b> How does the State/state legal aid body generally define “legal aid”?</p> <p><b>5.2 Types of legal aid</b> List and describe the different types of legal aid services provided by the state legal aid initiatives.</p> <p><i>(For example, informing the public about legal rights, legal advice, mediation, representation of individuals, public interest litigation, involvement in a state legal aid scheme and/or support to NGO’s.)</i></p> <p><b>5.3 Legal domains/thematic areas</b></p> <p>5.3.1 List the main legal domains covered by the State’s provision of legal aid.</p> <p><i>(For example, criminal law, labour law, family law, land law etc.)</i></p> <p>5.3.2 Among the main legal domains/thematic areas covered, describe the approximate distribution of the legal aid provided. Provide reasons for the disparity if any.</p> <p>5.3.3 Are there other domains/thematic areas that are not covered? If so,</p>	<p><b>5. LEGAL AID PROVIDED</b></p> <p><b>5.1 Definition of legal aid</b> How does the legal profession generally define “legal aid”?</p> <p><b>5.2 Types of legal aid</b></p> <p>5.2.1 List and describe the different types of legal aid services provided by members of the legal profession.</p> <p><i>(For example, informing the public about legal rights, legal advice, mediation, representation of individuals, public interest litigation, involvement in a state legal aid scheme and/or support to NGO’s.)</i></p> <p><b>5.3 Legal domains/thematic areas</b></p> <p>5.3.1 List the main legal domains/thematic areas covered by the legal profession’s provision of legal aid.</p> <p><i>(For example, criminal law, labour law, family law, land law etc.)</i></p> <p>5.3.2 Among the main legal domains/thematic areas covered, describe the approximate distribution of the legal aid provided. Provide reasons for the disparity if any.</p> <p>5.3.3 Are there other domains/thematic areas that</p>	<p><b>5. LEGAL AID PROVIDED</b></p> <p><b>5.1 Definition of legal aid</b> How is “legal aid” generally defined by paralegals and/or their affiliate organisations?</p> <p><b>5.2 Types of legal aid</b> List and describe the different types of legal aid services provided by paralegals.</p> <p><i>(For example, informing the public about legal rights, legal advice, mediation, drafting legal documents/written submissions, orienting/referring/accompanying clients, preparing clients for self representation, other kind of assistance, involvement in a state legal aid scheme and/or support to NGO’s.)</i></p> <p><b>5.3 Legal domains/thematic areas</b></p> <p>5.3.1 List the main legal domains/thematic areas covered by paralegals’ provision of legal aid.</p> <p><i>(For example, criminal law, labour law, family law, land law etc.)</i></p> <p>5.3.2 Among the main legal domains/thematic areas covered, describe the approximate distribution of the legal aid provided. Provide reasons for the disparity if any.</p>

<p>why?</p> <p><b>5.4 Eligibility criteria</b> Are there any eligibility criteria for receiving legal aid by the State/through the state's legal aid initiatives? If so, describe these.</p> <p><i>(For example, formal means criteria.)</i></p> <p><b>5.5 Self-payment/fees or contributions</b> Is the legal aid provided to the client by the State free or is there a requirement of self-payment for the client? If it is not free, how much and based on what criteria?</p> <p><i>(For example, the fee may be to cover part of a member of the legal profession's fee or filing fees.)</i></p> <p><b>5.6 Target groups</b> Do the state legal aid initiatives target any specific groups in regard to its provision of legal aid? If so, list these groups and describe why and how.</p> <p><i>(For example, in regard to prisoners on remand, women, children or disabled people.)</i></p> <p><b>5.7 Ensuring high standards</b> How do the state legal aid initiatives ensure that high standards are maintained in regard to its provision of legal aid?</p>	<p>are not covered? If so, why?</p> <p><b>5.4 Eligibility criteria</b> Are there any eligibility criteria for receiving legal aid by members of the legal profession? If so, describe these.</p> <p><i>(For example, formal means testing or informal means assessment during interview with client.)</i></p> <p><b>5.5 Self-payment/fees or contributions</b> Is the legal aid provided to the client by members of the legal profession free or is there a requirement of self-payment for the client? If it is not free, how much and based on what criteria?</p> <p><i>(For example, the fee may be to cover part of the member of the legal profession's salary or filing fees.)</i></p> <p><b>5.6 Target groups</b> Do members of the legal profession target any specific groups in regard to their provision of legal aid? If so, list these groups and describe why and how.</p> <p><i>(For example, in regard to prisoners on remand, women, children or disabled people.)</i></p> <p><b>5.7 Ensuring high standards</b> How does the legal profession ensure that high standards are maintained in regard to its provision of legal aid?</p>	<p>5.3.3 Are there other domains/thematic areas that are not covered? If so, why?</p> <p><b>5.4 Eligibility criteria</b> Are there any eligibility criteria for receiving legal aid by paralegals? If so, describe these.</p> <p><i>(For example, formal means testing or informal means assessment during interview with client.)</i></p> <p><b>5.5 Self-payment/fees or contributions</b> Is the legal aid provided to the client by paralegals free or is there a requirement of fees or contributions? If it is not free, how much and based on what criteria? Are the fees/contributions paid to the affiliate organisation or to the paralegal her- or him-self (and kept or not kept by her/him)?</p> <p><b>5.6 Target groups</b> Do some paralegals target any specific groups in regard to their provision of legal aid? If so, list these paralegals and their target groups and describe why and how.</p> <p><i>(For example, in regard to prisoners on remand, women, children or disabled people.)</i></p> <p><b>5.7 Ensuring high standards</b> How do paralegals/their affiliate organisations ensure that high standards are maintained in regard</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		to their provision of legal aid?
<p><b>6. TRAINING ACTIVITIES</b></p> <p><i>(Training both covers training about the law, i.e. substantive and procedural issues, and about how to provide legal aid, i.e. practical skills.)</i></p> <p>NB: When providing information about the training activities, describe the following aspects:</p> <ul style="list-style-type: none"> <li>• Who is carrying out the training</li> <li>• Who is trained and approximately how many</li> <li>• The training content</li> <li>• Duration</li> <li>• Methodology</li> <li>• Is a formal certificate of completed training issued</li> <li>• Outcomes/impact)</li> </ul> <p><b>6.1 Internal training</b></p> <p>6.1.1 Does the State organise <i>initial</i> training programmes to its own staff working with legal aid initiatives? If so, describe how (as mentioned in the above NB).</p> <p>6.1.2 Does the State provide <i>continuous learning programmes</i> to its own staff working with legal aid initiatives? If so, describe how (as mentioned in the above NB).</p> <p><b>6.2 External training</b></p> <p>6.2.1 Does the State offer <i>initial</i> training pro-</p>	<p><b>6. TRAINING ACTIVITIES</b></p> <p><i>(Training both covers training about the law, i.e. substantive and procedural issues, and about how to provide legal aid, i.e. practical skills.)</i></p> <p>NB: When providing information about the training activities, describe the following aspects:</p> <ul style="list-style-type: none"> <li>• Who is carrying out the training</li> <li>• Who is trained and approximately how many</li> <li>• The training content</li> <li>• Duration</li> <li>• Methodology</li> <li>• Is a formal certificate of completed training issued</li> <li>• Outcomes/impact)</li> </ul> <p><b>6.1 Internal training</b></p> <p>6.1.1 Does the legal profession carry out <i>initial</i> training programmes to its own members? If so, describe how (as mentioned in the above NB).</p> <p>6.1.2 Does the legal profession carry out <i>continuous learning</i> training programmes to its own members? If so, describe how (as mentioned in the above NB).</p> <p><b>6.2 External training</b></p> <p>6.2.1 Does the legal profession carry out <i>initial</i> training programmes to</p>	<p><b>6. TRAINING ACTIVITIES</b></p> <p><i>(Training both covers training about the law, i.e. substantive and procedural issues, and about how to provide legal aid, i.e. practical skills.)</i></p> <p>NB: When providing information about the training activities, describe the following aspects:</p> <ul style="list-style-type: none"> <li>• Who is carrying out the training</li> <li>• Who is trained and approximately how many</li> <li>• The training content</li> <li>• Duration</li> <li>• Methodology</li> <li>• Is a formal certificate of completed training issued</li> <li>• Outcomes/impact)</li> </ul> <p><b>6.1 Internal training</b></p> <p>6.1.1 Do some paralegal organisations carry out <i>initial</i> training programmes to their own paralegals? If so, describe how (as mentioned in the above NB).</p> <p>6.1.2 Do some paralegal organisations carry out <i>continuous learning</i> training programmes to their own paralegals? If so, describe how (as mentioned in the above NB).</p> <p><b>6.2 External training</b></p> <p>6.2.1 Do some paralegal organisations carry out</p>

