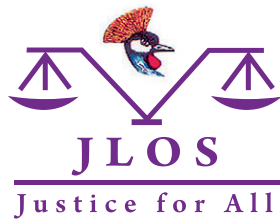


POLICY BRIEF

THE NEED FOR LEGAL AID IN UGANDA



Prepared by By

JUSTICE CENTRES UGANDA

APRIL
2015

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Operational Definitions

Alternative Dispute Resolution (ADR): Alternative means of settling conflicts other than through court processes.

Contact with the Law: This involves the participation of persons within the justice system mainly as witnesses or victims because their rights have been violated.

Conflict with the Law: This is when persons come into contact with the justice system because they are suspected or accused of committing an offence. It connotes involvement in breaching a law.

Formal justice system: Mechanisms for dispute resolution and enforcement that involve the state and rely on written law. They include courts and other public tribunals.

Informal justice system: Mechanisms for dispute resolution that originate within the community and rely on traditional or customary norms and principles.

Paralegal: A person who has received some form of legal training either from the Law Development Centre or through other means. Paralegals are not lawyers and whereas they can provide legal advice and other forms of legal aid, they cannot represent clients in court.

Acronyms

ACHPR	-	African Charter on Human and Peoples Rights
ACRWC	-	African Charter on the Rights and Welfare of the Child
ADR	-	Alternative Dispute Resolution
CBO	-	Community Based Organisations
CDO	-	Community Development Officers
CEDAW	-	Convention on Elimination of all Forms of Discrimination against Women
CFPU	-	Child and Family Protection Unit
CLO	-	Community Liaison Office
CRC	-	Convention on the Rights of the Child
CSO	-	Civil Society Organisation
FCC	-	Family and Children Court
FIDA	-	Uganda Association of Women Lawyers
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
JCU	-	Justice Centres Uganda
JLOS	-	Justice Law and Order Sector
LAC	-	Legal Aid Clinic
LCCs	-	Local Council Courts
LDC	-	Law Development Centre
LASA	-	Legal Aid South Africa
LASPNET	-	Legal Aid Service Providers Network
LAW-U	-	Law and Advocacy for Women in Uganda
M&E	-	Monitoring and Evaluation

- MoGLSD - Ministry of Gender, Labour and Social Development
- NGO - Non Governmental Organisation
- PLA - Platform for Labour Action
- UDHR - Universal Declaration of Human Rights
- UHRC - Uganda Human Rights Commission

A. What is Legal Aid?

Introduction

Legal aid is the provision of free or subsidised legal services to mainly poor and vulnerable people who cannot afford the services of paid lawyers.¹ Legal aid is provided as a means to enhance people's access to justice. Access to justice is the mechanism through which individuals, groups and communities realize their human rights. Human rights are meaningless without access to and availability of the justice system because it is through access that these rights are guaranteed and protected under the law. As such, legal aid enables all persons, particularly the poor and vulnerable, to access their right to justice as well as other human rights.

How does the need for Legal Aid come about?

The need for legal aid is created by the inability of persons to have all the required legal knowledge and to know all the procedures and to represent themselves in any legal matter impacting on them, and in which they have to protect or defend the violation of their rights. Factors such as poverty, ignorance of the law, armed conflict, disability or other vulnerability or marginalisation should not be a barrier to people progressively realizing their rights which are protected by the Constitution of Uganda². Furthermore, the inability to afford legal representation should never diminish a person's right to access justice.

The lack of an effective legal aid system denies financially disadvantaged and other vulnerable persons the right to enforce their rights because they cannot afford the high legal costs. Access to justice, through legal aid, is therefore crucial to ensure that all persons enjoy the full range of their human rights which in turn contributes to recognizing the dignity of every human being.

Legal aid can be provided in various forms including legal advice, assistance or representation, legal information and education, prison/police visits as well as Alternative Dispute Resolution (ADR). It can be provided by advocates, lawyers, paralegals, legal assistants, social workers, academicians, community-based volunteers, customary leaders, faith-based organisations, professional associations, women or youth groups, work-based associations and various informal providers.³

1. Comparative report by the Danish Institute of Human Rights -Access to Justice and Legal Aid in East Africa at page 7

2. The 1995 Constitution of Uganda, Chapter 4

3. Muganzi, Richard Nsumba. "The provision of legal aid services by state-funded mechanisms in Uganda: Challenges and Opportunities."A Presentation Paper at the 2nd National Legal Aid Conference

B. Why is Legal Aid Important?

Legal Aid and Human Rights

Access to justice is an essential element in a human rights observing society where values such as equality of persons, respect for human dignity and non-discrimination are paramount.⁴ Whatever rights and responsibilities exist, they are worthless unless it is possible for all to access the law and the courts in order to ensure that those rights and responsibilities are fully observed. For instance, if a person cannot afford legal representation, this can undermine their right to a fair trial, a right which is protected under Uganda's Constitution. Therefore, access to justice is critical to make human rights and freedoms a reality.

