



# Formalising the role of paralegals in Africa:

## A review of legislative and policy developments

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# Foreword

## A quiet revolution in legal assistance

In many parts of Africa, a quiet revolution is transforming the delivery of legal assistance to persons in conflict with the law. Too poor to afford the services of a lawyer, and unable to rely on inadequate or non-existent state-funded legal aid systems, many Africans are at the mercy of oppressive and corrupt criminal justice systems. This is beginning to change as paralegals – who are less expensive and more accessible than lawyers – are empowering the poor and marginalised in their interactions with police, prosecutors, and the courts. In almost two-dozen countries across Africa, paralegals are providing a critical service, particularly in the early stages of the criminal justice process. This has resulted in the reduction of unnecessary pretrial detention, speedy processing of cases, and a reduction of case backlogs.

Paralegals working in the criminal justice field are typically not lawyers, but have the skills and knowledge of the law to provide rudimentary forms of legal advice and assistance to persons in conflict with the law. They seek to bring about practical remedies to facilitate access to justice through a variety of tools, including the provision of legal advice and education, mediation and alternative dispute resolution services, advocacy, and public awareness raising.

Paralegals typically come from the communities they serve. They are thus finely attuned to local contexts and needs, such as speaking local languages, knowledge of local forms of justice, and community acceptance. In many African settings, paralegals navigate between the formal and informal justice systems, ensuring the latter's compliance with the rule of law and related human rights standards.

International legal and regulatory frameworks support the existence of paralegals as service providers in the criminal justice process. The 2004 *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa*, subsequently adopted by the African Commission on Human and Peoples' Rights, provides that the delivery of effective legal aid must include paralegal services.

The 2012 United Nations *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* urge states to recognise the role played by paralegals in providing legal aid services where access to lawyers is limited. Moreover, that states should introduce measures to ensure access for accredited paralegals who are assigned to provide legal aid to police stations, facilities of detention, pretrial detention centres, and prisons; and allow court-accredited and duly trained paralegals to participate in court proceedings and advise defendants when there are no lawyers available to do so.

At this timely report documents, while a small but growing number of African countries are adopting policies and passing legislation to promote paralegals within their criminal justice systems, most lack a legal framework which grants formal recognition to paralegals and the services they provide.

In a review of almost a dozen countries of Sub-Saharan Africa, this report found only two states – Nigeria and Sierra Leone – that have promulgated legislation formalising the role of paralegals. Draft legislation planned for Kenya, Uganda, and Zambia is likely to replicate such formal recognition beyond West Africa. Liberia, South Sudan, and Tanzania may, in the coming years, follow suit. In South Africa, a statutory body has been mandated to investigate and make recommendations on the legal recognition of paralegals.

Paralegals have an important role to play in criminal justice systems throughout Africa. In many countries the effective use of paralegals is inhibited by a lack of formal recognition. Changes to domestic legislative frameworks are necessary to empower paralegals in their work with persons in conflict with the law at police stations, court rooms and prisons. It is hoped that this report will serve as an impetus for debate and advocacy on this important issue.

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# 1. Introduction

Paralegals have increasingly become key actors in the legal aid framework around the world, and especially on the African continent. Paralegals are usually individuals without a law degree but with some legal training, who can provide a range of services considered to be part of a broader definition of legal aid, such as legal assistance, legal advice, legal education, and legal information. They also play an important role in alternative dispute resolution (ADR). While in some countries paralegals offer their services in the area of civil law, in particular in land and family issues, they can also work in the criminal justice system.

It is now widely recognised, especially on the African continent, that access to lawyers simply is not a reality for many - not only because of the prohibitive cost that such services represent, but also because in many jurisdictions there are not enough lawyers to represent all those who need their services. Legal representation in court is usually not a function exercised by paralegals but by lawyers, and paralegals therefore complement the work of lawyers by performing other forms of legal aid or assistance and hence facilitating access to justice.

However, despite the increasing role played by paralegals, they are seldom formally recognised as legal aid providers in national legislation. They also very often remain unregulated. This absence of formal recognition and regulation has resulted in numerous challenges faced by paralegals, challenges which are shared in many African countries. These include a lack of standardised training and professional standards, such as a code of conduct; an inconsistency in their mandate and powers; a lack of internal and external oversight over their work; varying remuneration schemes; no formalised relationship with, and therefore referral mechanism to, lawyers, and an inability to fully exercise their mandate because of limited recognition from formal justice actors. Maru and Gauri identify four reasons for which paralegals would seek formal recognition: to be given more legitimacy, to obtain more sustainable financing, to increase the quality and standard of work of paralegals and to set up a national body which would coordinate their work.<sup>1</sup>

Several regional and international soft law instruments have, in the past 15 years, started identifying exactly what the formalisation of paralegals, through the adoption of comprehensive legal aid framework, could entail. These instruments identify what provisions the required legislation or policies could contain. This said, countries have usually been slow at incorporating these soft law instruments into their domestic legislation. However, over the past ten years, some countries have adopted or considered adopting legal aid legislation recognising paralegals, although the extent of this recognition varies from one country to the other.

This paper examines both international and regional soft law instruments pushing for formal recognition of paralegals, as well as recent legislative and policy developments in Burundi, Kenya, Liberia, Nigeria, Mali, Sierra Leone, South Africa, South Sudan, Tanzania, Uganda and Zambia with particular focus on the role of paralegals in criminal justice systems. The resources relied upon are applicable legislation, draft legislation, policy documents, academic articles, NGO reports as well as interviews with experts from each of these countries.

## 2. Locating paralegals in the legal aid framework - definitions

There is currently no universally accepted definition of a paralegal. In most African jurisdictions, “paralegals”, also called “community-based paralegals” or “community paralegals”, are usually understood to be individuals who do not have a law degree but have skills and knowledge of the law that allow them to provide some form of legal aid and assistance to those in need, in particular members of a community they are part of or know well, and typically under the supervision of a legal

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<sup>1</sup> V Maru and V Gauri, *Bringing Law to Life: Community Paralegals and the Pursuit of Justice* (draft) (on file with author). See also UNODC, *Handbook on improving access to legal aid in Africa*, Criminal Justice Handbook Series, 2011, pp. 33 and 39.

practitioner.<sup>2</sup> A term community based paralegals often refers to paralegals who provide a broad-range generalist basic legal aid services to communities with which they are based. There are also specialized paralegals, such as criminal justice or health paralegals working with specialised civil society organizations or relevant government institutions on the matter. These kinds of paralegals are different to “corporate paralegals” who are often non-lawyers working in private law firms and assist lawyers. In this research paper, “paralegals” and “community paralegals” are used interchangeably but always refer to community paralegals as defined above.

Depending on the country in which they operate, paralegals may assist in civil or criminal matters, may act as individuals or as part of state or non-state organisations, may be volunteers or paid, and provide different services. They aim at achieving practical remedies to facilitate access to justice for the poor by resorting to education, mediation, organisation, advocacy, monitoring and, with the assistance of lawyers, litigation.<sup>3</sup>

Paralegals are increasingly located within the legal aid framework because of the kind of services that they usually render, because these services are offered for free or for a nominal fee and because their “client base” is almost exclusively poor. In recent years, legal aid has been more broadly defined than strict legal representation in court. Legal aid is defined in the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System (2004) and the UN Principles and Guidelines on Access to Legal Aid in the Criminal Justice Systems (2012) as encompassing five dimensions:

- **Legal representation in court**, which constitutes the formal, but also least accessible and most expensive form of legal aid, and should be used only as a last resort;
- **Legal assistance**, or assisting a person in taking legal steps to resolve a matter using the formal justice system;
- **Legal advice**, or providing information to an individual in relation to his or her particular problem;
- **Legal education and information**, or providing general information to individuals and communities on their rights and the different legal avenues available to exercise their rights, and
- Mechanisms for **alternative dispute resolution** and restorative justice processes.<sup>4</sup>

Various institutions can provide legal aid, including State-funded legal aid. This can include public defender offices, judicare programmes (where the State pays legal practitioners in private practice to provide legal services), justice centres, independent legal aid institutions, universities and law clinics (the latter two being financed by the State or by private donors), pro bono services offered independently by private lawyers, and non-governmental organisations (NGOs).<sup>5</sup> These different institutions can then rely on different legal aid providers, including lawyers, legal assistants, paralegals, recent law graduates, or law students. Each institution and each legal aid provider should be encouraged to interact with each other in order to maximise their contribution to the provision of legal aid, especially in a context of scarce financial and human resources.

Paralegals usually intervene in most forms of legal aid, with an important role to play in providing legal advice and information, raising general public awareness and conducting advocacy work. Legal representation is traditionally not a form of legal aid provided by paralegals, as it is highly regulated and reserved to those admitted to the Bar (a prerequisite being that one must be a holder of a law degree), i.e. lawyers. Paralegals should refer serious and complex cases to lawyers they work with, who should then assess whether to take the case to court. But there are instances where paralegals could benefit from being allowed to represent individuals in court, especially at bail hearings, where unrepresented accused risk being detained further despite the law providing the possibility for them to be released on bail. However, none of the countries surveyed in this report have yet authorised paralegals to represent an indigent person in court, and none of the surveyed countries have this practice in place.

2 Open Society Justice Initiative *Community-based Paralegals. A Practitioner's Guide*, 2010, p. 16; Danish Institute for Human Rights and East Africa Law Society, *Access to Justice and Legal Aid in East Africa*, 2011, DIHR research report, p.18. See also V Maru, “Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide” 31 *YJIL* 427 2006 at 469.

3 V Maru and V Gauri, *Bringing Law to Life: Community Paralegals and the Pursuit of Justice* (draft) (on file with author); S. D. Rao, “Paralegal Education in India: Problems and Prospects” 1 *J. Nat'l L. U. Delhi* 94 2013 at 97.

4 UN General Assembly, Resolution 67/187, 20 December 2012; Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004), article 1. See also V Maru, “Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide” 31 *YJIL* 427 2006 at 470; Danish Institute for Human Rights and East Africa Law Society, *Access to Justice and Legal Aid in East Africa*, 2011, DIHR research report, p.17-18.

5 2004 Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (Lilongwe Declaration), article 6; UNODC, *Handbook on improving access to legal aid in Africa*, Criminal Justice Handbook Series, 2011, pp. 27-39.