<p>grammes to others, such as the legal profession or paralegals and other stakeholders? If so, describe how (as mentioned in the above NB).</p> <p>6.2.2 Does the State offer <i>continuous learning</i> training programmes to others, such as the legal profession or paralegals and other stakeholders? If so, describe how (as mentioned in the above NB).</p> <p><b>6.3 Training by others</b></p> <p>6.3.1 Do others provide <i>initial</i> training to the state employees working with legal aid initiatives? If so, describe how (as mentioned in the above NB).</p> <p><i>(For example, training offered by international organisations.)</i></p> <p>6.3.2 Do others provide <i>continuous learning</i> training programmes to the state employees working with legal aid initiatives? If so, describe how (as mentioned in the above NB).</p>	<p>others, such as state legal aid employees or paralegals and other stakeholders? If so, describe how (as mentioned in the above NB).</p> <p>6.2.2 Does the legal profession carry out <i>continuous learning</i> training programmes to others, such as state legal aid employees or paralegals and other stakeholders? If so, describe how (as mentioned in the above NB).</p> <p><b>6.3 Training by others</b></p> <p>6.3.1 Do others provide <i>initial</i> training to members of the legal profession? If so, describe how (as mentioned in the above NB).</p> <p><i>(For example, training carried out by a state legal aid body or international organisations)</i></p> <p>6.3.2 Do others provide <i>continuous learning</i> training programmes to members of the legal profession? If so, describe how (as mentioned in the above NB).</p>	<p><i>initial</i> training programmes to paralegals of other organisations, to other relevant stakeholders (including state legal aid employees or members of the legal profession)? If so, describe how (as mentioned in the above NB).</p> <p>6.2.2 Do some paralegal organisations carry out <i>continuous learning</i> training programmes to paralegals of other organisations, to other relevant stakeholders (including state legal aid employees or members of the legal profession)? If so, describe how (as mentioned in the above NB).</p> <p><b>6.3 Training by others</b></p> <p>6.3.1 Do others provide <i>initial</i> training programmes to paralegals? If so, describe how (as mentioned in the above NB).</p> <p><i>(For example, training carried out by state legal aid initiatives, the legal profession, universities or law colleges, international organisations, or the private sector)</i></p> <p>6.3.2 Do others provide <i>continuous learning</i> training programmes to paralegals? If so, describe how (as mentioned in the above NB).</p>
<p><b>7. ACCESSIBILITY</b></p> <p><b>7.1 Information strategy</b></p> <p>7.1.1 Does the State have a strategy on informing</p>	<p><b>7. ACCESSIBILITY</b></p> <p><b>7.1 Information strategy</b></p> <p>7.1.1 Does the legal profession have a strategy on</p>	<p><b>7. ACCESSIBILITY</b></p> <p><b>7.1 Information strategy</b></p> <p>7.1.1 Do some paralegals and/or their affiliate or-</p>

<p>the public about how to make use of its legal aid services? If so, please describe this strategy and its sustainability (in terms of impact, infrastructure and cost).</p> <p>7.1.2 If there are no information strategies, provide examples of how the State in practice informs the public about its legal aid services. Also describe the sustainability of these approaches (in terms of impact, infrastructure and cost).</p> <p><i>(For example, by flyers, through a website, referrals by paralegals or others etc.)</i></p> <p><b>7.2 Outreach strategy</b></p> <p>7.2.1 Does the State have a strategy on ensuring outreach of its legal aid services? If so describe this strategy and its sustainability (in terms of impact, infrastructure and cost).</p> <p><i>(For example, by establishing branches in rural areas.)</i></p> <p>7.2.2 If there are no outreach strategies, provide examples of how the State in practice ensures outreach of its legal aid services. Also describe to which extent these approaches are sustainable (in terms of impact, infrastructure and cost).</p>	<p>informing the public about how to make use of its legal aid services? If so, please describe this strategy and its sustainability (in terms of impact, infrastructure and cost).</p> <p><i>(For example, where the law society organises a “Rights Awareness Week”.)</i></p> <p>7.1.2 If there are no information strategies, provide examples of how members of the legal profession in practice inform about their legal aid services. Also describe to which extent these approaches are sustainable (in terms of impact, infrastructure and cost)</p> <p><i>(For example, by flyers, through a website, referrals by paralegals, radios, local meetings, open weeks, sign posts etc.)</i></p> <p><b>7.2 Outreach strategy</b></p> <p>7.2.1 Does the legal profession have a strategy on ensuring outreach of legal aid services? If so, describe this strategy and its sustainability (in terms of impact, infrastructure and cost).</p> <p><i>(For example, by establishing branches in rural areas.)</i></p> <p>7.2.2 If there are no outreach strategies, provide examples of how members of the legal profession ensure outreach of their legal aid services. Also describe to which extent these ap-</p>	<p>ganisations have a strategy on informing the public about how to make use of their legal aid services? If so, please describe this strategy and its sustainability (in terms of impact, infrastructure and cost).</p> <p>7.1.2 If there are no information strategies, provide examples of how paralegals and/or their affiliate organisations in practice inform about their legal aid services. Also describe to which extent these approaches are sustainable (in terms of impact, infrastructure and cost).</p> <p><i>(For example, by flyers, through a website, referrals by paralegals, radios, local meetings, open weeks, sign posts etc.)</i></p> <p><b>7.2 Outreach strategy</b></p> <p>7.2.1 Do some paralegals and/or their affiliate organisations have a strategy on ensuring outreach of legal aid services? If so describe this strategy and its sustainability (in terms of impact, infrastructure and cost).</p> <p><i>(For example, by establishing branches in rural areas.)</i></p> <p>7.2.2 If there are no outreach strategies, provide examples of how paralegals and/or their affiliate organisations in practice ensure outreach of their legal aid services. Also describe to which extent these approaches are sus-</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	proaches are sustainable (in terms of impact, infrastructure and cost).	tainable (in terms of impact, infrastructure and cost).
<p><b>8. DOCUMENTATION</b></p> <p><b>8.1 Documentation management</b></p> <p>8.1.1 Does the State have a strategy on how to ensure documentation on its legal aid services provided? If so, please describe this strategy and the forms of documentation actually generated.</p> <p><i>(For example, monthly or annual reports on state legal aid activities, training reports by the state legal aid initiatives etc.)</i></p> <p>8.1.2 If there are no documentation strategies, please describe any other attempts by the State to document its legal aid services provided and the documentation actually generated.</p> <p>8.1.3 Is the documentation generated easily accessible to the public? If so, describe how this is ensured.</p> <p><b>8.2 Use of documentation</b></p> <p>Describe what the State uses its documentation for. If possible, provide examples.</p> <p><i>(For example, for funding purposes, quality assessments, research purposes etc.)</i></p>	<p><b>8. DOCUMENTATION</b></p> <p><b>8.1 Documentation management</b></p> <p>8.1.1 Does the legal profession have a strategy on how to ensure documentation of its legal aid services provided? If so, please describe this strategy and the forms of documentation generated.</p> <p><i>(For example, a joint annual report for the entire legal profession.)</i></p> <p>8.1.2 If there are no documentation strategies, describe any other attempts by members of the legal profession to document their legal aid services provided and the documentation actually generated.</p> <p><i>(For example, monthly or annual reports on legal aid projects, training reports etc.)</i></p> <p>8.1.3 Is the documentation generated easily accessible to the public? If so, describe how this is ensured.</p> <p><b>8.2 Use of documentation</b></p> <p>Describe what the legal profession uses its documentation for. If possible, provide examples.</p> <p><i>(For example, for funding purposes, to document Continuing Legal Education units, quality</i></p>	<p><b>8. DOCUMENTATION</b></p> <p><b>8.1 Documentation management</b></p> <p>8.1.1 Do some paralegals and/or their affiliate organisations have a strategy on how to ensure documentation of legal aid services provided? If so, please describe this strategy and the forms of documentation actually generated.</p> <p><i>(For example, monthly or annual reports on legal aid projects, training reports etc.)</i></p> <p>8.1.2 If there are no documentation strategies, please describe any other attempts by paralegals and/or their affiliate organisations to document their legal aid services provided and the documentation actually generated.</p> <p>8.1.3 Is the documentation generated easily accessible to the public? If so, describe how this is ensured.</p> <p><b>8.2 Use of documentation</b></p> <p>Describe what paralegals and/or their affiliate organisations use their documentation for. If possible, provide examples.</p> <p><i>(For example, for funding purposes, quality assessments, re-</i></p>