Legal Aid and Access to Justice

Legal aid is important because it affords a means of accessing justice when the need arises for those who cannot afford to pay for a legal service. Access to justice is facilitated through knowledge of legal rights and obligations, and the ability to claim these rights through existing justice delivery institutions. Justice delivery institutions can be both formal through courts and other quasi tribunals, as well as informal through other dispute resolution mechanisms such as traditional and cultural courts or settings, and other Alternative Dispute Resolution mechanisms provided by a whole range of institutions. Legal aid covers Legal representation, Alternative dispute resolution, Legal advice and assistance and Legal information. Legal aid ensures that the right of access to a court is meaningful and practical, not theoretical and that people in need can overcome obstacles to justice. It can be adjusted to suit people's needs or particular areas of the law.

The importance of legal aid is acknowledged within the United Nations system and was portrayed by the UN Special Rapporteur on the independence of Judges and Lawyers Gabriella Knaul whilst presenting her report in May 2013 to the UN Human Rights Council where she states:

“Legal aid is an essential precondition for the exercise and enjoyment of a number of human rights, including the rights to a fair trial and to an effective remedy. It represents an important safeguard that contributes to ensuring the fairness and public trust in the administration of justice.”⁵

Legal aid is useful for the following reasons:

- Guarantees and protects human rights and freedoms as provided for in the international Conventions and our national laws.
- Promotes the Rule of law.

4. UDHR, Article 7 & 8.

5. <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/>

- Helps to quicken the process of resolving civil and simple criminal matters either through the formal or informal justice systems.
- Reduces the escalation of disputes into more serious crimes.
- Supports individuals and communities that are in contact or conflict with the law to access necessary assistance either directly or through referrals.
- Minimises the possibility of unwarranted re-occurrence of conflict.
- Increases efficiency of the courts and the justice system by amicably resolving disputes through Alternative Dispute Resolution (ADR) mechanisms.
- Increases public confidence in the Judicial system.
- Lowers cost alternatives to courts for resolution of legal issues at an early stage.
- Empowers communities by raising awareness through training on law and human rights.
- Reduces case backlog in cases where people are too poor to litigate their cases in court.
- Helps to decongest prisons especially when it comes to minor offences.
- Helps contribute to the economy by supporting the poor and youth when they have legal problems which distract them from income generating activities such as agriculture and petty trade.

C. Legal Aid in International Law

There are several international instruments that oblige states to ensure effective delivery of legal aid to those in need. These include;

- The Universal Declaration of Human Rights (UDHR) ⁶provides that “everyone charged with a penal offence shall be granted all the guarantees necessary for his or her defence”.
- International Covenant on Civil and Political Rights (ICCPR), signed by Uganda on 21 June 1995, guarantees individuals the right to legal assistance without payment if a person does not have sufficient means to pay for it.⁷General Comment No. 32 issued by the Human Rights Committee under the ICCPR in its discussion of Article 14 states that in capital offences, the accused must be effectively assisted by a lawyer at all stages of the proceedings.⁸
- The Convention on the Rights of the Child (CRC) ratified by Uganda on 17th August 1990 provides for and protects the right to legal or other appropriate assistance for children charged with offences.⁹
- The Convention on the Elimination of All form of Discrimination against Women (CEDAW) ratified by Uganda on 22nd July 1985, declares it a duty of the state to establish legal protection of the rights of women on an equal basis with men and ensure through competent tribunals and other public institutions the effective protection of women against any act of discrimination.¹⁰

6. UDHR Article 11(1)

7. ICCPR Article 14 (3) (d)

8. UN.DOC.CCPR/GC/32(2007)

9. CRC Article 40

10. CEDAW Article 2(c)

- The African Charter on Human and Peoples' Rights (ACHPR) ratified by Uganda on 10 May 1986 provides for the right to defence, including the right to be defended by counsel of one's choice.¹¹
- The African Charter on the Rights and Welfare of the Child (ACRWC) ratified by Uganda on 17th August 1994 provides that every child accused of infringing the law shall be afforded legal and other appropriate assistance in the preparation and presentation of their defence.¹²
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) ratified by Uganda on 22nd July 2010 requires States Parties to take appropriate measures to ensure effective access by women to judicial and legal services, including legal aid.¹³
- The African Youth Charter 2006 stipulates the right of every young person (accused and convicted) to a lawyer.¹⁴

From the above, it is clear that legal aid is well protected under International law and human rights. Uganda as a party to all the aforementioned instruments is mandated to provide legal aid as a means to enabling persons in contact with the law to access justice and other human rights.

While many instruments seem skewed towards legal aid in criminal justice, it is now conventional law that legal aid is equally important in civil matters.

D. Regional Initiatives on Legal Aid

There have been several initiatives at the regional level, all which point towards a duty by States Parties, including the Government of Uganda to enhance access to justice through legal reforms and provision of legal aid especially for persons in most need.

They include;

- The Kampala Declaration on Prison Conditions 1996¹⁵– which addresses issues concerning prison conditions, remand prisoners and alternative sentencing.
- The Kadoma Declaration¹⁶ on Community Service Orders in Africa 1997 – which recommends the use of community service over custodial sentences to the greatest extent possible.