Paralegals navigate between the formal and informal justice systems, and use both formal law, usually inherited from the former colonial powers, (which can be outdated and are very difficult to understand for most lay persons) and customary law which, albeit better seated in communities, may not always comply with the rule of law and human rights standards (and in the latter case, should not be promoted by paralegals).<sup>6</sup> Although States are encouraged to put referral mechanisms in place to allow the formal justice system to review decisions made through informal justice mechanisms, informal or traditional justice systems applying customary law may, in some remote areas, be the only ones available, because formal courts are at too great a distance.<sup>7</sup> Paralegals can play a key role in ensuring that informal justice actors are linked to the formal justice systems, to ensure compliance with the rule of law and human rights standards.<sup>8</sup> Paralegals are also found at the heart of the formal justice system, in particular when they assist detainees whether they are suspects in police custody or accused persons and charged individuals at the pre-trial stage of the criminal justice process, and sentenced prisoners. Their services can range from general legal information on the detainees' rights to more individual advice and assistance in a particular case, and monitoring cases' progress. Especially when they are adequately trained and are recognised by the other criminal justice system actors, the paralegals' work also helps speed up court processes, thereby improving the right of the accused to a speedy trial and improving the general efficiency of the justice system.<sup>9</sup>

Maru and Gauri identify four advantages, but also four potential limitations, to the paralegal approach. Advantages are its cost effectiveness (lawyers are costly and both them and formal legal aid centres are often only located in urban centres); its flexibility (courts can be slow, expensive and corrupt, and offer a limited number of remedies); its capacity to straddle plural legal systems (both in relation to the law applied and the institutions relied on to resolve a conflict), and empowerment (the aim of a paralegal is to provide a person with the tools necessary to resolve the conflict, and similar conflicts in future, by him- or herself). Potential problems and limitations include consistency and quality of paralegals' work (because of limited training, supervision and support); limits on the effectiveness of their work (because of possible duplication and power imbalances with existing institutions); risk of abuse of their knowledge and status by paralegals, and sustainability because of limited funding, both from external donors and governments.<sup>10</sup>

Paralegals remain largely unrecognised as legal aid providers in domestic legislation. Without statutory recognition, they are not regulated by a state body. Many organisations working with paralegals have attempted to self-regulate by setting up networks or alliances of paralegals, but these networks or alliances usually do not include all paralegal organisations, and only last while there is capacity and funding to operate them. Some countries have regulatory frameworks for legal aid, but only few include paralegals in these frameworks, as is illustrated below by the few countries that have adopted legal aid legislation inclusive of paralegals.

Regulation should serve several purposes. It should set standard training programmes, may set criteria to enter the paralegal profession, should set up registration or accreditation frameworks of paralegals, should lead to the adoption of codes of conduct, should determine which services paralegals can provide, could grant paralegals the right to visit detainees or appear in court, should set up mechanisms for monitoring or evaluation, should provide for accountability mechanisms, should ensure sustainability of the paralegal profession through financial support, and should guarantee independence of paralegals, in order for them to still be able to hold the State accountable.<sup>11</sup> Overall, regulation ensures higher quality standards of paralegal work and gives them the necessary tools to fulfil their mandate adequately. This said, paralegals usually work within poor communities, communities which may give limited legitimacy to state institutions and lawyers. Too much regulation may therefore have the (unwanted) deterrent effect to profile paralegals as government employees or lawyers' assistants, and consequently affect the trust that a community has in its paralegals.<sup>12</sup> Efforts at regulation must therefore have all these elements and limitations in mind, and strike a delicate balance between sufficient leeway to allow paralegals do their work, and sufficient regulation to ensure that paralegals offer quality services. As Maru and Gauri put it,

6 V Maru, "Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide" 31 *YJIL* 427 2006 at 449, 456 and 460.

7 V Maru and V Gauri, *Bringing Law to Life: Community Paralegals and the Pursuit of Justice* (draft) (on file with author).

8 UNODC, *Handbook on improving access to legal aid in Africa*, Criminal Justice Handbook Series, 2011, pp. 37-38.

9 M Schönteich, "A powerful tool of justice. Paralegals and the provision of affordable and accessible legal services" 2012 *SACQ* p. 21 at pp. 22-24.

10 V Maru and V Gauri, *Bringing Law to Life: Community Paralegals and the Pursuit of Justice* (draft) (on file with author).

11 V Maru and V Gauri, *Bringing Law to Life: Community Paralegals and the Pursuit of Justice* (draft) (on file with author); Danish Institute for Human Rights and East Africa Law Society, *Access to Justice and Legal Aid in East Africa*, 2011, DIHR research report, p. 115; UNODC, *Handbook on improving access to legal aid in Africa*, Criminal Justice Handbook Series, 2011, p. 39.

12 V Jaichand, "Public Interest Litigation Strategies for Advancing Human Rights in Domestic Systems of Law", *SUR-IJHR*, 2004, 127 at 134; V Maru and V Gauri, *Bringing Law to Life: Community Paralegals and the Pursuit of Justice* (draft) (on file with author).

Perhaps affiliation to national institutions designed to hold the state accountable—a genuinely empowered and independent legal aid board, an ombudsman’s office, a human rights commission—would bolster paralegals at a local level, as does their connection to lawyers and the potential for higher-level advocacy. But community paralegals are not likely to ever outgrow the need to dance delicately between recognition and independence.<sup>13</sup>

This section defined the general legal aid framework in which paralegals operate, what role and functions paralegals can play, and the advantages and disadvantages of this institution. It further outlined the challenges faced by paralegals and how formal state recognition would address some of them. In particular, the quality of paralegal work can greatly vary from one paralegal to the next, and standardised training, codes of conduct and monitoring and evaluation would ensure paralegal work of higher quality. Their interventions in the criminal justice system in particular, contribute to a more effective and fair justice system. The next two sections will examine how international and regional instruments, as well as different domestic settings, have attempted to formally recognise paralegal work.

## 3. Paralegalism in international instruments

Paralegals have yet to be recognised in international law. So far, they have only been recognised in international and regional soft law instruments. However, the right to legal aid, which is increasingly understood as including services which can be provided by paralegals, has been recognised in several international treaties. At the time of adoption of these treaties, legal aid was still understood as almost exclusively limited to legal representation. These provisions may nevertheless today be interpreted as including more than legal representation, and are therefore outlined here.

### 3.1 International Treaties

The right to defend oneself in criminal trials is recognised in numerous international and regional instruments, including the Universal Declaration of Human Rights<sup>14</sup>, the International Covenant on Civil and Political Rights (ICCPR)<sup>15</sup> and the African Charter on Human and Peoples’ Rights (ACHPR)<sup>16</sup>. Both the ICCPR and the ACHPR recognise that the accused must be able to choose his or her own lawyer, but neither put an obligation on the State to provide legal aid at State’s expense (understood mostly as legal representation in court) to all indigent accused. However, the ICCPR adds that an accused is entitled to State-funded legal aid, if he or she cannot afford his or her own counsel, ‘where the interests of justice so require’,<sup>17</sup> i.e. in serious criminal cases (although the exact nature of all cases which should fall under this provision have never been authoritatively ruled on).<sup>18</sup> The limitation of State-funded legal aid to cases “where the interests of justice so require” are reflected in several legal aid legislations, outlined below.

### 3.2 Soft law instruments

Paralegals and their contribution to effective (broadly understood) legal aid have been widely recognised in international soft law instruments. In addition, all these instruments have identified recurring challenges faced by paralegals and many have called for the need to formalise the role of paralegals. These instruments have also repeatedly identified what the necessary legal framework on paralegals should look like. The African Commission on Human and Peoples’ Rights (ACHPR), with the support of the NGOs with observer status active in this field, has been at the forefront of the formal recognition of paralegals. Between 1999 and 2004, it has adopted several resolutions and declarations on legal aid and paralegals. In 2012, the UN General Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The relevant sections of these various soft law instruments are outlined below, in chronological order.

<sup>13</sup> V Maru and V Gauri, *Bringing Law to Life: Community Paralegals and the Pursuit of Justice* (draft) (on file with author).

<sup>14</sup> Universal Declaration of Human Rights, article 11(1).

<sup>15</sup> International Covenant on Civil and Political Rights, article 14 (3).

<sup>16</sup> African Charter on Human and Peoples’ Rights, article 7(1)(c).

<sup>17</sup> International Covenant on Civil and Political Rights, article 14(3)(d).

<sup>18</sup> Danish Institute for Human Rights and East Africa Law Society, *Access to Justice and Legal Aid in East Africa*, 2011, DIHR research report, p.21-22.

### 3.2.1 Regional soft law instruments

#### 1999 Dakar Declaration

The ACHPR adopted its *Resolution on the Right to a Fair Trial and Legal Aid in Africa* (the Dakar Declaration) in 1999. The Dakar Declaration states that governments have the ‘duty... to provide legal assistance to indigent persons in order to make the right to a fair trial more effective’ because of the inability of most ‘accused and aggrieved persons’ to afford formal legal services (article 8). The Dakar Declaration formally recognises paralegals and locates them amongst other human rights defenders. Finally, the Dakar Declaration recommends that State parties, Bar Associations and NGOs ‘consider innovative and alternative ways in providing legal assistance to indigent accused’, including by allowing ‘paralegals to provide legal assistance to indigent suspects at the pre-trial stage and pro-bono representation for accused in criminal proceedings’. This recommendation constitutes the first recognition of the key role that paralegals can play in the criminal justice system, without them providing formal legal representation in court.

#### 2003 Principles and Guidelines to a Fair Trial and Legal Assistance in Africa

In 2003, the ACHPR adopted the *Principles and Guidelines to a Fair Trial and Legal Assistance in Africa*. Principle H addresses legal aid and legal assistance (without defining these two concepts) and urges State parties to provide free legal assistance to any indigent accused<sup>19</sup> or party to a civil case ‘where the interests of justice so require’ (Principle H(a)). Principle H(g-i) recognises that there are insufficient lawyers to assist all accused and aggrieved persons, and urges State parties to formally recognise the role that paralegals can play in providing ‘basic’, or ‘essential’ legal assistance, especially in rural communities. Principle H(j) insists that civil society organisations (CSOs) should establish legal assistance programmes and train paralegals. The Principles and Guidelines furthermore contain the first elements of what formal legal recognition of paralegals should entail. These are:<sup>20</sup>

- Rules governing the activities and conduct of paralegals;
- Rules on the training and qualification procedures for paralegals;
- The importance of a linkage between paralegals and the formal legal profession;
- The granting of similar rights and facilities to paralegals and lawyers;
- The importance of allowing paralegals to exercise their mandate independently.

#### 2004 Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa

The 2003 Principles and Guidelines were followed by the 2004 *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa*, adopted by the ACHPR in 2006 and by the UN Economic and Social Council in 2007. The importance of the Lilongwe Declaration lies in its attempt at expanding the concept of legal aid as far as possible, not only in its components, but also in its stakeholders and approaches. The Lilongwe Declaration is supported by a Plan of Action containing recommendations to all those involved in the development of policies and in the provision of legal aid.