	<i>assessments, research purposes etc.)</i>	<i>search purposes etc.)</i>
<p><b>9. STATISTICS AND EXAMPLES OF IMPACT</b></p> <p><b>9.1 Statistical information</b> Based on available information in studies, reports and from key stakeholders, provide statistical information on legal aid services provided by the State within the last 3 years (specified for each year), especially in regard to:</p> <ul style="list-style-type: none"> <li>• Number of individuals, groups and organisations assisted each year</li> <li>• Number of cases dealt with per year</li> <li>• Types of cases (within what legal area) and distribution</li> <li>• What is the gender distribution in these cases</li> <li>• In how many cases was the assistance provided to persons with a disability</li> <li>• Number of public interest litigation cases</li> <li>• Other types of services provided</li> <li>• Number of training programmes carried through and/or number organisations/people trained</li> </ul>	<p><b>9. STATISTICS AND EXAMPLES OF IMPACT</b></p> <p><b>9.1 Statistical information</b> Based on available information in studies, reports and from key stakeholders, provide statistical information on legal aid services provided by members of the legal profession within the last 3 years (specified for each year), especially in regard to:</p> <ul style="list-style-type: none"> <li>• Number of individuals, groups and organisations assisted each year</li> <li>• Number of members of the legal profession that do pro bono work</li> <li>• Number of cases dealt with per year</li> <li>• Types of cases (within what legal area) and distribution</li> <li>• What is the gender distribution in these cases</li> <li>• In how many cases was the assistance provided to persons with a disability</li> <li>• Number of public interest litigation cases</li> <li>• Other types of services provided</li> <li>• Number of training programmes car-</li> </ul>	<p><b>9. STATISTICS AND EXAMPLES OF IMPACT</b></p> <p><b>9.1 Statistical information</b> Based on available information in studies, reports and from key stakeholders, provide statistical information on legal aid services provided by paralegals within the last 3 years (specified for each year), especially in regard to:</p> <ul style="list-style-type: none"> <li>• Number of individuals, groups and organisations assisted each year</li> <li>• Number of cases dealt with per year</li> <li>• Types of cases (within what legal area) and distribution</li> <li>• What is the gender distribution in these cases</li> <li>• In how many cases was the assistance provided to persons with a disability</li> <li>• Other types of services provided</li> <li>• Number of training programmes carried through and/or number organisations/people trained</li> </ul> <p><b>9.2 Examples of impact</b> Provide examples of the impact that paralegals’</p>

<p><b>9.2 Examples of impact</b> Provide examples of the impact that the State's provision of legal aid has had.</p> <p><i>(For example stories about improvement of rights of a specific group as a result of a specific state legal aid initiative.)</i></p>	<p>rised through and/or number organisations/people trained</p> <p><b>9.2 Examples of impact</b> Provide examples of the impact that members of the legal profession's provision of legal aid has had.</p> <p><i>(For example, description of landmark cases or stories about improvement of rights of a specific group.)</i></p>	<p>provision of legal aid has had.</p> <p><i>(For example, stories of changes where paralegals have worked with members of the legal profession, other bodies or on their own, stories of changes in the community or within local authorities as a result of the legal aid provided.)</i></p>
<p><b>10. FUNDING/RESOURCE MOBILISATION</b></p> <p><b>10.1 Main sources of funding</b> 10.1.1 What are the main sources of funding for the state legal aid initiatives and through which mechanisms?</p> <p><i>(For example from the State itself, from international donors.)</i></p> <p>10.1.2 What was the amount of funding available for the State's provision of legal aid the last 3 years (specified for each year)?</p> <p>10.1.3 What did this funding cover and what was the approximate distribution in regard to the different legal areas and/or target groups?</p> <p><i>(For example, specific state legal aid initiatives, members of the legal profession's fees, assistance to prisoners on remand, funding on administration as compared to funding spent on actual legal aid ser-</i></p>	<p><b>10. FUNDING/RESOURCE MOBILISATION</b></p> <p><b>10.1 Main sources of funding</b> 10.1.1 What are the main sources of funding for the legal profession's provision of legal aid and through which mechanisms?</p> <p><i>(For example from the State through a legal aid basket fund, from external donors or by the legal profession itself through pro bono work.)</i></p> <p>10.1.2 What was the amount of funding available for the legal profession's provision of legal aid the last 3 years (specified for each year)?</p> <p>10.1.3 What did this funding cover and what was the approximate distribution in regard to the different legal areas and/or target groups?</p> <p><i>(For example, individual cases, public litigation, filing fees, legal aid earmarked for prisoners</i></p>	<p><b>10. FUNDING/RESOURCE MOBILISATION</b></p> <p><b>10.1 Main sources of funding</b> 10.1.1 What are the main sources of funding for paralegals' provision of legal aid and through which mechanisms?</p> <p><i>(For example from the State through a legal aid basket fund, from external donors, the private sector, individual contributions etc.)</i></p> <p>10.1.2 What was the approximate overall amount of funding available for paralegals' provision of legal aid the last 3 years (specified for each year)?</p> <p>10.1.3 What did this funding cover and what was the approximate distribution in regard to the different legal areas and/or target groups?</p> <p><i>(For example, transportation, training programmes, sensitisation, individual cases, filing fees, assistance to prisoners on</i></p>