11. ACHPR Article 7(1)(c)

12. ACRWC Article 17(2)(C)(iii)

13. Maputo Protocol Article 8(a)

14. African Youth Charter Article 18(f)

15. <http://www.penalreform.org/>

16. <http://www.ilo.org>

- The Dakar Declaration¹⁹⁹⁹ on the Right to a fair trial and legal aid in Africa which emphasizes the importance of access to justice as part of a fair trial and places the primary responsibility for ensuring legal aid in criminal cases on the government.¹⁷
- In accordance with the Dakar Declaration, the African Commission adopted the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003¹⁸ which obligates State Parties to ensure that an accused person has a right to legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused if he or she does not have sufficient means to pay for it.¹⁹
- The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, 2004²⁰ which recognises that the majority of people affected by the criminal justice system are poor and have no resources with which to protect their rights. It 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 and urges governments to adopt measures to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable.²¹
- The Abuja Declaration on Alternatives to Imprisonment 2002²² which recommends that prison should be restricted as a last resort in criminal matters.
- The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002²³ which aims to reduce prison population and reintegration of ex prisoners into society.²⁴
- The Kyiv Declaration on the Right to Legal Aid 2007, which recognises that the poor and vulnerable have a right to legal aid and that the state has the primary responsibility of creating legal aid schemes²⁵.

17. Dakar Declaration, Article 1 & 8

18. <http://www.achpr.org>

19. Principle G(a-c)(1-5)

20. *ibid*

21. Lilongwe Declaration, Article 1 & 3

22. <https://www.unodc.org>

23. <http://www.achpr.org>

24. Principle 1 & 3 of the Ouagadougou Declaration

25. Principle 1 & 2 of the Kyiv Declaration

E. Legal Aid in Uganda: Sources and Forms

Legal Sources of Legal Aid in Uganda

The legal sources highlighted above affirm that providing a system of legal aid is a significant part of how Uganda can meet its international and human rights obligations. Ideally, these international obligations should be domesticated nationally through adoption of one key legislation. However in Uganda to date, there is no comprehensive law and policy on legal aid as the right to legal aid is contained in various laws.

The 1995 Constitution of the Republic of Uganda clearly embodies human rights, freedoms, principles of rule of law, good governance and due process as enshrined in the major human rights treaties. Relevant provisions as embedded in the Constitution in relation to legal aid and access to justice include:

- Equality before the law to all citizens.²⁶
- An obligation on the State to provide legal representation at its expense to every person charged with any offence which carries a sentence of death or imprisonment for life.²⁷
- The right to access to justice by every Ugandan. In this regard, the government is obliged to provide access to justice to all Ugandans “without delay” and “irrespective of their economic status”²⁸.

The Trial on Indictment Act provides that “a person accused of an offence before the High Court be defended by an advocate”.²⁹ However majority of the cases tried in High Court are of a capital nature, and attract life imprisonment or the death penalty, the practice is that all accused persons appearing in the High Court must be defended by an advocate at the expense of the State or in addition to their own paid lawyer.³⁰

The Poor Persons Defence Act provides that “prisoners should have legal aid in the preparation and conduct of their defence and at trial if their means are insufficient to enable them to obtain such aid”³¹.

The Poor Persons Defence Act and the Trial on Indictment Act are in the spirit of the Constitution³² and apply only to criminal proceedings and do not extend to cover other proceedings including civil and family cases. The provision of legal aid under this Act is dependent on the availability of the Advocate. In the event that the court is not able to procure one, the accused is not able to proceed with his or her case on the grounds that there is no advocate to represent him or her.

26. Article 21 of the Constitution

27. Article 28(3) (e) of the Constitution

28. Article 126 of the Constitution

29. Section 55 TID, Cap 23

30. *ibid*

31. Section 2 of Cap 20

32. *ibid*

The Magistrates Courts Act provides for any person accused of an offence before a magistrate court to be defended by an advocate as of right.³³ However, many persons appearing in these courts are poor and cannot afford legal counsel. The result is that the majority of persons end up defending themselves, except for those cases which attract life imprisonment, where the state provides an advocate at its cost.

The Advocates (Legal Aid Services to Indigent Persons)³⁴ formulated under the Advocates Act, Cap. 267 as amended by Act. No. 27 of 2002 specify rules governing the provision of legal aid including registration of legal aid service providers, eligibility for legal aid, maintenance of quality of services and client care and supervision by the Uganda Law Council.

Further to this, the Advocates (Pro bono Services to Indigent Persons) Regulations³⁵ require all advocates in Uganda to provide pro bono services for at least 40 hours in a year or pay money in lieu thereof. Additionally, the Advocates (Student Practice) Rules, 2004 allow post graduate Bar students, as part of their training, to provide legal aid by representing juvenile clients in magistrates courts under guidance of senior lawyers.