The Lilongwe Declaration states that governments have the primary responsibility to provide and ensure access to legal aid in the criminal justice system, but that a broad range of organisations should be included in the provision of legal aid.<sup>21</sup> The Lilongwe Declaration identifies paralegals as legal aid providers, alongside lawyers and legal assistants.<sup>22</sup> Each State should examine different legal aid systems, including ‘government funded public defender offices, judicare programmes, justice centres, law clinics - as well as partnerships with civil society and faith-based organizations’. These different mechanisms should in any case be independent and be overseen by a coordinating body.<sup>23</sup> Recognising that there are insufficient lawyers on the continent to assist all those in conflict with the law, it points out that policies aimed at increasing the pool of lawyers is unsustainable and that a viable model should rather rely on both lawyers and on ‘non-lawyers, including law students, paralegals, and legal assistants’, who can provide legal assistance, knowledge and training to those in conflict with the law.<sup>24</sup>

19 The Principles consider that two criteria should be key in determining that the interests of justice require State-funded legal assistance in criminal cases: the seriousness of the offence and the severity of the sentence (Principle H(b)(i)).

20 Principles and Guidelines to a Fair Trial and Legal Assistance in Africa, DOC/OS(XXX)247, Principle H(h), (i) and (k).

21 Lilongwe Declaration, article 1.

22 Lilongwe Declaration, article 3.

23 Lilongwe Declaration, article 6.

24 Lilongwe Declaration, article 7.

The Lilongwe Declaration also insists on adopting a broad definition of legal aid, one that should include ‘legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution’.<sup>25</sup> The Declaration underlines the importance of providing such legal aid at all stages of the criminal justice process, from the moment of arrest and throughout the period of detention. It also insists that alternative, community-based, forms of conflict resolution, which lower the workload of all the formal criminal justice actors, should be recognised and prioritised.<sup>26</sup> Paralegals are not directly identified as the main stakeholders to promote and implement these community-based mechanisms but, because of the manner in which they operate, can certainly be regarded as such.

The Plan of Action contains many indications of what comprehensive legal aid legislation should contain. Highlights are:

- The need to establish an independent legal aid institution, accountable only to Parliament;
- The need to establish a State-funded legal aid scheme that would make funds available to all accredited legal aid providers (organisations or individuals);
- The need to ensure that legal aid mechanisms are sustainable;
- The need to ensure that legal aid is available at all stages of the criminal justice process;
- The need to formalise the work of paralegals, 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 services.
  - The need to promote ADR mechanisms relying on traditional, informal, community-based mechanisms;
  - The recommendation to allow paralegals to provide legal advice and assistance [but not legal representation] to all detainees, both in police custody and in prison, to attend police interrogations, and to monitor court hearings and places of detention, including the compliance with custody time limits.
  - The need to specifically establish paralegal services in prisons, to provide the following services:
    - Legal education of prisoners so as to allow them to understand the law, process and apply this learning in [the detainees’] 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.
- The need to facilitate access to all places of detention for paralegals.

### 2012 Kampala Declaration on Community Paralegals

Finally, about 50 CSOs who participated in a regional meeting on community paralegals in Kampala in 2012 adopted the *Kampala Declaration on Community Paralegals*. The Declaration has not been adopted by the ACHPR or another international organisation, but constitutes the first formal regional tool dedicated to paralegals. The Declaration outlines the gap that exists between the law and the reality of the majority of people in many African countries: numerous people see their fundamental rights denied because of ‘cost, dysfunction, corruption or abuse of power’.<sup>27</sup> Paralegals, who know the law, the different legal systems applicable in a particular country as well as relevant government structures, can bridge this gap by providing a variety of services including ‘mediation, organizing, education and advocacy’.<sup>28</sup> The Preamble furthermore points to the different statuses under which paralegals currently work: their mandate can be very specific or holistic; some are paid and others are volunteers; some work for State institutions and others work for non-State institutions. The signatories then adopted a series of recommendations, aimed at reinforcing and formalising the role of paralegals. These are:

25 Lilongwe Declaration, article 1.

26 Lilongwe Declaration, articles 3 and 5.

27 Kampala Declaration on Community Paralegals, 2012.

28 Kampala Declaration on Community Paralegals, 2012.

- The need to strengthen the ‘quality and consistency of community paralegal efforts, through mechanisms for training, supervision, evaluation, and community oversight’;
- The need to create national, regional and international paralegal networks in order to exchange best practices;
- The need for governments to formally recognise the role of community paralegals, for example through public legal aid boards, ombudsman offices or human rights commissions;
- The need to have paralegals present in both urban and rural settings;
- The need to ensure that paralegals are independent from the government.

This section illustrated that the ACHPR, supported by the many civil society organisations active in the field of paralegalism on the continent, has been at the forefront of developing inclusive principles on access to legal aid, which culminated in the adoption of the comprehensive Lilongwe Declaration. The Kampala Declaration, a document adopted by civil society organisations, may eventually be adopted and possibly expanded by the ACHPR, which would give paralegals additional international leverage to advocate for their formal recognition domestically.

### 3.2.2 International soft law instrument

The UN General Assembly adopted in 2012 the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (“UN Principles and Guidelines”).<sup>29</sup> This key document contains numerous provisions relevant for the development of legislation or policies on paralegals albeit, similarly to the Lilongwe declaration, only focusing on the criminal justice system and therefore not addressing the possible specificities of paralegal work in civil cases. The relevant provisions are outlined hereunder.

The UN Principles and Guidelines adopt a broad definition of legal aid and expressly refer to the broad definition contained in the Lilongwe Declaration outlined above.<sup>30</sup> They define legal aid as follows:

For the purposes of the Principles and Guidelines, the term “legal aid” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.<sup>31</sup>

The definition first lists the different forms of legal aid that should be made available in the criminal justice system: legal advice, legal assistance and legal representation (at no charge for the accused), and well as legal education, legal information, ADR mechanisms and restorative justice processes. Furthermore, the UN Principles recommend that legal aid be provided to the detained, arrested or imprisoned, suspected or accused person if he or she cannot afford it or if the interests of justice so require.

The first part of the UN Principles and Guidelines sets out a series of Principles, addressing constitutional and statutory recognition of legal aid, the importance of accessible and effective legal aid, the need for financial and administrative independence, the need to develop public awareness programmes on national legal systems, and the need to inform arrested persons of their right to legal aid.<sup>32, 33</sup> Finally, the UN Principles insist on the need to provide adequate training and skills to all legal aid providers, an independent accountability mechanism, and establishing partnerships between all legal aid providers.<sup>34</sup>

The second part of the UN Principles and Guidelines sets out Guidelines on the provision of all aspects of legal aid and at all stages of the criminal justice process, and aim to determine ideal legislation and/or policy frameworks on legal aid. The Guidelines indicate how States could determine the means test to access legal aid.<sup>35</sup> They provide further details on the need to disseminate information on the right

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<sup>29</sup> UN General Assembly, Resolution 67/187, 20 December 2012.

<sup>30</sup> UN Principles and Guidelines, para. 7.

<sup>31</sup> UN Principles and Guidelines, para. 8.

<sup>32</sup> The indication that such information be provided before questioning is to be welcomed since the most severe forms of abuse by the police or those in charge of criminal investigations, including torture, often take place during the first hours of arrest, and may lead to forced confessions, resulting in the unfair sentencing of the detainee who was a victim of such abuse.

<sup>33</sup> UN Principles and Guidelines, paras. 14 to 19, 26, 29 and 36.

<sup>34</sup> UN Principles and Guidelines, paras. 37 to 39.

<sup>35</sup> UN Principles and Guidelines, para. 41. The Principles contain examples of what “the interests of justice” could amount to, and include “the urgency or complexity of the case or the severity of the potential penalty”: see UN Principles and Guidelines, para. 21.

to legal aid, both to the general population and to all officials in contact with detainees.<sup>36</sup> They also contain a series of rights to be granted to all persons detained, arrested, suspected or accused of, or charged with a criminal offence.<sup>37</sup>

The UN Guidelines provide specific guidelines on the particular contents (i.e. how legal aid should be understood) at all stages of the criminal justice system: during the pre-trial stage,<sup>38</sup> during court proceedings,<sup>39</sup> and during the post-trial stage.<sup>40</sup> The Guidelines recommend in particular that the law allow paralegals to provide ‘appropriate types of assistance to the accused in court, provided that they are under the supervision of qualified lawyers’.<sup>41</sup> Furthermore, they encourage legal aid provided to draw up rosters of lawyers and paralegals who would provide legal advice and assistance to prisoners, thereby ensuring some regularity and continuity in the assistance provided to prisoners.<sup>42</sup>

The UN Guidelines recommend that States establish an independent national legal aid body or authority in charge of the provision and management of legal aid and all legal aid providers, including training and oversight of service providers.<sup>43</sup>

Finally, the UN Guidelines contain a specific guideline on paralegals, recommending that States recognise the role that paralegals (or similar service providers) play in providing legal aid services ‘in accordance with their national law’, ‘where appropriate’ and ‘where access to lawyers is limited’.<sup>44</sup> The last part should not be read as a scarce legal profession being a precondition for the recognition of paralegals, but rather as a reason for the development of such position. The UN Guidelines then list a series of measures which States should put in place, in consultation with all relevant stakeholders, to ensure adequate recognition and inclusion of paralegals. These are:

- a. To develop, where appropriate, a nationwide scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;
- b. To ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers;
- c. To ensure the availability of monitoring and evaluation mechanisms to guarantee the quality of the services provided by paralegals;
- d. To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;
- e. To specify the types of legal services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers, unless such determination is within the competence of the courts or bar associations;
- f. To ensure access for accredited paralegals who are assigned to provide legal aid to police stations and prisons, facilities of detention or pretrial detention centres, and so forth;
- g. To allow, in accordance with national law and regulations, court accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers available to do so.<sup>45</sup>

In summary, the regional and international instruments recommend that a broad definition of legal aid be adopted by States, including services that can be provided by paralegals. They call for statutory recognition of paralegals, which should furthermore include provisions on: standardised training and accreditation schemes, mechanisms to strengthen the quality and consistency of paralegal services, monitoring and evaluation mechanisms, codes of conduct, the types of legal services and activities that paralegals are allowed to take on (up to the right to provide legal assistance to an accused and possibly appear in court under limited circumstances), the independence of paralegals, linkages to be established between the formal legal profession and paralegals, and the need to have paralegals present both in rural and urban settings.

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36 UN Principles and Guidelines, para. 42.

37 These include the right to remain silent, to access family, not to be interviewed without the presence of a legal aid provider, or the circumstances in which legal aid providers should have access to such persons: UN Principles and Guidelines, para. 43.