<p><i>vices provided etc.)</i></p> <p>10.1.4 How is the allocation of funds prioritised among the different cost items?</p> <p>10.1.5 Do the state legal aid initiatives make use of non-financial resources? If so, describe these types.</p> <p>(For example, by providing free transport or facilities, ensuring volunteers' support etc.)</p> <p><b>10.2 Funding/resource mobilisation strategies</b></p> <p>10.2.1 Does the State/state legal aid initiatives have any <i>existing</i> strategies on how to raise funding and ensure financial sustainability for its provision of legal aid? If so, describe these strategies.</p> <p>(For example, is the main part financed by the State itself or/and does it rely on international donors? The question also covers any funding strategies that are part of a specific legal aid initiative or/and is applied by a state legal aid body.)</p> <p>10.2.2 Has the State/state legal aid initiatives discussed any <i>future</i> strategies on how to raise funding and ensure financial sustainability for its provision of legal aid? If so, describe these strategies.</p>	<p><i>on remand etc.)</i></p> <p>10.1.4 How is the allocation of funds prioritised among the different cost items?</p> <p>10.1.5 Are there other types of non-financial resources received? If so, describe these types.</p> <p>(For example, free transport facilities provided by the State, volunteers' support etc.)</p> <p><b>10.2 Funding/resource mobilisation strategies</b></p> <p>10.2.1 Does the legal profession have any <i>existing</i> strategy on how to raise funding and ensure financial sustainability for its provision of legal aid? If so, describe these strategies.</p> <p>10.2.2 Has the legal profession discussed any <i>future</i> strategies on how to raise funding and ensure financial sustainability for its provision of legal aid? If so, describe these strategies.</p>	<p><i>remand etc.)</i></p> <p>10.1.4 What is the general picture in regard to how the allocation of funds to different cost items is prioritised among paralegals?</p> <p>10.1.5 Are there other types of non-financial resources received? If so, describe these types.</p> <p>(For example, transport facilities, technical assistance, volunteers' support, members of the legal profession attached to the paralegals' affiliate organisations and paid by the State etc.)</p> <p><b>10.2 Funding/resource mobilisation strategies</b></p> <p>10.2.1 Do paralegals and/or their affiliate organisations have any <i>existing</i> strategies on how to raise funding and to ensure financial sustainability for their provision of legal aid? If so, describe these strategies.</p> <p>10.2.2 Have paralegals and/or their affiliate organisations discussed any <i>future</i> strategies on how to raise funding and to ensure financial sustainability for their provision of legal aid? If so, describe these strategies.</p>
<p><b>11. LINKAGES</b></p> <p>(By "linkages" is meant any type of formal or informal co-operation and/or coordination</p>	<p><b>11. LINKAGES</b></p> <p>(By "linkages" is meant any type of formal or informal co-operation and/or coordination</p>	<p><b>11. LINKAGES</b></p> <p>(By "linkages" is meant any type of formal or informal co-operation and/or coordination</p>

<p><i>on provision of legal aid.)</i></p> <p><b>11.1 The legal profession</b>  11.1.1 Describe <i>current</i> formal and informal linkages between the state legal aid initiatives and the legal profession.</p> <p><i>(This includes any linkages with a legal society/bar association and individual members. For example, is there a State mandated pro bono scheme? Are there incentives towards provision of pro bono services for the state employed members of the legal profession? Are there incentives towards provision of pro bono services for external members of the legal profession working with the state legal aid initiatives?)</i></p> <p>11.1.2 Are there any <i>potential</i> formal and informal linkages between the state legal aid initiatives and the legal profession? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.1.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the state legal aid initiatives and the legal profession? If so, describe these.</p> <p><i>(“Challenges” includes any weaknesses, obstacles and threats.)</i></p>	<p><i>on provision of legal aid. Linkages in regard to the legal profession cover both linkages regarding a legal society/bar association and regarding individual members of the legal profession.)</i></p> <p><b>11.1 The State</b>  11.1.1 Describe <i>existing</i> formal and informal linkages between the legal profession and the state legal aid initiatives.</p> <p>11.1.2 Are there any <i>potential</i> formal and informal linkages between the legal profession and the state legal aid initiatives? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.1.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the legal profession and the state legal aid initiatives? If so, describe these.</p> <p><i>(“Challenges” includes any weaknesses, obstacles and threats.)</i></p> <p>11.1.4 What is the legal profession’s general perception in regard to the State’s/state legal aid initiatives’ provision of legal aid?</p> <p>11.1.5 If this is not already covered, describe any les-</p>	<p><i>on provision of legal aid.)</i></p> <p><b>11.1 The State</b>  11.1.1 Describe <i>existing</i> formal and informal linkages between paralegals/their affiliate organisations and the state legal aid initiatives.</p> <p><i>(For example, information sharing, reporting, planning mechanisms, meetings, advice etc.)</i></p> <p>11.1.2 Are there any <i>potential</i> formal and informal linkages between paralegals/their affiliate organisations and the state legal aid initiatives? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.1.3 Are there any strengths and/or challenges in regard to furthering the cooperation between paralegals/their affiliate organisations and the state legal aid initiatives? If so, describe these.</p> <p><i>(“Challenges” includes any weaknesses, obstacles and threats.)</i></p> <p>11.1.4 What is the general perception of paralegals/their affiliate organisations in regard to the State’s/state legal aid initiatives’ provision of legal aid?</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>11.1.4 What is the State's/the state legal aid body's general perception in regard to the members of the legal profession's provision of legal aid?</p> <p>11.1.5 If this is not already covered, describe any lessons learned in regard to linkages between the state legal aid initiatives and the legal profession.</p> <p><b>11.2 Paralegals</b> 11.2.1 Describe <i>existing</i> formal and informal linkages between the state legal aid initiatives and paralegals/their affiliate organisations.</p> <p>11.2.2 Are there any <i>potential</i> formal and informal linkages between the state legal aid initiatives and paralegals/their affiliate organisations? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.2.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the state legal aid initiatives and paralegals/their affiliate organisations? If so, describe these.</p> <p>11.1.4 What is the State's/the state legal aid body's general perception</p>	<p>sons learned in regard to linkages between the legal profession and the state legal aid initiatives.</p> <p><b>11.2 Paralegals</b> 11.2.1 Give examples of <i>existing</i> formal and informal linkages between the legal profession and paralegals.</p> <p>11.2.2 Are there any <i>potential</i> formal and informal linkages between the legal profession and paralegals? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.2.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the legal profession and paralegals? If so, describe these.</p> <p>11.2.4 What is the legal profession's general perception in regard to the paralegals' provision of legal aid?</p> <p>11.2.5 If this is not already covered, describe any lessons learned in regard to linkages between the legal profession and paralegals.</p> <p><b>11.3 Other legal aid service providers</b> 11.3.1 Does the legal pro-</p>	<p>11.1.5 If this is not already covered, describe any lessons learned in regard to linkages between paralegals/their affiliate organisations and the state legal aid initiatives.</p> <p><b>11.2 The legal profession</b> 11.2.1 Describe <i>existing</i> formal and informal linkages between paralegals/their affiliate organisations and members of the legal profession.</p> <p><i>(This includes any linkages with a legal society/bar association and individual members.)</i></p> <p>11.2.2 Are there any <i>potential</i> formal and informal linkages between paralegals/their affiliate organisations and the legal profession? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.2.3 Are there any strengths and/or challenges in regard to furthering the cooperation between paralegals/their affiliate organisations and the legal profession? If so, describe these.</p> <p>11.2.4 What is the general perception of paralegals/their affiliate organisations in regard to the members of the legal profession's provision of legal aid?</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>in regard to the paralegals' provision of legal aid?</p> <p>11.2.5 If this is not already covered, describe any lessons learned in regard to linkages between the state legal aid initiatives and paralegals/their affiliate organisations.</p> <p><b>11.3 Other legal aid service providers</b></p> <p>11.3.1 Describe <i>existing</i> formal or informal linkages between the state legal aid initiatives and other legal aid service providers? If so, describe these.</p> <p><i>(For example, legal clinics operated by universities, institutions or specialised NGO's.)</i></p> <p>11.3.2 Are there any <i>potential</i> formal and informal linkages between the state legal aid initiatives and other legal aid service providers? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.3.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the state legal aid initiatives and other legal aid service providers? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.3.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the state legal aid initiatives and other legal aid service providers? If so, describe these.</p>	<p>profession have any <i>existing</i> formal or informal linkages with other legal aid service providers? If so, describe these.</p> <p><i>(For example, legal clinics operated by universities, institutions or specialised NGO's.)</i></p> <p>11.3.2 Are there any <i>potential</i> formal and informal linkages between the legal aid profession and other legal aid service providers? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.3.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the legal profession and other legal aid service providers? If so, describe these.</p> <p>11.3.4 What is the legal profession's general perception in regard to other legal aid service providers' provision of legal aid?</p> <p>11.3.5 If this is not already covered, describe any lessons learned in regard to linkages between the legal profession and other legal aid providers.</p> <p><b>11.4 Other bodies</b></p> <p>11.4.1 Does the legal profession have any <i>existing</i></p>	<p>11.2.5 If this is not already covered, describe any lessons learned in regard to linkages between paralegals/their affiliate organisations and the legal profession.</p> <p><b>11.3 Other legal aid service providers</b></p> <p>11.3.1 Do paralegals/their affiliate organisations have any <i>existing</i> formal or informal linkages with other legal aid service providers? If so, describe these.</p> <p><i>(For example, legal clinics operated by universities, institutions or specialised NGO's.)</i></p> <p>11.3.2 Are there any <i>potential</i> formal and informal linkages between paralegals/their affiliate organisations and other legal aid service providers? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.3.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between paralegals/their affiliate organisations and other legal aid providers? If so, describe these.</p> <p>11.3.4 What is the general</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>11.3.4 What is the State's/the state legal aid body's general perception in regard to other legal aid service providers' provision of legal aid?</p> <p>11.3.5 If this is not already covered, describe any lessons learned in regard to linkages between the state legal aid initiatives and other legal aid providers.</p> <p><b>11.4 Other bodies</b></p> <p>11.4.1 Describe any <i>existing</i> formal or informal linkages between the state legal aid initiatives and other relevant bodies? If so, describe these.</p> <p><i>(For example, courts, the police, international organisations, the media etc.)</i></p> <p>11.4.2 Are there any <i>potential</i> formal and informal linkages between the state legal aid initiatives and other relevant bodies? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.4.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the state legal aid initiatives and other relevant bodies? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p>	<p>formal or informal linkages with other relevant bodies? If so, describe these.</p> <p><i>(For example, courts, the police, international organisations, the media etc.)</i></p> <p>11.4.2 Are there any <i>potential</i> formal and informal linkages between the legal profession and other relevant bodies? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.4.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between the legal profession and other relevant bodies? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.4.4 If this is not already covered, describe any lessons learned in regard to linkages between the legal profession and other relevant bodies.</p>	<p>perception of paralegals/their affiliate organisations in regard to other legal aid service providers' provision of legal aid?</p> <p>11.3.5 If this is not already covered, describe any lessons learned in regard to linkages between paralegals/their affiliate organisations and other legal aid providers.</p> <p><b>11.4 Other bodies</b></p> <p>11.4.1 Describe any <i>existing</i> formal or informal linkages between paralegals/their affiliate organisations and other relevant bodies? If so, describe these.</p> <p><i>(For example, courts, the police, international organisations, the media etc.)</i></p> <p>11.4.2 Are there any <i>potential</i> formal and informal linkages between paralegals/their affiliate organisations and other relevant bodies? If so, describe these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.4.3 Are there any strengths and/or challenges in regard to the current cooperation or in regard to furthering the cooperation between paralegals/their affiliate organisations and other relevant bodies? If so, describe</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><i>have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.4.4 If this is not already covered, describe any lessons learned in regard to linkages between the state legal aid initiatives and other relevant bodies.</p>		<p>these.</p> <p><i>(For example, linkages that have been discussed by key stakeholders or that in your opinion as an expert would strengthen the provision of access to justice.)</i></p> <p>11.4.4 If this is not already covered, describe any lessons learned in regard to linkages between paralegals/their affiliate organisations and other relevant bodies.</p>
<p><b>12. OTHER STRENGTHS, CHALLENGES AND LESSONS LEARNED</b></p> <p><i>(When answering this section, the main focus shall be on the issues covered in this questionnaire, i.e. strengths and challenges in regard to i) regulation and policies, ii) organisation, categories and monitoring mechanisms, iii) numbers and geographical coverage, iv) the legal aid provided, v) training activities, vi) accessibility, vii) documentation, viii) amount of legal aid provided and impact, ix) and funding/resource mobilisation. Notably, “challenges” includes any weaknesses, obstacles and threats.)</i></p> <p><b>12.1 Strengths</b> Describe the main strengths of the State’s provision of legal aid.</p> <p><b>12.2 Challenges</b> 12.2.1 Describe the main internal challenges that the State faces in regard to providing effective legal aid.</p> <p><i>(By “internal” is meant within the State itself, for example lack</i></p>	<p><b>12. OTHER STRENGTHS, CHALLENGES AND LESSONS LEARNED</b></p> <p><i>(When answering this section, the main focus shall be on the issues covered in this questionnaire, i.e. strengths, challenges and lessons learned in regard to i) regulation and policies, ii) organisation, categories and monitoring mechanisms, iii) numbers and geographical coverage, iv) the legal aid provided, v) training activities, vi) accessibility, vii) documentation, viii) amount of legal aid provided and impact, ix) and funding/resource mobilisation. Notably, “challenges” includes any weaknesses, obstacles and threats.)</i></p> <p><b>12.1 Strengths</b> Describe the main strengths of the legal profession’s provision of legal aid.</p> <p><i>(For example, a high level of legal expertise, the ability to represent individuals in court etc.)</i></p> <p><b>12.2 Challenges</b> 12.2.1 Describe the main</p>	<p><b>12. OTHER STRENGTHS, CHALLENGES AND LESSONS LEARNED</b></p> <p><i>(When answering this section, the main focus shall be on the issues covered in this questionnaire, i.e. strengths and challenges in regard to i) regulation and policies, ii) organisation, categories and monitoring mechanisms, iii) numbers and geographical coverage, iv) the legal aid provided, v) training activities, vi) accessibility, vii) documentation, viii) amount of legal aid provided and impact, ix) and funding/resource mobilisation. Notably, “challenges” includes any weaknesses, obstacles and threats.)</i></p> <p><b>12.1 Strengths</b> Describe the main strengths of paralegals’ provision of legal aid.</p> <p><b>12.2 Challenges</b> 12.2.1 Describe the main internal challenges that paralegals/their affiliate organisations face in regard to providing effective legal aid.</p>