All the above mentioned laws and regulations buttress Article 28 (3) of the Constitution in guaranteeing legal aid for needy persons in Uganda. It is relevant to note that this still provides a skewed view of the need for legal aid where criminal justice is more emphasized than civil justice and also that there is no specific legal framework to encompass all these provisions which can be viewed as a disadvantage in the provision of legal aid services.

F. Other Regional Initiatives on Legal Aid: A Case Study of South Africa

Introduction

South Africa perhaps provides the most ideal example of how citizens of a state can maximally enjoy access to justice through the provision of legal aid. The provision of legal aid in South Africa is premised upon its commitment to the upholding of constitutional values of human dignity, equality and human rights. It is regulated at a national level through a law, the Legal Aid South Africa Act³⁶, an Act established to ensure access to justice through legal aid. The Legal Aid South Africa Act creates a national public entity, Legal Aid South Africa (LASA) which avails legal aid, advice and legal representation to persons at state expense.

Models of Legal Aid Service Provision in South Africa

For the first 20 years after it was established, the LASA provided legal aid through Judicare. Under this, LASA employed the services of lawyers from the private sector to provide legal aid to cases that qualified for state assistance. However, this changed in the 1990's with adoption of the new Constitution whose wide provisions on legal aid resulted into an exponential

33. Section 158 MCA Cap 16

34. Regulations No. 12 of 2007

35. Regulations No. 39 of 2009

36. Legal Aid South Africa Act No. 39 of 2014

growth in the number of judicare cases which were too expensive for the state to afford.

Accordingly the LASA started a number of pilot projects through the Public Defender's office under which salaried legal practitioners became the primary givers of legal aid. These practitioners were stationed in justice centres across the country. The centres were strategically located near courts and served between 10 and 20 courts. These Justice Centres act like legal firms where clients can go to receive legal services in both civil and criminal matters. Each centre has a principle attorney who is at the head of the centre, professional assistants, candidate attorneys and paralegals. The centres offer legal assistance for criminal and civil cases and the services given include litigation, referrals and advice.³⁷

Through these centres, Legal Aid South Africa provides legal aid to 736,679 people throughout the country every year. LASA further provides support from a special fund to specialised legal matters of public interest with the potential to impact on South African law through Justice Centres or referrals to private law firms.³⁸

Other models of legal aid delivery used in South Africa include:

- Pro bono legal aid- Lawyers/attorneys provide 24 hours of compulsory pro bono service through the national law society, Law Society of South Africa.
- University and law school legal aid clinics: LASA has cooperation agreements with various universities that have legal clinics to provide legal services in their communities.³⁹
- Clusters of paralegal advice offices: In South Africa, paralegals have some form of legal qualification and provide legal advice, legal assistance and education. Paralegal advice officers are mainly at grass-root levels with local communities. They provide a valuable link between their communities and mainstream providers of legal aid services especially Justice Centres.

Provision of Legal Aid

Legal aid in Uganda is provided through both state and non-state actors.

State Agencies

The Judiciary is mandated to promote reconciliation and administration of justice without undue regard to legal technicalities.⁴⁰

- Courts such as the Commercial Court and the Family and Children Courts (FCCs) dispense quick justice and rely on Alternative Dispute Resolution (ADR) to ensure access to justice for all persons.
- The State Brief system to provide legal aid to serious matters in criminal sessions. Under this system, public funds are allocated by courts to advocates who are instructed

37. The Gazette of the Government of South Africa Vol. 594, NO 38315&http://www.legal-aid.co.za

38. <http://www.legal-aid.co.za>

39. *ibid*

40. Article 126 of the Constitution

to represent accused persons charged with capital offences. Additionally, under the e-Justice Platform, the judiciary is working towards providing some form of legal aid through a web based mechanism and particularly legal information.

- Establishment of Justice Centres Uganda (JCU), in 2009 by the Justice Law and Order Sector, through the Judiciary which is a Project with Centres around the country as a forerunner to the delivery of legal aid by the Government of Uganda. Justice Centres was set up to provide a one-stop-shop legal aid service delivery model that provides legal aid services across civil and criminal areas to indigent and vulnerable persons through salaried lawyers, paralegals and psychosocial officers. JCU has further empowered individuals and communities through legal and human rights awareness as well as advocacy for policy and legal reform and also operates both a clinic model (where clients go to the Centres or clinics for legal aid services) as well as an outreach model (where services are taken to communities through awareness and community mediations among others). Part of JCU's role is to learn lessons that would inform the establishment of a well thought out working model for legal aid service delivery by the state of Uganda. JCU has contributed greatly to ensuring that professional quality services are delivered to the poor, vulnerable and marginalized people in Uganda.

The Police

- Community Liaison Office (CLO) undertakes community legal awareness.
- Child and Family Protection Unit (CFPU) which provides dispute settlement in domestic matters and those involving child offenders.

Ministry of Gender, Labour and Social Development (MoGLSD) provides legal aid to deserving cases as well as community legal awareness and mobilization through probation and welfare Officers and Community Development Officers (CDO).

Uganda Human Rights Commission (UHRC) through regional offices and civil military centres extends legal aid services across the country to people complaining of human rights violations.