38 UN Principles and Guidelines, para. 44.

39 UN Principles and Guidelines, para. 45.

40 UN Principles and Guidelines, paras. 46 and 47.

41 UN Principles and Guidelines, para. 45(f).

42 UN Principles and Guidelines, para. 47(b).

43 UN Principles and Guidelines, paras. 59 to 61, 69 to 72. The UN Guidelines speak to budgetary independence, external oversight, cooperation agreements and partnership with the different legal aid providers, and the need for legal aid funds.

44 UN Principles and Guidelines, para. 67.

45 UN Principles and Guidelines, para. 68.

## 4. Overview of country situations

This section examines the steps that several African countries have taken in adopting legislation or policy documents recognising paralegals. The exercise is meant to be a comprehensive one, although some countries that have taken such steps may not be listed below, if relevant information could not be sourced.<sup>46</sup>

### 4.1 Paralegals in the criminal justice systems of the surveyed countries

No reliable and comprehensive information is available on the proportion of paralegals working on criminal justice related matters compared to the overall number of paralegals working in the surveyed countries. However, in criminal justice-related matters, paralegals in all surveyed countries provide general legal education to detainees in prison. In Kenya, Sierra Leone, Tanzania, Uganda and Zambia, paralegals can also provide legal advice and assistance to self-represented accused in court, in order to brief them on procedures and prepare them for their trial, and in particular for their bail hearing. In all the latter countries as well as in Nigeria, paralegals also locate the families and relatives of an accused, in order for them to possibly prepare the required bail amount. Paralegals may also liaise with the police and the courts to ensure that files are not lost or that legal deadlines for court hearings are complied with. Finally, in Kenya, Liberia, Uganda, South Sudan, and Zambia, paralegals are stationed at police stations in order to provide legal advice to arrested individuals.<sup>47</sup> However, as already indicated above, none of the surveyed countries have legally authorised, or authorise the practice of, paralegals formally representing an accused during a court hearing, whether a bail hearing or a subsequent hearing.

### 4.2 Burundi

The Burundian Constitution does not contain any provision on the right to legal aid or State intervention in ensuring legal representation before the courts, but guarantees the right to the lawyer of one's choice in all criminal trials.<sup>48</sup> There is no legislation regulating legal aid in Burundi, neither are paralegals formally recognised. Legal aid is still primarily perceived as amounting to legal representation in court. An extensive 2011 study on the state of legal aid in Burundi<sup>49</sup> identified the need to 'rationalise and coordinate' the provision of legal aid by the various legal aid providers (paralegals being identified as one), even prior to formalising the role of paralegals or adopting legal aid legislation. In 2010, several CSOs providing legal aid set up a Legal Aid Forum, which attempts to coordinate the provision of legal aid (mostly focused on legal representation) and is funded by an international donor, but coordination is limited. Generally, the provision of legal aid, as well as its monitoring, is decided by the individual legal aid providers. Therefore, Burundian legal aid actors are primarily working at ensuring that they better utilise their scarce resources and in a more coordinated manner. This also relates to the work of paralegals, which should be complementing the work of other legal aid providers. This said, all legal aid providers, and especially paralegals, need to be better trained and equipped to fulfil their mandate, and to sign a code of conduct to ensure the provision of quality legal aid. None of these tools have been developed yet.<sup>50</sup>

A draft Legal Aid Bill was prepared in 2009 by the Ministry of Justice and the United Nations Office in Burundi and is primarily focused on regulating the providing of legal representation in court.<sup>51</sup> However, it contains a broad definition of legal aid, referring to both legal representation and legal assistance, advice or information, and which can be provided by 'other professionals'. Legal aid not amounting to legal representation is mostly understood as general legal information and individual assistance in citizens' relationships with State institutions issuing administrative documents, outside the formal

46 In particular, information on Rwanda could not be found and the country is therefore excluded in the report, despite the high likelihood that Rwanda is developing legal aid legislation recognising paralegals.

47 Interview with Florence Wanjiru Gachichio, Paralegal Officer with the Legal Resources Foundation Trust (Kenya); Interview with Robert Gbarbea, Senior Legal Advisor at the Carter Centre Liberia; Interview with Simeon Koroma, Director of Timap for Justice (Sierra Leone); interview with Karol Limondin, Legal Advisor, National Human Rights Systems Department, Danish Institute for Human Rights; Interview with Richard Nsumba Muganzi, Executive Director of LASPNET (Uganda); Danish Institute for Human Rights and East Africa Law Society, *Access to Justice and Legal Aid in East Africa*, 2011, DIHR research report, p. 70.

48 Constitution of the Republic of Burundi, s. 19.

49 *Avocats Sans Frontières, Etude de Base sur l'Aide Légale au Burundi*, June 2011.

50 *Avocats Sans Frontières, Etude de Base sur l'Aide Légale au Burundi*, June 2011; Interview with Emmanuel Nibizi, CODR UBUNTU coordinator.

51 Avant-projet de loi portant cadre légal de l'aide juridique et de l'assistance judiciaire au Burundi, ss 27 to 60.

justice system. Despite the Draft Bill recognising that this form of legal aid can be provided by a wide variety of stakeholders, it determines that legal assistance can only be provided by a Legal Information Bureau, managed by the Ministry of Justice, despite the numerous CSOs and NGOs already providing legal aid, including legal representation in court, thus leaving the latter unregulated.<sup>52</sup> The Bill does not formalise the role of paralegals nor does it recognise them as legal aid providers.

### 4.3 Kenya

Kenya adopted a new Constitution in 2010, which not only guarantees access to justice for all,<sup>53</sup> but may also be read as constituting constitutional recognition of paralegals. Indeed, any arrested person has the right to ‘communicate with an advocate, and other persons whose assistance is necessary’.<sup>54</sup> At trial, legal representation free of charge by an advocate will be provided ‘if substantial injustice would otherwise result’.<sup>55</sup> The Constitution may also be read as recognising a space for paralegals during trial, as it reads that ‘[i]n the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court’.<sup>56</sup> However, no constitutional provision can be read as recognising a role for paralegals in assisting detainees. Furthermore, it remains unclear how these provisions will be interpreted.

The Kenyan Legal Aid Bill and a draft Legal Aid and Awareness Policy are both currently with Cabinet for approval.<sup>57</sup> The Policy is not publicly available, but the relevant provisions of the Legal Aid Bill are summarised below.

Firstly, the Bill encompasses a broad definition of legal aid, which reads as including:

- a. legal advice and awareness;
- b. legal representation;
- c. assistance—
  - i. with resolving disputes other than by legal proceedings;
  - ii. with taking steps preliminary or incidental to any proceedings; and
  - iii. in arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings;
- d. the provision of legal information and law-related education;
- e. access to justice, and
- f. undertaking law-reform and advocacy work on behalf of the community it serves.<sup>58</sup>

It also defines an “accredited paralegal” as

A person employed by the [National Legal Aid] Service, a government department, accredited body who has completed a training course approved by the Kenya School of Law, the [National Legal Aid] Service or a training course conducted by a university in Kenya, an accredited body and who provides free legal advice and assistance and legal awareness education under the general supervision of an advocate but is not licensed to practice as an advocate.<sup>59</sup>

The Bill also states that accredited paralegals, whether employed by the National Legal Aid Service or an accredited legal aid provider, may provide legal advice and assistance, but only for free.<sup>60</sup> A paralegal under the Kenyan draft law is therefore an accredited person who is not a qualified lawyer, but who has completed compulsory training and provides free legal aid and assistance, under the supervision of a lawyer. The Bill also provides that exceptionally, in jurisdictions where there are no legal aid providers, an “intermediary” may provide legal advice and assistance in civil and criminal matters, but only for free.<sup>61</sup> However, since paralegals are legally defined as legal aid providers, they cannot fulfil the role of “intermediary”. This is one of the several inconsistencies in the Kenyan Legal Aid Bill.

52 Avant-projet de loi portant cadre légal de l’aide juridique et de l’assistance judiciaire au Burundi, ss 16 to 26.

53 Constitution of Kenya, s. 48.

54 Constitution of Kenya, s. 49(1)(c). The Constitution does not, however, indicate who determines under which circumstances such assistance is necessary.

55 Constitution of Kenya, s. 50(2)(h).

56 Constitution of Kenya, s. 50(2)(h).

57 Interview with Jedidah Wakonyo Waruhiu, Commissioner at the Kenyan National Human Rights Commission.

58 Kenya Legal Aid Bill (2013), s. 2.

59 Kenya Legal Aid Bill (2013), s. 2.

60 Kenya Legal Aid Bill (2013), s. 64.

61 Kenya Legal Aid Bill (2013), s. 65.

The Legal Aid Bill, if enacted, will establish a National Legal Aid Service (“Service”), with a broad mandate that includes the establishment and administration of a national legal aid scheme; provide funding to institutions providing legal aid; manage the Legal Aid Fund; monitor and evaluate the work of paralegals, and develop, in consultation with the Council for Legal Education, paralegals’ training courses and certification process.<sup>62</sup> The Board of the Service is chaired by a judge and consists of representatives of all relevant actors in the legal aid field, including one civil society organisation representative, but who must be from outside the capital. It is not mandatory that this latter representative employ paralegals.<sup>63</sup> The mandate of the Board includes hiring its own staff (including paralegals), entering into cooperation agreements with institutions providing legal aid, and accrediting legal aid providers, but not paralegals (see below).<sup>64</sup>

The Legal Aid Bill will create a Legal Aid Fund, managed by the Service which, among others, funds legal aid providers and finances the legal representation of indigent persons.<sup>65</sup>

The Service is mandated to decide on each individual application for legal aid if funded by the Legal Aid Fund.<sup>66</sup> This includes services potentially rendered by paralegals. It is mandated to establish policies to prioritise the types of cases in which legal aid will be provided (which can potentially be civil, criminal and constitutional matters) and which types of legal aid will be provided.<sup>67</sup> The Bill does not seem to differentiate between legal representation and other forms of legal aid, which means that in its current form the Bill would require the Service to also approve each individual request for legal advice or every legal awareness initiative, which will probably be extremely burdensome and unfeasible. It bears some logic that this institution oversees the adequate expenditure of State funds allocated to legal aid, by approving individual requests for legal representation, but it is surprising that the Bill require the Service to individually approve other forms of legal aid as well.