<p><i>of coordination, bureaucracy, diversion of funds etc.)</i></p> <p>12.2.2 Describe the main <i>external</i> challenges that the State faces in regard to providing effective legal aid.</p> <p><i>(“External” relates to the environment in which the State operates, for example lack of political will).</i></p> <p><b>12.3 Lessons learned</b> If not already covered, describe the main lessons learned in regard to the State’s provision of legal aid.</p>	<p><i>internal</i> challenges that the legal profession faces in regard to providing effective legal aid.</p> <p><i>(By “internal” is meant within the legal profession itself, for example lack of a coordinating body within the legal profession or lack of will among members to carry out pro bono work.)</i></p> <p>12.2.2 Describe the main <i>external</i> challenges that the legal profession faces in regard to providing effective legal aid.</p> <p><i>(“External” relates to the environment in which the organisation operates, for example weaknesses in the justice system, lack of legislation laying down requirements for legal aid work or lack of exterior funding.)</i></p> <p><b>12.3 Lessons learned</b> If not already covered, describe the main lessons learned in regard to the legal profession’s provision of legal aid.</p>	<p><i>(By “internal” is meant within the specific organisation of paralegals themselves, for example lack of internal coordination or training, disciplinary issues etc.)</i></p> <p>12.2.2 Describe the main <i>external</i> challenges that paralegals/their affiliate organisations face in regard to providing effective legal aid.</p> <p><i>(“External” relates to the environment in which paralegals/their affiliate organisations operate, for example lack of a main body organising the work, inability to go to court under national law or lack of legal recognition or/and exterior funding, security issues, cultural attitudes etc.)</i></p> <p><b>12.3 Lessons learned</b> If not already covered, describe the main lessons learned in regard to paralegals’ provision of legal aid.</p>
<p><b>13. ADDITIONAL INFORMATION</b></p> <p>If there is any additional information that should be added to this study, please feel free to provide this information here.</p>	<p><b>13. ADDITIONAL INFORMATION</b></p> <p>If there is any additional information that should be added to this study, please feel free to provide this information here.</p>	<p><b>13. ADDITIONAL INFORMATION</b></p> <p>If there is any additional information that should be added to this study, please feel free to provide this information here.</p>

Appendix 2: The Lilongwe Declaration on Accessing Legal Aid on the Criminal Justice System in Africa