The Administrator General's Office extends legal services to widows and orphans on matters regarding administration of estates and succession disputes.

Local Council Courts (LCCs) provide quick resolution in matters of land and family disputes.

Non-State Agencies

Legal aid by non-state agencies is provided by a multitude of actors including private legal professionals, University legal aid clinics, donor supported initiatives, NGOs and paralegals both professional and community based.

Federation of Uganda Women Lawyers (FIDA) who are the oldest legal aid service provider in Uganda, have provided the service for more than 40 years and they look out for vulnerable women and children. They have contributed a lot to restoring harmony among families through eliminating unfair treatment of women at the family level.

Legal Aid Project of the Uganda Law Society has provided legal aid services across the civil and criminal divide for more than 25 years.

- The Duty Counsel scheme, a form of ‘emergency room’ assistance where lawyers stationed at magistrate courts provide free legal advice and representation to members of the general public with matters in court. Duty counsel keep the courts running by providing unrepresented litigants with immediate help during court appearances.

Legal Aid Clinic (LAC) is a law school clinic model of service delivery where post graduate Bar students of the Law Development Centre (LDC) provide legal aid to indigent juvenile offenders by representing them in Magistrates Courts under guidance and supervision of a senior practicing lawyer.

The Paralegal Advisory Services (PAS) uses paralegals to provide legal aid to poor persons in detention centres through legal information, advice, victim involvement, witness tracing and referrals. PAS collaborates with judicial, police and probation officers to coordinate and ensure quick justice for suspects and inmates. PAS works closely with the Uganda Prisons Service.

The majority of legal aid by non state actors is provided through Civil Society Organisations (CSOs) under the umbrella organization known as the Legal Aid Service Providers Network (LASPNET). They include faith based organisations, International and national Non-Government Organisations (NGOs), humanitarian agencies, UN agencies and Community Based Organisations (CBOs). Most of these legal aid service providers are largely issue or theme based, depending on their mandate. For example, the Uganda Association of Women Lawyers (FIDA-U) provides legal assistance to women and children and the Platform for Labour Action (PLA) concentrates on rights of workers and labourers.

Success stories in Legal Aid Service Provision in Uganda

Macro Sector Support

One of the key result areas for the reform within the Justice, Law and Order Sector framework⁴¹ emphasizes enhancement of access to justice for all (especially the poor and the marginalized) through minimizing financial bottlenecks hampering access to justice, enabling physical access to JLOS institutions and services, improving the quality of justice delivery and reducing on the technicalities that hamper access to justice.

The role of legal aid complements access to justice within the JLOS. The Sector aims to ensure a functional comprehensive legal aid system and has adopted planned strategies towards this which include:

- Making legal advice and representation available and accessible to all those who need it through the development, adoption and implementation of a National Legal Aid

41. (JLOS) (SIP III)(output 2)

Policy, law and body;

- Providing for a State legal aid service provider;
- Setting up a regulator for legal aid service delivery;
- Developing capacity of Legal aid institutions;
- Strengthening legal and rights awareness programmes;
- Provision of specialized services such as for Persons with disabilities, children among others;

All the above are an illustration of the commitment in the sector's wide approach to improving access to justice through legal aid.

Development Partner Support

There is a common strategy by development partners to support legal aid through creation of the Legal Aid Basket Fund. This Fund has been critical in providing needed financial support to many service providers countrywide, over the years.

Impact / Strategic Litigation

Service providers have engaged in strategic litigation aimed at law and policy reform. For example, Law and Advocacy for Women in Uganda successfully challenged sections of the law which were discriminatory against women⁴².

Organisation and Coordination

Civil Society Legal Aid Service Providers have organised themselves through an umbrella organisation, the Legal Aid Service Providers Network (LASPNET) which links all legal aid service providers and provides a forum for promoting the legal aid sector agenda.

Research and Advocacy

Several studies carried out through research have raised the profile of legal aid services and they include the nationwide 2009 mapping exercise of legal aid service providers as well as the JCU studies on the relevance of legal aid in the economic development of Uganda, the best practices to legal aid service delivery, trends analysis and also this policy brief which brings all legal aid information in one place.

Challenges to Legal Aid Service Provision in Uganda

Despite the successes of legal aid in Uganda and the country's obvious compliance to international obligations, the service is hindered by a number of factors. The main limitations in providing legal aid arise from inadequate funding, its adhoc and criminal skewed in nature, and it does not cover across all parts of the country. Other challenges include charges of corruption, low staff numbers and capacity, limited geographical outreach, huge case backlogs among other issues.

42. Constitutional Petitions Nos. 13 of 2005 and 05 of 2006

In addition, other challenges faced by non state legal aid service providers in the current legal aid environment include;

Absence of Legal Aid Policy

There is no overarching policy to hold government accountable for providing legal services to indigent persons whose rights have been abused. As a result, legal aid service delivery in Uganda has remained dominated by non-state actors with very little participation by the government which is the key duty bearer. Even the Justice Centres Uganda Project is predominantly funded by development partners which so far indicates very little commitment on the part of the state. This situation, combined with the lack of an institutional framework on legal aid has impacted negatively on the strategy for delivery and quality of services provided.