The Legal Aid Bill describes the procedure for individuals to apply for a legal aid grant (which in theory would also fund every service provided by a paralegal).<sup>68</sup> The Legal Aid Bill sets a list of eligibility criteria to access legal aid, the mandatory criteria being that the person be indigent.<sup>69</sup> The Bill does not seem to impose that the Service indicate which form of legal aid (representation, assistance, awareness, information) is to be provided by the legal aid provider identified in the granted decided by the Service.<sup>70</sup>

The Bill puts in place a mechanism of mandatory notification by police and prison officials of every detained person of their right to legal aid. The reply must be recorded by the police and forwarded to the Service within 24 hours.<sup>71</sup> However, it is uncertain whether all prisons and police stations throughout the country will be able to comply with the provision. Judges and magistrates have an obligation to inform individuals of their right to legal aid, and failure to do so may nullify the proceedings.<sup>72</sup>

The Legal Aid Bill also sets the framework for the accreditation of legal aid providers. It may accredit advocates, law firms, civil society organisations and university law clinics, and may charge fees for accreditation purposes and to monitor the work of legal aid providers.<sup>73</sup> It therefore does not accredit individual paralegals, despite them being defined as “accredited” in the same Bill. It may be that the requirement that they be accredited means that they work for an accredited organisation, or that they have passed an accredited training programme, or that this inconsistency is a shortcoming in the draft legislation, which should then be corrected before adoption.

The Bill does not expressly prohibit legal aid providers who do not seek funding from the Service to provide legal aid, on their own terms. It is, however, unclear how these would be regulated, if they are authorised to operate outside of the legal framework of the Legal Aid Bill. Finally, it is also unclear what the future role of current paralegal coordinating structures, such as the NGOs the Paralegal Support Network (PASUNE) or the Kenya Paralegal Association (KPA), will be.

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62 Kenya Legal Aid Bill (2013), s. 6.

63 Kenya Legal Aid Bill (2013), s. 7.

64 Kenya Legal Aid Bill (2013), s. 8.

65 Kenya Legal Aid Bill (2013), s. 21.

66 Kenya Legal Aid Bill (2013), s. 27.

67 Kenya Legal Aid Bill (2013), s. 27(2) and (3).

68 Kenya Legal Aid Bill (2013), Part IV.

69 Kenya Legal Aid Bill (2013), s. 28(1) to (3).

70 Kenya Legal Aid Bill (2013), s. 40.

71 Kenya Legal Aid Bill (2013), s. 37.

72

73 Kenya Legal Aid Bill (2013), s. 52.

In summary, the positive aspect of the Kenya Legal Aid Bill is its broad definition of legal aid, formal recognition of paralegals and the creation of a single coordinating body. However, the Bill contains several inconsistencies, puts in place a cumbersome process to access any funding for any type of legal aid provided, puts excessive powers in the hands of the National Legal Aid Service, and contains limited provisions on monitoring and oversight, which is already lacking.

## 4.4 Liberia

The Liberian Constitution contains the right for every suspect or accused to a lawyer during interrogation, and that statements made without the presence of a lawyer will be deemed inadmissible as evidence.<sup>74</sup> Furthermore, the Constitution provides that the State will make available legal aid services to all accused who cannot afford their own private lawyer.<sup>75</sup> These provisions are, however, not complied with in practice, mainly because of a limited number of lawyers available in the country.<sup>76</sup>

Paralegals provide general legal information to accused and detained persons, can facilitate mediation processes for less serious offences and may at times be present as an observer during police interrogation, but this latter practice only occurs in very limited and random instances.<sup>77</sup>

There is no legislation, draft legislation or government regulation on legal aid or paralegal services in Liberia. The Liberian National Bar Association has attempted to regulate the provision of legal aid, but with limited success.

In 2013, a Criminal Justice Conference, co-hosted by the Ministry of Justice and the Judiciary, supported by the UN Mission in Liberia and attended by representatives from government, civil society, the UN and donors, adopted a series of resolutions on the justice system in Liberia.<sup>78</sup> One resolution related specifically to paralegals:

### Resolution 14: Establishment of Paralegal Services

That, in accordance with the Resolution of the 2008 National Rule of Law Retreat, a body will be constituted under the Louis Arthur Grimes Law School to look closely at the modalities for formalizing paralegal services in Liberia

- i. That the body will include representation from international NGO partners and national civil society organizations working in the justice sector
- ii. That this body will take into consideration the 2008 Rule of Law Retreat resolution promoting creation of a Taskforce on Non-Lawyers
- iii. That this body will consider seriously both the advantages and potential disadvantages of different paralegal systems and clearly set out proposals for the functions, roles, and qualification of persons who will participate in a paralegal program
- iv. That this body will be mandated to make recommendations to the Ministry of Justice and the Supreme Court within 4 months of signing of this resolution.<sup>79</sup>

No draft legislation or policy document has yet come out of this resolution. The national agency in charge of taking the lead on developing a draft has not prioritised this action. Furthermore, the recent Ebola outbreak in Liberia has shifted priorities, the development of legal aid legislation not being one. The situation is slowly normalising, which will allow civil society organisations to undertake new actions to advocate for the development of draft legislation or a policy document.<sup>80</sup>

74 Constitution of the Republic of Liberia, article 21 (c).

75 Constitution of the Republic of Liberia, article 21 (i).

76 Interview with Robert Gbarbea, Senior Legal Advisor at the Carter Centre Liberia.

77 Interview with Robert Gbarbea, Senior Legal Advisor at the Carter Centre Liberia.

78 R Ofori, "New Proposals for Criminal Justice Reform", *UN FOCUS - UNMIL*, March-May 2013, pp. 26-27.

79 Interview with Robert Gbarbea, Senior Legal Advisor at the Carter Centre Liberia.

80 Interview with Robert Gbarbea, Senior Legal Advisor at the Carter Centre Liberia.

## 4.5 Mali

The Malian constitution guarantees the right to counsel but does not contain any provision on legal aid.<sup>81</sup>

Mali has set accreditation requirements for paralegals, relating to training and minimum qualifications.<sup>82</sup> It is unclear whether this is government regulated or an initiative of civil society organisations offering paralegal services. In 1998, the latter civil society organisations adopted the Statut de parajuriste (“Paralegals’ Status”).<sup>83</sup> It defines paralegals as ‘a man or woman who knows the social realities in his or her working environment, enjoying some reputation and who contributes to making the law more accessible to the population’.<sup>84</sup> Paralegals have to be employed by an organisation providing legal aid and are chosen from within their communities.<sup>85</sup> These organisations are responsible for the general oversight of the work of paralegals.<sup>86</sup> They can only work as paralegals after having followed the national paralegal’ training course and passed an examination.<sup>87</sup>

The *Cadre National de Pilotage du Curriculum de la formation du Parajuriste (CNPCP-Mali)* (“Pilot National Framework for the Curriculum of the Training of Paralegals”) was established in 2006 and was responsible for the training and monitoring of paralegals. The Pilot Framework has been replaced by the *Cadre National de Formation des Parajuristes* (“National Framework for the Training of Paralegals”), although it was not possible to contact them.<sup>88</sup> The paralegals’ training curriculum is available online.<sup>89</sup> It is dated 2006, but it is unclear whether it has been updated since or whether it is still used. Also, it is unclear whether the Cadre National de Formation des Parajuristes actually monitors the work of paralegals.

## 4.6 Nigeria

The Nigerian Constitution affords the right to counsel of the accused’s choice, but does not put any obligation on the State to provide legal aid to indigent accused.<sup>90</sup> The recently adopted Legal Aid Act (2011) regulates the provision of legal aid and opts for a *judicare* model with some recognition for paralegals. Most of the provisions of the Act have yet to be implemented.<sup>91</sup>

The Legal Aid Act, 2011 established a Legal Aid Council, which is a government body mandated to provide ‘legal aid, advice and access to justice ... in 3 broad areas, namely, Criminal Defence Service, Advice and Assistance in Civil matters including legal representation in court and Community Legal Services subject to merits and indigence tests for the parties’.<sup>92</sup> The Act defines legal aid as encompassing legal assistance by a legal practitioner in the preparation of proceedings, legal representation in court and ‘such additional aid (including advice)’, without specifying who is to provide the latter.<sup>93</sup> It therefore has a relatively narrow scope. The Legal Aid Council is also required to keep a register of all legal practitioners who are willing to provide legal representation in court under the legal aid scheme regulated by the Act.<sup>94</sup> Finally, the Legal Aid Council is mandated to set up Community Legal Services to provide general legal information as well as assistance outside court proceedings (such as ADR, ensuring enforcement of rulings, financial assistance or claims against public or private bodies). However, the Act does not specify who will staff these Services (paralegals or others) and does not require that these Services be available throughout the country. Regulations may, however, address these latter issues.<sup>95</sup>

The Legal Aid Council is also mandated to visit places of detention in order to inform pre-trial detainees (but not convicted prisoners) of their right to legal aid, assess general conditions of detention of pre-trial detainees and ensure that legal aid lawyers have access to detainees.<sup>96</sup> There is no space in the Act for paralegals to perform some of these functions, who currently are not encouraged to work on criminal matters but rather to refer these to their supervising lawyer.<sup>97</sup>

81 Malian Constitution, s. 9.

82 *Avocats Sans Frontières, Etude de Base sur l’Aide Légale au Burundi*, June 2011, p. 77-78.

83 [www.cnpcpmali.org/pdf/statut\\_definitif.doc](http://www.cnpcpmali.org/pdf/statut_definitif.doc) (accessed 15 January 2015).

84 Statut du Parajuriste, s. 1 (author’s translation).

85 Statut du Parajuriste, s. 4 and 6.

86 Statut du Parajuriste, s. 10 to 14.

87 Statut du Parajuriste, s. 7 and 8.

88 The CNPCP-Mali’s email addresses are no longer active and I was unable to reach the *Cadre National* by phone.

89 See this link: [http://www.cnpcpmali.org/pdf/curriculum\\_national.pdf](http://www.cnpcpmali.org/pdf/curriculum_national.pdf) (accessed 15 January 2015).

90 Constitution of the Federal Republic of Nigeria, s. 36(6)(c).

91 Interview with Okereke Chinwike, President and CEO of AFRILAW; Interview with Oby Nwankwo, Executive Director of CIRDDOC.