**The Lilongwe Declaration  
on Accessing Legal Aid  
in the Criminal Justice System in Africa**

Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and  
other Service Providers in Africa

Lilongwe, Malawi  
November 22-24, 2004

*128 delegates from 26 countries including 21 African countries met between 22-24 November 2004 in Lilongwe, Malawi, to discuss legal aid services in the criminal justice systems in Africa. Ministers of State, judges, lawyers, prison commissioners, academics, international, regional, and national non-governmental organizations attended the conference. The three days of deliberations produced the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (set forth below), which was adopted by consensus at the closure of the Conference with the request that it be forwarded to national governments, the African Union Commission on Human and Peoples' Rights, the African Union Commission, and the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok in April, 2005, and publicized to national and regional legal aid networks.*

**Preamble**

Bearing in mind that access to justice depends on the enforcement of rights to due process, to a fair hearing, and to legal representation;

Recognising that the vast majority of people affected by the criminal justice system are poor and have no resources with which to protect their rights;

Further recognising that the vast majority of ordinary people in Africa, especially in post-conflict societies where there is no functioning criminal justice system, do not have access to legal aid or to the courts and that the principle of equal legal representation and access to the resources and protections of the criminal justice system simply does not exist as it applies to the vast majority of persons affected by the criminal justice system;

Noting that legal advice and assistance in police stations and prisons are absent. Noting also that many thousands of suspects and prisoners are detained for lengthy periods of time in overcrowded police cells and in inhumane conditions in over-crowded prisons;

Further noting that prolonged incarceration of suspects and prisoners without providing access to legal aid or to the courts violates basic principles of international law and human rights, and that legal aid to suspects and prisoners has the potential to reduce the length of time suspects are held in police stations, congestion in the courts, and prison populations, thereby improving conditions of confinement and reducing the costs of criminal justice administration and incarceration;

Recalling the Resolution of the African Charter of Fundamental Rights of Prisoners adopted by the African Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice held at Addis Ababa, Ethiopia in March, 2004 and its recommendations for its adoption by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April, 2005;

Mindful that the challenge of providing legal aid and assistance to ordinary people will require the participation of a variety of legal services providers and partnerships with a range of stakeholders and require the creation of innovative legal aid mechanisms;

Noting the Kampala Declaration on Prison Conditions 1996, the Kadoma Declaration on Community Service Orders in Africa 1997, the Abuja Declaration on Alternatives to Imprisonment 2002 and the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002; and mindful that similar measures are needed with respect to the provision of legal aid to prisoners;

Noting with satisfaction the resolutions passed by the African Commission on Human and Peoples' Rights (notably: the Resolution on the Right of Recourse and Fair Trial 1992, the Resolution on the Right to a Fair Trial and Legal Assistance in Africa 1999) and, in particular, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2001;

Commending the practical steps that have been taken to implement these standards through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention;

Commending also the Recommendation of the African Regional Preparatory Meeting held at Addis Ababa in March 2004 that the African Region should prepare and present an African Common Position to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April, 2005, and that the African Union Commission has agreed to prepare and present that Common Position to the Congress;

Welcoming the practical measures that have been taken by the governments and legal aid establishments in African countries to apply these standards in their national jurisdictions; while emphasizing that notwithstanding these measures, there are still considerable shortcomings in the provision of legal aid to ordinary people, which are aggravated by shortages of personnel and resources;

Noting with satisfaction the growing openness of governments to forging partnerships with nongovernmental organizations, civil society, and the international community in developing legal aid programs for ordinary people that will enable increasing numbers of people in Africa, especially in rural areas, to have access to justice;

Commending also the recommendations of the African Regional Preparatory Meeting for the Eleventh United Nations Conference for the introduction and strengthening of restorative justice in the criminal justice system;

*The participants of the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa, held in Lilongwe, Malawi, between 22 and 24 November 2004, hereby declare the importance of:*

### ***1. Recognising and supporting the right to legal aid in criminal justice***

All governments have the primary responsibility to recognise and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system. As part of this responsibility, governments are encouraged to adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice. Legal aid should be defined as broadly as possible to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academic institutions.

### ***2. Sensitizing all criminal justice stakeholders***

Government officials, including police and prison administrators, judges, lawyers, and prosecutors, should be made aware of the crucial role that legal aid plays in the development and maintenance of a just and fair criminal justice system. Since those in control of government criminal justice agencies control access to detainees and to prisoners, they should ensure that the right to legal aid is fully implemented. Government officials are encouraged to allow legal aid to be provided at police stations, in pre-trial detention facilities, in courts, and in prisons. Governments should also sensitize criminal justice system administrators to the societal benefits of providing effective legal aid and the use of alternatives to imprisonment. These benefits include elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.

### ***3. Providing legal aid at all stages of the criminal justice process***

A legal aid program should include legal assistance at all stages of the criminal process including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected. Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited paralegal, or legal assistant. Governments should ensure that legal aid programs provide special attention to persons who are detained without charge, or beyond the expiration of their sentences, or who have been held in detention or in prison without access to the courts. Special attention should be given to women and other vulnerable groups,

such as children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, refugees, internally displaced persons, and foreign nationals.

#### ***4. Recognising the right to redress for violations of human rights***

Human rights are enforced when government officials know that they will be held accountable for violations of the law and of basic human rights. Persons who are abused or injured by law enforcement officials, or who are not afforded proper recognition of their human rights, should have access to the courts and legal representation to redress their injuries and grievances. Governments should provide legal aid to persons who seek compensation for injuries suffered as the result of misconduct by officials and employees of criminal justice systems. This does not exclude other stakeholders from providing legal aid in such cases.

#### ***5. Recognising the role of non-formal means of conflict resolution***

Traditional and community-based alternatives to formal criminal processes have the potential to resolve disputes without acrimony and to restore social cohesion within the community. These mechanisms also have the potential to reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity. All stakeholders should recognise the significance of such diversionary measures to the administration of a community-based, victim-oriented criminal justice system and should provide support for such mechanisms provided that they conform to human rights norms.

#### ***6. Diversifying legal aid delivery systems***

Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. In carrying out its responsibility to provide equitable access to justice for poor and vulnerable people, there are a variety of service delivery options that can be considered. These include government funded public defender offices, judicare programmes, justice centres, law clinics - as well as partnerships with civil society and faith-based organizations. Whatever options are chosen, they should be structured and funded in a way that preserves their independence and commitment to those populations most in need. Appropriate coordinating mechanisms should be established.

#### ***7. Diversifying legal aid service providers***

It has all too often been observed that there are not enough lawyers in African countries to provide the legal aid services required by the hundreds of thousands of persons who are affected by criminal justice systems. It is also widely recognised that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students, paralegals, and legal assistants. These paralegals and legal assistants can provide access to the justice system for persons subjected to it, assist criminal defendants, and provide knowledge and training to those affected by the system that will enable rights to be effectively asserted. An ef-

fective legal aid system should employ complementary legal and law-related services by paralegals and legal assistants.

### ***8. Encouraging pro bono provision of legal aid by lawyers***

It is universally recognised that lawyers are officers of the court and have a duty to see that justice systems operate fairly and equitably. By involving a broad spectrum of the private bar in the provision of legal aid, such services will be recognised as an important duty of the legal profession. The organized bar should provide substantial moral, professional and logistical support to those providing legal aid. Where a bar association, licensing agency, or government has the option of making pro bono provision of legal aid mandatory, this step should be taken. In countries in which a mandatory pro bono requirement cannot be imposed, members of the legal profession should be strongly encouraged to provide pro bono legal aid services.

### ***9. Guaranteeing sustainability of legal aid***

Legal aid services in many African countries are donor funded and may be terminated at any time. For this reason, there is need for sustainability. Sustainability includes: funding, the provision of professional services, establishment of infrastructure, and the ability to satisfy the needs of the relevant community in the long term. Appropriate government, private sector and other funding, and community ownership arrangements should be established in order to ensure sustainability of legal aid in every country.