Civil society providers have adopted varying standards of eligibility to legal aid and services provided. The result compromises the quality of services where all models operate as they see fit. For instance, there is no standard definition of a 'paralegal' in Uganda, and therefore those with formal certification from the Law development Centre cannot be easily distinguished from community based, multipurpose paralegals with basic (minimal) legal or human rights training.

Limited and Haphazard Coverage

The scope of existing legal aid services is limited mainly to urban areas. Additionally, the different schemes that are in place work independent of each other resulting into a haphazard mode of service delivery and at times a duplication of services, leaving urban areas with an over concentration and rural areas with barely any coverage of legal aid service provision.

Inadequacy of Funding

Due to the high demand, legal aid service provision requires substantial funding. However, the Government of Uganda as a key duty bearer has not committed any meaningful amount of funds to implement legal aid. As such, legal aid schemes such as the state brief system, Justice Centres Uganda and the LDC legal aid clinic operate at minimal levels. The consequences of limited funding include lack of supervision of advocates resulting in low quality of services rendered, poor pay, limited capacity to conduct monitoring and evaluation (M&E), donor dependency, limited geographical outreach with no strategy for taking the services beyond the existing areas of operation and little focus on public interest litigation which though useful for legal reform, is expensive. Also, because of the scramble for funding and survival, CSOs give undue focus to handling individual cases as they come in and only limited attention to advocacy for policy reform and seeking lasting solutions.

Poor Attitude by Private Practitioners

The most appropriate methods of delivering legal aid services in any country are likely to be influenced by the structure and attitude of the legal profession. Pro bono schemes are cheap and, if supported by the legal profession, can encourage public service by legal practitioners.

In Uganda, proper implementation of the pro bono legal aid scheme has a big potential to ease the demand for legal aid. However, the mandatory nature of the scheme has been challenged by some advocates and many lawyers are reluctant to take on pro bono cases. In fact, only 500 out of the 1,700 advocates who hold a practicing certificate are registered under the pro bono legal aid scheme of the Uganda Law Society. Thus, the poor attitude by legal practitioners implies that pro bono clients may not receive the same level of service as paying clients which compromises quality of services rendered.

G. Why is there need for Legal Aid in Uganda?

Understanding Uganda's contextual background. In assessing the need for legal aid in Uganda, it is important to understand the context of the population and relate it to their justice needs.

High Population Growth

An important factor to note is the growth in the population. According to the 2014 national census, Uganda has a population of 34.9 million which implies that there is an increase of 10.7 million compared to the 24.2 million as per the 2002 census this portrays an average annual growth rate of 3.03 percent. The majority of the population are women at 17.9 million. The growth in population implies more competition for non-changing resources such as land and water, which results into increased conflicts and also bigger service needs for citizens, including access to justice.

Over stretched justice system

In April 2014, the Resident Judge of Jinja (A district in Eastern Uganda) Godfrey Namundi during the official launch of a new judicial Service Commission system reported that out of over 50 judicial officers needed to handle the pending 800 cases, only 20 exist. He noted that this had retarded provision of justice to the people in this sub region.⁴³ Thus, even with the increase in the number of justice institutions such as courts and police, the growth in population does not match that of available services, requiring complimentary alternatives to be initiated, one of which is a functioning legal aid system.

Rapid Urbanisation

The rate of urbanisation is steadily increasing and in 2014, Uganda had a total urban population of 6 million people, meaning that the majority of the populace is rural based and far away from the administration of justice services, most of which are concentrated in Kampala. This coupled with the high levels of unemployment especially among the youth population, many of whom migrate from rural areas. As an example, the youth unemployment rate in Kampala is three times the national youth unemployment rate and even among the working youth, almost 13 percent are underemployed. Furthermore, most of these youth are concentrated in urban areas under pitiable living conditions. Migrants to urban areas remain socially and economically vulnerable due to the lag in the socio-economic transition in urban areas. Consequently, the scramble for survival translates into conflict with the law, high crime rates and often imprisonment⁴⁴ which leads to the need for legal aid services.

43. <http://ugandareport.com/>

44. Hon. Werikhe, Michael K. Rapid Urbanization and the Challenge for Secondary Cities at page 4 & <http://www.citiesalliance.org>

Colossal Remand Population

In 2012, there were 3 prisoners occupying a space meant for one prisoner in Uganda⁴⁵ and by July 2014, 55% of the total prison population were pre-trial detainees. The high remand population not only points to obstacles within the administration of justice system but also the glaring need for legal aid as a way of providing an alternative other than the formal justice system by the provision of critical legal assistance to a population of remanded persons so obviously in need of it.