92 Nigeria Legal Aid Act, 2011, s. 1 and 8(1). See also s. 8(2) and (3).

93 Nigeria Legal Aid Act, 2011, s. 8(5)(c).

94 Nigeria Legal Aid Act, 2011, ss. 14 and 15.

95 Nigeria Legal Aid Act, 2011, s. 23.

96 Nigeria Legal Aid Act, 2011, s. 19.

97 Interview with Okereke Chinwike, President and CEO of AFRILAW.

The Legal Aid Council is mandated to maintain a register of non-governmental organisations and law clinics who provide legal aid (and some of whom work with paralegals), and may enter into cooperation agreements with them.<sup>98</sup>

The Legal Aid Act, 2011 sets up a Legal Aid General Fund to finance the provision of legal aid to indigent persons.<sup>99</sup> The Fund is used to pay private practitioners (including those briefed by CSOs) according to a scale determined by the Legal Aid Council.<sup>100</sup>

The Legal Aid Act, 2011 also affords some formal recognition of paralegals. Paralegals are defined in the Act as ‘any person although not admitted to the practice of law in Nigeria, performs substantially legal tasks under the direction and supervision of a legal practitioner’.<sup>101</sup> This definition matches to a large extent the way in which paralegals operate in Nigeria.<sup>102</sup> Indeed, paralegals in Nigeria are mostly intervening in civil matters, although some are present at the courts to provide legal information to accused persons. The Legal Aid Council is also authorised to grant licenses to ‘to persons who have undergone a prescribed course in paralegal services to render such services in appropriate situations’. However, the Act does not specify what this prescribed course entails. Also, the Act appears not to make the accreditation a mandatory condition for paralegals to operate. The Act mandates the Legal Aid Council to adopt regulations ‘for the involvement of Para-Legal aid provision in accordance with the provisions of this Act’,<sup>103</sup> but these regulations have yet to be adopted and it is unknown whether the regulations will address all issues needing clarification.<sup>104</sup>

Despite these weak provisions, CSOs working with have done advocacy work to develop a legal framework providing better recognition of paralegals and to develop a Paralegal Training Institute to provide standardised quality training to paralegals who often have basic levels of education and work in rural communities.<sup>105</sup> Currently, there exists a two-year National Innovative Diploma course in Paralegal Studies, but this course is more geared towards corporate paralegals and remains unavailable and irrelevant to many community paralegals.<sup>106</sup>

## 4.7 Sierra Leone

The Sierra Leonean constitution recognises the right to counsel, but does not contain any provision on State-funded legal aid.<sup>107</sup> In 2012, the Sierra Leone Parliament adopted the Legal Aid Act (6 of 2012), determining the conditions under which legal aid is provided. The Sierra Leone Legal Aid Act constitutes a model of comprehensive legislation recognising the role of paralegals as part of the legal aid framework.

The Act is the result of intense advocacy work by CSOs and NGOs, which started in 2008 with the organisations of the first national consultative conference on legal aid in Sierra Leone, organised by the Minister of Justice and the Justice Sector Development Programme (Department of International Development – United Kingdom). The conference resulted in the identification of the most suitable legal aid model for Sierra Leone and the development of draft legislation, which was discussed at a second consultative conference in 2010. The Act that was eventually adopted by Parliament is a compromise between the advocacy demands of civil society and the constraints of the government, and does not include all the provisions that CSOs and NGOs would have liked to see included.<sup>108</sup>

The Legal Aid Act contains a broad definition of legal aid, which reads as ‘the provision of legal advice, assistance or representation to indigent persons’. Legal advice and assistance are in turn defined as:

98 Nigeria Legal Aid Act, 2011, s. 17 (1) and (2).

99 The Act determines that those entitled to legal aid are those earning less than the minimum wage and, in exceptional circumstances assessed by the Legal Aid Council, to those earning up to ten times the national minimum wage. The Nigeria minimum wage currently stands at 18000 Naira (95 US\$) per month: <http://www.minimum-wage.org/international/en/Nigeria> (accessed 16 January 2015).

100 Nigeria Legal Aid Act, 2011, s. 15.

101 Nigeria Legal Aid Act, 2011, s. 24.

102 Interview with Okereke Chinwike, President and CEO of AFRILAW; Interview with Pascal Anozie, Project Coordinator at CIRDDOC.

103 Nigeria Legal Aid Act, 2011, s. 23(4).

104 Interview with Okereke Chinwike, President and CEO of AFRILAW; Interview with Pascal Anozie, Project Coordinator at CIRDDOC; Interview with Oby Nwankwo, Executive Director of CIRDDOC.

105 Interview with Okereke Chinwike, President and CEO of AFRILAW; Interview with Pascal Anozie, Project Coordinator at CIRDDOC.

106 Interview with Okereke Chinwike, President and CEO of AFRILAW.

107 Constitution of the Republic of Sierra Leone, s. 17(2)(b).

108 Interview with Simeon Koroma, Director of Timap for Justice.

Providing information in both criminal and civil cases about the relevant law and legal processes, assisting with ADR, advising on legal issues, assisting with the drafting of documents other than instruments prohibited under section 24 of the Legal Practitioners Act, 2000, referring matters to legal practitioners and doing other things that do not constitute legal representation.<sup>109</sup>

The Legal Aid Act also contains a definition of an “accredited paralegal”:

A person employed by the [Legal Aid] Board, a government department, an accredited civil society organization or a non-governmental organization and who has completed a training course in the relevant field of study at the Judicial and Legal Training Institute or an educational institution approved by the Board.<sup>110</sup>

Therefore, Sierra Leonean accredited paralegals must be employed by an accredited organisation and must have completed compulsory training. Each paralegal must also be accredited with the Legal Aid Board.<sup>111</sup> Paralegals are expressly listed as legal aid providers, alongside with legal practitioners, civil society organisations, non-governmental organisations, and university law clinics, but can only provide legal advice and legal assistance (not legal representation in court).<sup>112</sup>

The Legal Aid Act creates a Legal Aid Board, chaired by a judge, who is appointed by the President, a provision which CSOs (unsuccessfully) advocated to be amended.<sup>113</sup> There is no requirement that an organisation working with paralegals be represented on the Board.<sup>114</sup> The majority of the Board’s membership is close to the legal profession, which may bring the Legal Aid Board to focus its mandate on legal representation, to the detriment of the other forms of legal aid.<sup>115</sup> The mandate of the Board includes accrediting legal aid providers (individuals and organisations, including paralegals), enter into cooperation agreements with legal aid providers, determine the types of cases in which legal aid can be provided, and determine the maximum level of income to qualify as an “indigent person”.<sup>116</sup>

Importantly, the Legal Aid Board is mandated to ‘appoint at least one paralegal to each Chiefdom, (a) to provide advice, legal assistance and legal education to the Paramount Chief and the inhabitants of the Chiefdom; and (b) where appropriate, to assist in diverting certain cases to the formal justice system’.<sup>117</sup> This provision speaks to the tensions between formal and customary law, as well as the possible abuse of power by some traditional leaders, which have arisen in Sierra Leone. The second part of the provision speaks to the role that paralegals play in promoting ADR, and their mediation between the formal and traditional justice systems. However, the implementation of this provision will be challenging, as it will require an important number of trained paralegals, which the country does not (yet) have.<sup>118</sup>

Under the Legal Aid Act, legal aid, including paralegal services, is provided to indigent persons ‘if the interest of justice so require’. However, the Act does not provide further indications on how to determine this interest of justice, leaving it, to a certain extent, to the accredited legal aid providers to do so.

All institutions who are independent of the Legal Aid Board, whether they offer legal representation, advice or assistance, and therefore who may work with paralegals, can only provide legal aid if they have entered into a cooperation agreement with the Legal Aid Board.<sup>119</sup>

Where indigent persons need legal representation in court, whether in civil or criminal cases, this form of legal aid has to first be approved by the Board.<sup>120</sup> Legal advice and assistance, which paralegals can provide, need not be approved by the Board in every case but are legally described as benefitting indigent persons only.<sup>121</sup> Furthermore, the Act states that if the legal aid provider, when providing legal assistance and advice, is not funded by the Legal Aid Board, then the legal aid provider can set its own

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109 Sierra Leone Legal Aid Act (6 of 2012), s. 1. The instruments prohibited under s24 of the Legal Practitioners Act, 2000 are instruments relating to real and personal estates of individuals and companies.

110 Sierra Leone Legal Aid Act (6 of 2012), s. 1.

111 Sierra Leone Legal Aid Act (6 of 2012), s. 30(1)(d) and (2)(b).

112 Sierra Leone Legal Aid Act (6 of 2012), s. 1.

113 Interview with Simeon Koroma, Director of Timap for Justice.

114 Sierra Leone Legal Aid Act (6 of 2012), ss. 2 and 4.

115 Interview with Simeon Koroma, Director of Timap for Justice.

116 Sierra Leone Legal Aid Act (6 of 2012), ss. 9, 10 and 21.

117 Sierra Leone Legal Aid Act (6 of 2012), ss. 14(2).

118 Interview with Simeon Koroma, Director of Timap for Justice.

119 Sierra Leone Legal Aid Act (6 of 2012), s. 33.

120 The Legal Aid Act sets a detailed procedure to apply for legal aid representation, including a system of appeal against the Legal Aid Board decision: see ss. 23 to 28.

121 Sierra Leone Legal Aid Act (6 of 2012), s. 20.

criteria to determine the provision of legal aid.<sup>122</sup> Finally, legal representation in criminal matters has to be provided from the moment of arrest until a possible appeal is decided upon. There is no similar requirement that legal assistance and advice be provided for the same duration.

Police and prison officials have the obligation to notify the Legal Aid Board of an arrest or imprisonment of an unrepresented person who appears to be indigent, while judges and magistrates may inform the Board of the same.<sup>123</sup> CSOs (unsuccessfully) advocated for a provision putting an obligation on the judiciary to inform indigent persons of their right to legal aid, and would also have wanted for indigent persons to be systematically provided with legal representation in court, the absence of which would have caused the case to be quashed on appeal.<sup>124</sup>

Therefore, all legal representation in court can only be provided to indigent persons (the maximum level of income being set by the Legal Aid Board) and has to first be approved by the Legal Aid Board, and legal assistance and advice, including paralegal services, can be provided to the same indigent persons if funded by the Legal Aid Board, or to a broader pool of individuals if these services are not funded by the Legal Aid Board. However, all legal aid providers, whether their interventions are funded by the Legal Aid Board or not, have to be accredited with the Legal Aid Board.

The Legal Aid Act also provides for mechanisms of oversight. Firstly, all legal aid providers must keep records of individual cases they intervene in and must report quarterly to the Legal Aid Board.<sup>125</sup> Legal practitioners providing legal representation can be subject to disciplinary action if their conduct is unprofessional,<sup>126</sup> and organisations providing legal aid (including paralegal services) can see their cooperation agreement with the Legal Aid Board cancelled if a legal aid provider fails to meet its obligations under a cooperation agreement with the Board.<sup>127</sup> Not being accredited or providing legal aid without a cooperation agreement constitutes a criminal offence, of which both individuals and organisations can be held liable.<sup>128</sup>

The Sierra Leonean legislation should be seen as model legislation for legal aid and paralegals in Africa. Its accreditation, operational and oversight mechanisms are clearly defined and well designed. Its definitions are clear. It is sufficiently rigorous to ensure high quality legal aid services (all legal aid providers must be accredited), but simultaneously flexible to ensure the system will operate efficiently (approval of individual applications for legal representation only, possibility to work outside the Legal Aid Board scheme and conditions if receiving its own funding).