### ***10. Encouraging legal literacy***

Ignorance about the law, human rights, and the criminal justice system is a major problem in many African countries. People who do not know their legal rights are unable to enforce them and are subject to abuse in the criminal justice system. Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, women, and the urban and rural poor.

## **Lilongwe Plan of Action for Accessing Legal Aid in the Criminal Justice System in Africa**

*The participants recommend the following measures as forming part of a Plan of Action to implement the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice system in Africa. The document is addressed to governments and criminal justice practitioners, criminologists, academics, development partners as well as non-governmental organizations, community based organizations and faith based groups active in this area. It is meant to be a source of inspiration for concrete actions.*

## **LEGAL AID FRAMEWORK**

### ***Institution building***

Governments should introduce measures to:

- Establish a legal aid institution that is independent of government justice departments e.g.: legal aid board/commission that is accountable to parliament.
- Diversify legal aid service providers, adopting an inclusive approach, and enter into agreements with the Law Society as well as with university law clinics, nongovernmental organizations (NGOs), community-based organizations (CBOs) and faith-based groups to provide legal aid services.
- Encourage lawyers to provide pro bono legal aid services as an ethical duty.
- Establish a legal aid fund to administer public defender schemes, to support university law clinics; and to sponsor clusters of NGOs/CBOs and others to provide legal aid services throughout the country, especially in the rural areas.
- Agree minimum quality standards for legal aid services and clarify the role of paralegals and other service providers by:
  - developing standardized training programmes
  - monitoring and evaluating the work of paralegals and other service providers
  - requiring all paralegals operating in the criminal justice system to submit to a code of conduct
  - establishing effective referral mechanisms to lawyers for all these service providers.

### ***Public awareness***

Governments should introduce measures to:

- Incorporate human rights and ‘Rule of Law’ topics in national educational curricula in accordance with the requirements of the United Nations Decade of Human Rights Education.
- Develop a national media campaign focusing on legal literacy in consultation with civil society organizations and media groups.
- Sensitise the public and justice agencies on the broadened definition of legal aid and the role all service providers have to play (through TV, radio, the printed media, seminars and workshops).
- Institute one day a year as ‘Legal Aid Day’

### ***Legislation***

Governments should:

- Enact legislation to promote the right of everyone to basic legal advice, assistance and education, especially for victims of crime and vulnerable groups.
- Enact legislation to establish an independent national legal aid institution accountable to Parliament and protected from executive interference.
- Enact legislation to ensure the provision of legal aid at all stages of the criminal justice process.
- Enact legislation to recognize the role of non-lawyers and paralegals and to clarify their duties.

- Enact legislation to recognize customary law and the role non State justice fora can play in appropriate cases (i.e. where cases are diverted from the formal criminal justice process)

### ***Sustainability***

Governments should introduce measures to:

- Diversify the funding-base of legal aid institutions that should be primarily funded by governments, to include endowment funds by donors, companies and communities.
- Identify fiscal mechanisms for channelling funds to the legal aid fund, such as:
  - recovering costs in civil legal aid cases where the legal aid litigant has been awarded costs in a matter and channelling such recovered costs into the legal aid fund
  - taxing any award made in civil legal aid cases and channelling the moneys paid into the legal aid fund
  - fixing a percentage of the State's criminal justice budget to be allocated to legal aid services.
- Identify incentives for lawyers to work in rural areas (e.g. tax exemptions / reductions).
- Require all law students to participate in a legal aid clinic or other legal aid community service scheme as part of their professional or national service requirement.
- Request the Law Society to organize regular circuits of lawyers around the country to provide free legal advice and assistance.
- Promote partnerships with NGOs, CBOs, faith-based groups and, where appropriate, local councils.

## **LEGAL AID IN ACTION**

### **In the police station**

Governments should introduce measures to:

- Provide legal and/or paralegal services in police stations in consultation with the Police Service, the Law Society, university law clinics and NGOs. These services might include:
  - providing general advice and assistance at the police station to victims of crime as well as accused persons
  - visiting police cells or lock-ups (cachots)
  - monitoring custody time limits in the police station after which a person must be produced before the court
  - attending at police interview
  - screening juveniles for possible diversion programmes
  - contacting / tracing parents / guardians / sureties
  - assisting with bail from the police station.
- Require the police to co-operate with service providers and advertise these services and how to access them in each police station.



## **At court**

Governments should introduce measures to:

- Draw up rosters for lawyers to attend court on fixed days in consultation with the Law Society and provide services free of charge.
- Encourage the judiciary to take a more pro-active role in ensuring the defendant is provided with legal aid and able to put his/her case where the person is unrepresented because of indigency.
- Promote the wider use of alternative dispute resolution and diversion of criminal cases and encourage the judiciary to consider such options as a first step in all matters.
- Encourage non-lawyers, paralegals and victim support agencies to provide basic advice and assistance and to conduct regular observations of trial proceedings.
- Conduct regular case reviews to clear case backlogs, petty cases and refer/divert appropriate cases for mediation; and convene regular meetings of all criminal justice agencies to find local solutions to local problems.

## **In prison**

Governments should introduce measures to ensure that:

- Magistrates/judges screen the remand caseload on a regular basis to make sure that people are remanded lawfully, their cases are being expedited, and that they are held appropriately.
- Prison officers, judicial officers, lawyers, paralegals and non-lawyers conduct periodic census to determine who is in prison and whether they are there as a first rather than a last resort.
- Custody time limits are enacted.
- Paralegal services are established in prisons. Services should include:
  - legal education of prisoners so as to allow them to understand the law, process and apply this learning in their own case
  - assistance with bail and the identification of potential sureties
  - assistance with appeals
  - special assistance to vulnerable groups, especially to women, women with babies, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.
- Access to prisons for responsible NGOs, CBOs and faith-based groups is not subject to unnecessary bureaucratic obstacles.

## **In the village**

Governments should introduce measures to:

- Encourage NGOs, CBOs and faith-based groups to train local leaders on the law and constitution and in particular the rights of women and children; and in mediation and other alternative dispute resolution (ADR) procedures.
- Establish referral mechanisms between the court and village hearings. Such mechanisms might include:
  - diversion from the court to the village for the offender to make an apology or engage in a victim-offender mediation;

- referral from the court to the village to make restitution and/or offer compensation
- appeals from the village to the court.
- Establish a Chief's Council, or similar body of traditional leaders, in order to provide greater consistency in traditional approaches to justice.
- Record traditional proceedings and provide village hearings ('courts') with the tools for documenting proceedings.
- Provide a voice for women in traditional proceedings.
- Include customary law in the training of lawyers.

### **In post-conflict societies**

Governments should introduce measures to:

- Recruit judges, prosecutors, defence lawyers, police and prison officers in peacekeeping operations and programmes of national reconstruction.
- Include the services of national NGOs, CBOs and faith-based groups in the reestablishment of the criminal justice system especially where the need for speed is paramount.
- Consult with traditional, religious and community leaders and identify common values on which peace-keeping should be based.