Disproportionate Land Matters

Noteworthy is the voluminous caseload of land related matters clogging the formal justice system. The majority of new cases registered both under the courts as well as for mediation by legal aid service providers are land matters, most of which are products of the Land Tribunals which are now un operational. The transit of case files from the said tribunals to formal courts⁴⁶ resulted into loss of case files and other relevant documents. For many with such cases, justice seems more of an illusion than reality. Furthermore, resolution of land matters within the courts faces its own challenges including limited human resources for instance, Amuru district has only one magistrate and yet the majority of land cases in the north are from Amuru District.

Generally, land disputes have the potential to cause serious societal disruption and result into grave consequences for already vulnerable groups within the community such as women. For instance, in Northern Uganda which suffered long periods of political instability, many women, children and youth were left without productive land for farming. Furthermore, the land tenure system in this part of the country does not allow individuals to dispose of communal land. This renders a large part of the population needy, especially since the majority of people in Uganda still rely on the land for their very survival. Thus, justice for land related cases especially for the underprivileged and already vulnerable groups such as poor women and orphans can in no way be realized without external assistance, such as legal aid.

HIV and the potential for Health Related Litigation

The number of persons in Uganda living with HIV is growing. According to the latest HIV/AIDS⁴⁷, the total burden of HIV in Uganda, as represented by the number of persons in the country that are living with HIV, has continued to increase. This is a result of continuing spread of HIV as Uganda continues to experience a high rate of new HIV infections and further, that between 2007 and 2013, the estimated number of people living with HIV increased from 1.2 million to 1.6 million.

With this in mind, the rights of Persons living with HIV, as a growing part of the population, will have to be defended in regard to cases of discrimination and right to access medicines. Also, with a law⁴⁸ now in place, criminalising deliberate and willful transmission of HIV, the

45. UBOS Statistical Abstract 2013

46. Practice Direction No. 1/2006

47. Country Progress Report by the Uganda Aids Commission 2013

48. The HIV Prevention and Control Act of 2014

number of criminal charges brought against infected persons who intentionally infect others is bound to increase, which will translate into matters for litigation in courts and therefore increased demand for access to justice. Thus, the need for legal aid is further justified.

Access to Justice and Poverty: The Significance of Legal Aid in Poverty Reduction

According to the Ministry of Gender, Labour and Social Development⁴⁹, the Uganda National Household Survey states that 25% of the population (7.4 million people) lives below the poverty line. Notable also is the fact that about 10 percent of the poor have remained chronically poor since 2005/06. Of these statistics, women in Uganda are poorer than men and there are also some dimensions of poverty in which they are more disadvantaged. It is further reported that while Uganda seems to have met the MDG target of halving income poverty target earlier than 2015, worsening distribution of income and high population growth, if not addressed, are likely to reverse the trends.

In the Participatory Poverty Assessment on Safety, Security, and Access to Justice, conducted by the Justice, Law and Order Sector (JLOS) in 2002, poverty was reported to severely constrain safety, security and access to justice, particularly for women. The poor reported that expensive, cumbersome and complex procedures severely reduced their use of formal justice systems. Constraints highlighted by the poor included lack of access to legal services, gender based obstacles and inadequate legal awareness among others. As a consequence of poverty, dis-empowerment severely constrains access to justice for the poor. On the other hand, failure to realise legal protection through justice delivery agencies results in dis-empowerment of the users. The intersection between poverty and access to justice is therefore manifested in empowerment. It is not surprising therefore that 36% of all Ugandans are too poor to pay for services provided by a lawyer.⁵⁰

Related to poverty is the aspect of illiteracy. An analysis of Uganda's literacy rate for persons 10 years and above is at 73⁵¹. With a population that is majorly poor, and which still needs basic literacy skills, there is only so much that can be achieved by citizens in contact with the law in terms of their right to access justice, which often requires a good appreciation of complex and technical legal procedures.

Poverty, together with other factors such as ignorance of legal rights and obligations, complex judicial systems and processes, a largely profit oriented urban based legal profession, exclusion of marginalized groups from social and political processes that define their lives, ambiguous, cumbersome and costly laws as well as policy and administrative processes that do not benefit the poor all contribute to limited access to justice. Interestingly though, even with all these obstacles that should obviously deter people from resorting to courts, the majority of Ugandans prefer litigation as a mode of dispute resolution. In 2013 for instance, there was a 56% growth in cases registered in court, even with 89.12% disposal rate of registered cases

49. Statistical Abstract 2012/13

50. Kavuma, Steven B.K "Accessible and Effective Legal Aid: The key to unlocking Uganda's Development potential." Key Note address at the opening of the 2nd Uganda National Legal Aid Conference

51. UBOS Statistical Report 2013

in the judiciary (JLOS, 2013). The ULS Client Perception Survey that was undertaken in 2013 also illustrates the high demand for litigation. 56% of cases handled by ULS require legal representation compared to the 33% for legal advice and 4% on mediation. The huge demand for court related solutions in legal matters leaves a glaring need for legal aid services.

While legal interventions might not in the short term make a huge impact on the poverty situation of the recipients of the legal services, they greatly empower individuals and communities as a whole which is “a key ingredient in the struggle for eradication of poverty from society, thereby enhancing the unlocking of Uganda’s development potential in the long term.”