The Legal Aid Act is slowly being implemented, as the Legal Aid Board was only set up mid-2014, and is still in the process of hiring its staff and becoming fully operational. The content of the training programme for paralegals has yet to be agreed upon between the different stakeholders. The accreditation and oversight mechanisms are not yet operational.<sup>129</sup>

## 4.8 South Africa

The South African Constitution enshrines the right to choose and consult one's own counsel, and to be informed of this right promptly.<sup>130</sup> Furthermore, the Constitution contains the right to legal aid at the State's expense, 'if substantial injustice would otherwise result', and to be informed of this right promptly.<sup>131</sup> Legal Aid South Africa (LASA) is the independent, State-funded, institution responsible for the provision of legal aid, mostly in the form of legal representation in criminal matters. It has developed a "means test" to determine who qualifies for legal aid at state expense and has its own paralegals in its justice centres and satellite offices.<sup>132</sup> LASA paralegals are often the first port of call for people seeking legal aid (in civil or criminal cases), and provide general legal advice on matters brought to legal aid

122 Sierra Leone Legal Aid Act (6 of 2012), s. 36.

123 Sierra Leone Legal Aid Act (6 of 2012), s. 35.

124 Interview with Simeon Koroma, Director of Timap for Justice.

125 Sierra Leone Legal Aid Act (6 of 2012), s. 31.

126 Sierra Leone Legal Aid Act (6 of 2012), s. 32.

127 Sierra Leone Legal Aid Act (6 of 2012), s. 33(2).

128 The sentence is a 'fine not exceeding thirty million leones or to imprisonment for a term not exceeding three years': Sierra Leone Legal Aid Act (6 of 2012), s. 38.

129 Interview with Simeon Koroma, Director of Timap for Justice.

130 Constitution of the Republic of South Africa, s. 35(2)(b).

131 Constitution of the Republic of South Africa, s. 35(2)(c).

132 The 2015 criteria are outlined on its website (<http://www.legal-aid.co.za/?p=956>) (accessed 18 February 2015) and can be summarised as follows: In criminal matters, if the accused receives a state grant, an old age pension, or is a minor, he or she automatically qualifies for legal aid. In all other cases, the accused must pass a Means Test: if living alone, the accused may not earn more than R5 500 (US\$ 500) a month, or his or her household may not have a combined earning of R6 000 (US\$ 600). Furthermore, the accused or his/her household may not own a house and moveable property worth more than R500 000 (US\$ 50 000) or, if there is no property ownership, the value of the moveable property may not be more than R100 000 (US\$ 10 000).

offices, resolve non-litigious matters and re-direct litigious matters to the LASA attorneys and candidate attorneys.<sup>133</sup> They have usually followed formal paralegal training offered by several colleges and institutes around the country.<sup>134</sup> This formal paralegal training does not cater specifically for community paralegals, but rather corporate paralegals working in private law firms. Currently, LASA has over 2000 legal staff, which includes principal attorneys, candidate attorneys and paralegals.<sup>135</sup>

In addition to LASA, community paralegals and Community Advice Offices (CAOs) in South Africa have been part and parcel of the socio-political landscape since the 1930s, and were key in the struggle against apartheid. As of today, they remain largely the only institutions providing legal information and advice to poor and marginalised communities in rural communities.<sup>136</sup> Community paralegals today mostly intervene in civil matters, and there is space for them to increasingly intervene in criminal matters, which would impact on the length of proceedings, improve access to bail, but also promote ADR mechanisms, thereby supplementing the work of LASA's paralegals.<sup>137</sup>

Community paralegals in South Africa have taken many initiatives to self-regulate. In 1996, the National Community Based Paralegal Association (NCBPA) was created in order to organise the sector and facilitate advocacy initiatives, including seeking formal recognition and ensure quality services by developing standardised training and practice.<sup>138</sup> Over the years, the NCBPA fell apart and CSOs active in paralegal work decided to create a new alliance to regulate CAOs and paralegals.<sup>139</sup> This brought the creation of the National Alliance for the Development of Community Advice Offices (NADCAO) in 2005, at a time when the sector remained extremely fragmented (and hence making advocacy efforts and formal recognition difficult). Efforts at bringing all CAOs under one alliance proved challenging, as different organisations and regions had different interests. But NADCAO became the primary paralegal alliance to coordinate and supervise the work of all CAOs.<sup>140</sup> However, NADCAO does not represent all CAOs and organisations offering paralegal services.<sup>141</sup>

Attempts at formalising the role of paralegals through legislation, including at the repeated request of the paralegal community itself, and with the support of government, have been in the pipeline since the 1990s, but have been very slow at materialising. The paralegal community's first objective was the development of autonomous legislation on the paralegal profession. But some in the paralegal community saw the Legal Practice Bill as an opportune avenue for recognition and sought to be recognised alongside all other legal practitioners.<sup>142</sup>

The Legal Practice Bill was developed to regulate access to the legal profession and the delivery of legal services in South Africa. Its focus was not the provision of legal aid. The original drafts formally recognised the paralegal profession, but the 2010 draft no longer included a reference to paralegals.<sup>143</sup> This was also the result of the paralegal community's own strategic decisions, as some decided to advocate

133 Legal Aid South Africa, Annual Report 2013/14, Pretoria, 2014, p. 21; Legal Aid South Africa, Vacancy for a paralegal position at Phuthaditjhaba Justice Centre, available at <http://www.legal-aid.co.za/?p=3894> (accessed 18 February 2015).

134 Legal Aid South Africa, Vacancy for a paralegal position at Phuthaditjhaba Justice Centre, available at <http://www.legal-aid.co.za/?p=3894> (accessed 18 February 2015). Paralegal studies are offered on varying scales, from short courses (see for example the School of Paralegal Studies (<http://www.paralegal.za.org>, accessed 18 February 2015)) to three-year degrees (see for example the Diploma in Law (Paralegal Studies) offered by the University of Johannesburg (<http://www.uj.ac.za/EN/Faculties/law/coursesandprogrammes/Documents/CLPS.pdf> (accessed 18 February 2015)).

135 Legal Aid South Africa, Annual Report 2013/14, Pretoria, 2014, p. 26.

136 S Benjamin, *Joining Forces For The Poor: Alliance-building for social justice in South Africa and the story of the National Alliance for the Development of Community Advice Offices*, September 2012, pp. 9 and 10; J Dugard and K Drage, "To Whom Do The People Take Their Issues?" *The Contribution of Community-Based Paralegals to Access to Justice in South Africa*, World Bank Justice and Development Working Paper Series, 2013, pp. 4-11.

137 Wits Justice Project, Justice for Breakfast: Community Paralegals in South Africa, 13 February 2013, Outcome Report, p. 4.

138 S Benjamin, *Joining Forces For The Poor: Alliance-building for social justice in South Africa and the story of the National Alliance for the Development of Community Advice Offices*, September 2012, p. 11.

139 S Benjamin, *Joining Forces For The Poor: Alliance-building for social justice in South Africa and the story of the National Alliance for the Development of Community Advice Offices*, September 2012, p. 16.

140 NADCAO Fact Sheet, available at <http://nadcao.org.za/wp-content/uploads/2013/08/NADCAO-Fact-Sheet-Web.pdf> (accessed 6 January 2015); S Benjamin, *Joining Forces For The Poor: Alliance-building for social justice in South Africa and the story of the National Alliance for the Development of Community Advice Offices*, September 2012, pp. 22-27 and 30-32; J Dugard and K Drage, "To Whom Do The People Take Their Issues?" *The Contribution of Community-Based Paralegals to Access to Justice in South Africa*, World Bank Justice and Development Working Paper Series, 2013, pp. 18-19.

141 Wits Justice Project, Justice for Breakfast: Community Paralegals in South Africa, 13 February 2013, Outcome Report, p. 4; J Dugard and K Drage, "To Whom Do The People Take Their Issues?" *The Contribution of Community-Based Paralegals to Access to Justice in South Africa*, World Bank Justice and Development Working Paper Series, 2013, pp. 19-24.

142 Others were reluctant to be associated with "lawyers", thereby affecting their credibility in communities weary of formalised institutions. CAOs were also hoping that formal recognition as legal practitioners would ensure government funding of CAOs, who still today remain funded by private donors: NADCAO "Community Based-Paralegals Demand Recognition and Regulation in the Legal Practice Bill: Press statement", 25 July 2012, available at <http://www.ngopulse.org/press-release/community-based-paralegals-demand-recognition-and-regulation-legal-practice-bill> (accessed 6 January 2015).

143 NADCAO "Community Based-Paralegals Demand Recognition and Regulation in the Legal Practice Bill: Press statement", 25 July 2012, available at <http://www.ngopulse.org/press-release/community-based-paralegals-demand-recognition-and-regulation-legal-practice-bill> (accessed 6 January 2015).

with the Department of Justice and Constitutional Development (DOJ&CD) for the development of a separate regulatory framework for paralegals.<sup>144</sup> When NADCAO realised that separate legislation was not forthcoming, it requested that paralegals be re-introduced as formal legal practitioners in the Legal Practice Bill.<sup>145</sup> Eventually, the Legal Practice Act was adopted in September 2014 (Act 28 of 2014) without any formal recognition or regulatory framework for paralegals. The Legal Practice Council, mostly mandated to regulate the legal profession, was mandated by the Act to, 'within two years after the commencement of Chapter 2 of this Act, investigate and make recommendations to the Minister on ... the statutory recognition of paralegals, taking into account best international practices, the public interest and the interests of the legal profession, with the view to legislative and other interventions in order to improve access to the legal profession and access to justice generally'.<sup>146</sup>

In December 2014, a new Legal Aid South Africa Act 39 of 2014 was adopted. The new Act authorises LASA to employ legal practitioners, candidate attorneys and paralegals (which it is already doing).<sup>147</sup> The Act mandates LASA to provide legal aid including legal representation, assistance, advice, information and education.<sup>148</sup> Some of these will continue to be rendered by paralegals. The inclusion of community paralegals as independent legal aid providers (outside the LASA framework) rather than legal practitioners had been advocated by some over the years, but unfortunately they were not included in this Act either.<sup>149</sup>

In a 2014 Report of the Portfolio Committee on Justice and Correctional Services on the Legal Aid Bill, the Committee recognised that LASA was mainly assisting individuals in criminal matters, and that additional state funding was required to ensure legal assistance in civil matters. The Committee recognised that 'paralegals, and community law and advice centres play a major role in the area of public interest law' by providing legal services, mostly in civil matters, to poor and rural communities, and that the sector had to be recognised and regulated, as a complement to LASA. It therefore recommended that separate legislation to regulate paralegals be prioritised and expedited (contrary to the extensive deadline given in the Legal Practice Act to draft recommendations on paralegals), in consultation with all relevant stakeholders.<sup>150</sup>

South African community paralegals are therefore waiting for new draft legislation to be tabled, which would hopefully put in place a statutory regulatory body for paralegals, and would set norms and standards for access to the profession, training, accreditation or registration, roles and functions, and accountability and oversight mechanisms. It is regrettable that paralegals are the last in the legal practice and legal aid field to be regulated, especially considering the long history behind attempts to regulate the paralegal profession. It appears, however, that the different voices claiming to represent community paralegals, the various interests, and changing strategies over the years, have contributed to this slow recognition.