Appendix 3: Resolution 100(XXX) 06 of the African Commission on Human and Peoples' Rights Resolution on the Adoption of the Lilongwe Declaration

**Resolution 100(XXX) 06 of the African Commission on Human and Peoples' Rights Resolution on the Adoption of the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System, 2006**

The African Commission on Human and Peoples' Rights meeting at its 40th Ordinary Session, held in Banjul, The Gambia, from 15 - 29 November 2006;

*Recalling* its mandate under Article 45(b) of the African Charter on Human and Peoples' Rights (the Charter) "to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states may base their legislation";

*Recalling* Articles 7 and 26 of the Charter, which guarantee the right to a fair trial and legal counsel before independent courts;

*Recalling* its Resolution on the *Right to Recourse and Fair Trial*, adopted at its 11<sup>th</sup> Ordinary Session in Tunis, Tunisia in 1992;

*Recalling* further its resolution on the *Respect and Strengthening of the Independence of the Judiciary*, adopted at its 19<sup>th</sup> Ordinary Session in Ouagadougou, Burkina Faso in 1996;

*Recognising* its resolution on the *Right to Fair Trial and Legal Assistance in Africa*, adopted at its 26<sup>th</sup> Ordinary Session in Rwanda in 1999;

*Recalling* the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa*, adopted in 2001;

*Concerned* with the continued lack of legal aid in most parts of Africa and its adverse impact on the right to access to justice in Africa;

SUPPORTS the *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa*, adopted by the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers, Lilongwe, Malawi, November 2004;

URGES all stakeholders to make every effort to make these declarations widely known in Africa and invites State Parties to the Charter to take into account the principles in the Declaration when formulating policies and domestic legislation;

APPEALS to Member States to take all necessary measures in order to uphold their obligations under the Charter and other international instruments, including the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* providing for the right to fair trial and access to justice;

CALLS on Members States to extend their full collaboration with the mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa in monitoring prisons and conditions of detention in Africa.

*Done in Banjul, The Gambia, 29 November 2006*

Appendix 4: The Kyiv Declaration on the Right to Legal Aid

**The Kyiv Declaration on the Right to Legal Aid**  
**Conference on the Protection and Promotion of Human Rights through**  
**Provision of Legal Services**  
**Best Practices from Africa, Asia and Eastern Europe**  
**Kyiv, Ukraine**  
**27-30 March 2007**

115 delegates from twenty-five countries, among them Government representatives, legal aid practitioners, academics, and representatives from human rights, legal advocacy, and legal and justice sector reform organisations, met in Kyiv, Ukraine, between 27-30 March, 2007, to discuss and identify best practices in the protection and promotion of human rights through the provision of legal services. The Kyiv Declaration on the Right to Legal Aid, set forth below, was adopted by consensus at the conclusion of the conference, with a request that it be forwarded to national governments, to legal aid bodies and organisations, public and private, at national level, and to relevant national and multilateral bodies engaged in developing or implementing policies and programmes addressing legal aid, access to justice and rule of law.

**Preamble**

*Recalling* that governments have the primary responsibility to recognise and give effect to international human rights standards;

*Recognising* that many governments fall short of these standards;

*Bearing in mind* that access to justice in criminal, civil, administrative and other fields of law depends on the recognition of and compliance with international human rights standards;

*Noting* that in many countries the government and law enforcement agencies are feared and mistrusted;

*Recognising* that people in the legal systems of many states are denied access to justice and are ignorant about their human and legal rights and procedures;

*Considering* that a legal aid system is a public good that is the common property of all members of society, that the promise of justice for all can only be realised when its rules and operation are understandable and accessible to all, and that the provision of legal aid is a vital element in this regard;

*Aware* that the provision of legal aid will promote access to justice;

*Noting* that legal aid achieves societal benefits including the elimination of unnecessary detention, speedy processing of cases, fair and impartial trials and dispute resolution, the reduction of prison populations, the lowering of appeal rates, decreased reliance on a range of social services, the advancement of social and economic rights, and greater social harmony;

*Understanding* that legal aid encompasses the provision to a person, group or community, by or at the instigation of state or non-state actors, of legal information, edu-

cation, advice, assistance, representation and advocacy and mechanisms for alternative dispute resolution;

*Mindful* of the UN Basic Principles on the Role of Lawyers;

*Welcoming* the practical measures to realise access to justice through the provision of legal aid that have been taken in many countries;

*Respecting* governments' need to ration and allocate available resources according to need, and that each country has its own capabilities and needs when consideration is given to what kind of legal aid systems to employ;

*Noting* the growing incidence of partnerships among governments, nongovernmental organisations, civil society organisations, business corporations and the international community in developing legal aid programs;

*Observing* that in many countries there are not enough lawyers, resources and mechanisms to provide the legal aid services required to ensure access to justice;

*Acknowledging* that traditional and community-based alternatives to formal legal processes have the potential to resolve disputes without acrimony, to restore social cohesion within the community, and to develop self-reliance within communities;

*The Participants of the Conference on the Protection and Promotion of Human Rights through Provision of Legal Services – Best Practices from Africa, Asia and Eastern Europe, Kyiv, Ukraine 27-30 March 2007, hereby declare the importance of:*

### **1. Recognising and supporting the right to legal aid in the justice system**

Legal aid is a right and governments are obliged to implement sustainable, quality controlled, legal aid programs that deliver legal aid services without discrimination to all people in their jurisdictions, subject only to a transparent and reviewable assessment of need, and with special attention to women and vulnerable groups, such as indigent people, children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, asylum seekers, refugees, internally displaced persons, stateless persons, foreign nationals, prisoners, and other persons deprived of their liberty.

### **2. Providing legal aid at all stages of the justice process**

A legal aid program must include legal advice and assistance at all stages of the criminal, civil and administrative process.

### **3. Sensitising all government officials**

Governments are obliged to make public officials aware of the crucial role that legal aid plays in both ensuring access to justice and achieving desirable societal goals, and to educate and train them in procedures necessary to ensure that the right to legal aid is provided at all stages of criminal, civil and administrative proceedings.

### **4. Viewing legal aid as one means of ensuring a justice system that is accessible and available to all**

Governments are obliged to ensure that legal information is available regarding administrative, civil and criminal matters and to this end public servants are obliged to inform and explain substantive and procedural aspects of legal matters to all members of the public.

## **5. Cooperating with other stakeholders and the public**

Governments should establish cooperative arrangements with a wide range of stakeholders – such as non-governmental organisations, community-based organisations, religious and non-religious charitable organisations, professional bodies and associations and academic institutions – and ensure effective public participation in the formulation of legal aid policies, programs and legislation.

## **6. Recognising the right to redress for violations of human rights**

Legal aid should be available to all people without discrimination who seek legal redress for violation of their human rights, including for violations by any organ of state.

## **7. Recognising the role of non-formal means of conflict resolution**

Governments and all stakeholders should recognise the significance of traditional and community-based alternatives to formal legal processes, and should provide support for such mechanisms provided that they conform to human rights norms.

## **8. Diversifying legal aid delivery systems**

Governments should consider a variety of service delivery options such as government funded public defender offices, judicare programmes, justice centres, law clinics, as well as partnerships with civil society and faith-based organisations.

## **9. Diversifying legal aid service providers**

Governments should consider appropriate alternatives to the use of lawyers through the provision of complementary legal and related services by non-lawyers such as lay advocates, law students, paralegals, legal assistants, and other service providers.

## **10. Encouraging pro bono provision of legal aid by lawyers**

Support for and involvement in the provision of legal aid should be recognised as an important duty of the legal profession which should, through the organised bar and law schools, provide moral, ethical, professional and logistical support to those providing legal aid, especially through pro bono legal aid services. Governments should promote an enabling environment for private practitioners to provide pro bono services and ensure competitive rates of remuneration.

## **11. Guaranteeing sustainability of legal aid**

Governments should make appropriate fiscal, budgetary and operational arrangements for a sustainable legal aid program, including for the provision of a broad range of legal aid services, establishment of infrastructure, an independent, cost-effective, professional and quality driven case management system, and with the ability to satisfy the needs of the community in the long term.

## **12. Promoting legal literacy through legal education and advocacy**

Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, and the urban and rural poor. Governments are encouraged to ensure that human rights and legal documents are translated and made widely available. International and regional bodies are encouraged to make available human rights documentation in relevant languages.

### **13. Ensuring access to justice in programmes of assistance to justice systems in developing and transitional countries**

Governments and multilateral donors should ensure that programmes of assistance to justice systems in developing and transitional countries include the provision of legal aid information and other measures to further access to justice, particularly among the poor and vulnerable, in a sustainable way.

### **14. Guaranteeing a secure environment for the provision of legal aid**

Governments should ensure that there is an enabling environment for the provision of legal aid services, including protection for lawyers and all other service providers from harassment, intimidation and other threats to their safety and security.