A critical part of legal interventions that empower developing communities like Uganda is legal aid. Legal aid to the poor is an important factor in enhancing their access to justice. According to the report on Best practices by Justice Centres Uganda, “while comparable to the welfare systems approach, the preferred approach to ensure access to justice, especially to the poor and marginalized, is to develop a comprehensive legal aid framework targeting the indigent across all sectors of society”.⁵² Legal aid removes the high costs of legal services, substitutes the lack of legal representation and alienation due to technicalities and further deals with language and ignorance of human rights⁵³, the results of which are that people are able to have conflicts settled at community and family level, they become more knowledgeable of their rights and are empowered to claim these rights thus advocating for social policy and legal change at community and national level.⁵⁴

Therefore, a comprehensive legal aid framework is inevitable if Uganda is to maximise her development initiatives as well as comply with her human rights obligations.

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54. Ibid at 50.

H. Conclusion and Recommendations

Conclusion

Legal aid services in Uganda have for a long time been provided by both state and non-state actors without any comprehensive policy backing from the Government. Due to lack of a national legal aid policy and a comprehensive legal framework to guide legal aid service provision, legal aid services in Uganda are currently provided in an adhoc manner using various models of service delivery. There is a wide array of models being utilized such as the traditional clinic model, outreach and legal sensitization, Justice Centres, paralegals, pro bono, among others. However, the models are as varied as the forms, thematic and geographical focus areas, eligibility criteria or even performance standards. To date, there are no uniform standards of service provision, and in fact, 'anything goes' as long as it suits the purpose of each service provider.

As a country, Uganda needs to establish a policy on legal aid. Such a policy would be a critical link between Uganda's international and human rights commitments and the actual operationalization of these obligations. Having a legal aid policy, comprehensive law and national legal aid service provider in place is crucial in guaranteeing rights as well as seeking accountability from duty bearers, that is, State agencies responsible for providing quality legal aid services to socially and economically disadvantaged persons in a fair and consistent way.

Recommendations and Way Forward

In order to ensure good quality legal aid to all persons in need, it is important for Uganda to adopt a comprehensive legal aid scheme to define all aspects of legal aid and mechanisms for implementation under the supervision of one national entity. In so doing, the Government of Uganda as the primary duty bearer assumes the primary responsibility to adopt all appropriate measures to fully realize the right to legal aid for any individual within her territory and subject to her jurisdiction.

This is nothing new, as in fact, there has been acknowledgement that the Government of Uganda should take steps in this direction. At the annual JLOS review of 2008, an undertaking to develop a national legal aid policy and institutional framework was adopted and a draft policy⁵⁵ has been pending approval by the Cabinet since 2012.

There is need for Uganda to move beyond merely committing herself in words to actually operationalizing the establishment of a legal aid policy.

In particular, the policy should specify the following:

The nature of Legal Aid. This should be as broad as possible and not limited to legal representation in court in serious cases, as is the case in Uganda right now. The policy should target the most effective forms of legal aid such as legal advice, awareness raising and legal representation in both civil and criminal matters. It should also integrate an empowering approach so as to contribute to the elimination of obstacles and barriers that restrict access

55. National Legal Aid Policy Draft 6 (Final)

to justice especially for the poor and marginalized. The key to establishing a right to a broader idea of legal aid lies in understanding the role of the state from a human rights perspective where citizens are rights holders, rather than a welfarist one where legal aid is perceived as a privilege granted by the State.

- Areas of law. These should be those which mostly affect the poor and marginalized in Uganda.
- Recommended model or combination of delivery models. A holistic approach using a combination of methods is probably the most effective way of delivering legal aid services. Selected models should maximize access to free legal aid for all individuals. The most utilized models in Uganda include the 'one stop' Justice Centres model, out reach and pro bono models. Law students and paralegals should be tapped as potentially valuable and inexpensive resources available to assist the national legal aid scheme.
- Eligibility criteria for institutions that desire to provide legal aid services and Eligibility criteria for beneficiaries of legal aid must be paid attention to.
- Standards for client care and quality service.
- Standardisation, coordination and monitoring of legal aid through a national legal aid body.
- Involvement of private legal professionals and requirement for continuous professional development.
- Clarification of terms such as 'paralegal'. In Uganda, the term paralegal is defined under the Advocates (Legal Aid to Indigent Persons) Regulation as a person who holds a qualification in law other than a degree in law, recognized by the Law Council. Currently, there is no standardized training and accreditation of paralegals in Uganda. Besides the Diploma in Law graduates from the Law Development Centre, most of the non-state actors train their own paralegals. There is need to clarify this term and the role that paralegals can play in legal aid service provision.

On the whole, this Policy Brief has explained the importance of having a policy and operationalizing a structure for legal aid in Uganda. It has further illustrated the benefits of legal aid to human rights and economic development. Thus, having such a policy and oversight entity in place to guide legal aid service provision will be one way in which the Government of Uganda meets its international obligations and protects human rights and freedoms within its territory including the right of access to justice effectively.

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