## 4.9 South Sudan

The Transitional Constitution recognises the right to all accused persons to self-representation, a right to a lawyer of their own choice, or a right to State-funded legal aid 'where he or she cannot afford a lawyer to defend him or her in any serious offence'.<sup>151</sup> According to a 2013 report by the South Sudan Law Society (SSLS),<sup>152</sup> the South Sudanese government currently only funds legal aid in the most serious criminal cases, and under the judicare system, hiring private lawyers to represent the accused in court. The SSLS, a donor-funded independent institution, also runs several legal aid clinics throughout the country, but these services remain unregulated. Paralegals in South Sudan provide legal assistance and advice, and there are to be government efforts to licence paralegals in order to entitle them to represent accused individuals in court which is, however, a role they are not yet playing.

144 NADCAO and the National Task Team on Community-Based Paralegals, *Joint Submission to the Portfolio Committee on Justice and Constitutional Development on the Legal Practice Bill [B-20-2012]*; paras 2.19 to 2.22. (on file with author).

145 NADCAO and the National Task Team on Community-Based Paralegals, *Joint Submission to the Portfolio Committee on Justice and Constitutional Development on the Legal Practice Bill [B-20-2012]* (on file with author).

146 Legal Practice Act (28 of 2014), s. 34(9)(b). Chapter 2 will come into force three years after the commencement of Chapter 10, which will only commence at a date decided by the President. Therefore, Chapter 2 will come into force at an unknown date.

147 Legal Aid Act (39 of 2014), s. 4(1)(a).

148 Legal Aid Act (39 of 2014), s. 3.

149 J Dugard and K Drage, "To Whom Do The People Take Their Issues?" *The Contribution of Community-Based Paralegals to Access to Justice in South Africa*, World Bank Justice and Development Working Paper Series, 2013, pp. 33-34. See also V Jaichand, "Public Interest Litigation Strategies For Advancing Human Rights In Domestic Systems Of Law", *SUR-IJHR*, 2004, 127 at 133-134.

150 National Assembly, "Report of the Portfolio Committee on Justice and Correctional Services on the Legal Aid Bill" [B8-2014], dated 10 September 2014", paras. 5 to 7.

151 Transitional Constitution of the Republic of South Sudan, s. 19(6).

152 D Deng, *Challenges of Accountability. An Assessment of Dispute Resolution Processes in Rural South Sudan* (2013), South Sudan Law Society.

However, the SSLS recommends that licensing be optional, as many community paralegals acting outside the formal judicial system and in remote parts of the country, many of whom are women, would not be able to obtain a licence and mandatory licensing would have the effect of reducing the number of community paralegals. The SSLS also recommends that future government regulations clarify the role that unlicensed community paralegals could play.<sup>153</sup>

Currently, South Sudan paralegals intervening in the criminal justice field are posted in police stations around the country to ensure that arrested individuals are brought before a judge within 24 hours, as required by the Transitional Constitution, and provide legal information and assistance to accused and detained individuals along the court process.<sup>154</sup>

## 4.10 Tanzania

The current Constitution does not contain a right to counsel.<sup>155</sup> However, a new Constitution is being drafted and should be adopted in the first half of 2015, which enshrines the right to counsel but contains no provisions on legal representation or other forms of legal aid provided at State's expense.<sup>156</sup>

In 2004, the Law Reform Commission of Tanzania published a *Report on the Scheme for Provision of Legal Services by Paralegals*, aimed at assessing the need to formalise the work of paralegals. The Report examined the enrolment, conduct, training and the setting of fees of paralegals, determining paralegals' role in the Tanzanian justice system, and their qualifications.<sup>157</sup> The report contains a *Draft Bill for an Act to establish the National Paralegal Authority and make provisions for the institution, management and development of paralegals, and to provide for other related matters*, inspired by the corporate paralegalism model (and therefore not *per se* focused on the provision of legal assistance to indigent persons). The relevant provisions are summarised below.

The report notes the shortage of lawyers, the urban focus of formal legal aid services and hence the development of paralegal services provided by civil society organisations, especially in rural parts of the country. However, without a regulatory framework, the quality of legal assistance and advice provided by paralegals vary greatly. Of particular note are Tanzanian Primary Courts, at the lowest level of the judicial system, which resolve conflicts between parties only, and before which lawyers or prosecutors have no right of appearance. Paralegals cannot appear before these courts either. This prohibition of legal representation leaves a tremendous gap in the guarantee to a fair trial.<sup>158</sup>

The Law Reform Commission recommended that paralegal services be officially recognised as forming part of the legal aid framework. Its draft Bill defines a paralegal as 'a person holding a practicing certificate and registered by the Registrar to National Paralegals Authority'.<sup>159</sup> The Draft Bill creates the National Paralegal Authority, whose mandate includes accreditation of paralegals and of training institutions, setting a training curriculum, setting professional examination and certification criteria, designing and instituting a code of conduct to regulate the conduct of paralegals, acting as a disciplinary authority for paralegals and determining the fees that paralegals can request.<sup>160</sup> The Draft Bill recommended that paralegals be registered with the National Paralegal Authority which, in a similar manner as lawyers, would keep a roll of paralegals who would be issued a practicing certificate.<sup>161</sup> It is unclear in the Draft Bill what the powers of paralegals would be, but the report recommended that the duties and functions of paralegals be set by the National Paralegal Authority and the Minister of Justice and Constitutional Affairs, and would include powers similar to that of a notary public.<sup>162</sup> The report recommended that paralegals be given the right to represent individuals before Primary Courts, both in civil and criminal matters, and both as defendants and prosecutors, which is reflected in legislative amendments suggested by the Draft Bill.<sup>163</sup> Finally, the Law Reform Commission recommended that registration and licensing be required to operate as a paralegal.<sup>164</sup>

153 D Deng, *Challenges of Accountability. An Assessment of Dispute Resolution Processes in Rural South Sudan* (2013), South Sudan Law Society, p. 4.

154 Interview with Taban Romano, Senior Legal Aid Attorney at the SSLS.

155 The Constitution of the United Republic of Tanzania.

156 The United Republic of Tanzania Draft Constitution, 2013, s. 38.

157 Law Reform Commission of Tanzania, *Report on the Scheme for Provision of Legal Services by Paralegals*, p. iii.

158 Law Reform Commission of Tanzania, *Report on the Scheme for Provision of Legal Services by Paralegals*, p. 6-7.

159 Tanzania Draft Bill, s. 2.

160 Tanzania Draft Bill, s. 4; Law Reform Commission of Tanzania, *Report on the Scheme for Provision of Legal Services by Paralegals*, p. 40, 43, 45, 49 and 50.

161 Tanzania Draft Bill, ss. 13 and 14.

162 Law Reform Commission of Tanzania, *Report on the Scheme for Provision of Legal Services by Paralegals*, p. 50.

163 Tanzania Draft Bill, second schedule; Law Reform Commission of Tanzania, *Report on the Scheme for Provision of Legal Services by Paralegals*, p. 40 and 44.

164 Tanzania Draft Bill, s. 15; Law Reform Commission of Tanzania, *Report on the Scheme for Provision of Legal Services by Paralegals*, p. 50.

However, this draft Bill has not gone much beyond the stage of recommendations from the Law Reform Commission and the current government is not envisaging developing policy or legislation on legal aid in the near future, including recognising paralegals.<sup>165</sup>

## 4.11 Uganda

The Constitution recognises the right to counsel and enshrines a right to legal representation at State's expense only in cases carrying the death penalty or life imprisonment.<sup>166</sup>

Uganda's legal aid framework is set in the Poor Persons Defence Act, 1998, which confirms that the provision of legal aid at State's expense is limited to legal representation in the most serious criminal cases, as per constitutional requirements. The country does not have a national legal aid body, and the provision of State-funded legal aid is currently managed by the Uganda Law Council (ULC), which sits within the Ministry of Justice and Constitutional Affairs and whose primary mandate is to regulate the legal profession. The Advocates (Legal Aid to Indigent Persons) Regulations, 2007 defines legal aid as 'the provision of legal advice or representation by a lawyer, an advocate or a paralegal'.<sup>167</sup> However, the ULC mostly supervises the provision of legal representation in court to those facing a sentence of life imprisonment or capital punishment (through the *state brief*, or *judicare*, system), and therefore does not play an active role in supervising and regulating other forms of legal aid, including legal advice, which are functions performed by paralegals. In addition, under the Advocates (Amendment) Act 27 of 2002 and the Advocates (Pro Bono Services to Indigent Persons) Regulations, 2009, lawyers are required to perform 40 hours of *pro bono* work per year, but very few comply with this requirement.<sup>168</sup>

Paralegals are currently active under two umbrellas. Firstly, many are working for CSOs providing legal aid services (including legal representation in court through their own lawyers). Some, in particular those working for the Paralegal Advisory Services, intervene in the criminal justice field, by for example providing legal information and legal education to accused persons at police stations and to prisoners, by following up on court cases and monitoring custody time-limits, by notifying families of a person's detention in order to facilitate payment of bail, or by providing support to victims and witnesses. They have been highly effective in reducing the prison population and the length of criminal trials. Paralegals working in the criminal justice sector hold a one-year Diploma in Law, a qualification that most community-based paralegals working on civil matters do not have.<sup>169</sup> The Draft National Legal Aid Policy (see below) identifies several challenges to the current work of paralegals, including varying work standards, lack of monitoring, uneven geographic distribution and unsustainable funding.<sup>170</sup>

Secondly, the Justice, Law and Order Sector (JLOS)'s Justice Centres<sup>171</sup> are pilot "one-stop shop" projects at which comprehensive legal aid, from legal education to legal representation and including alternative dispute resolution mechanisms, is provided by lawyers, paralegals, social workers and psychologists.<sup>172</sup>

Relevant stakeholders, including representatives from government and civil society, met at two successive National Legal Aid Conferences, the first one held in 2011 and the second one in 2014. After the first National Legal Aid Conference, JLOS developed a Draft National Policy on Legal Aid as well as a Draft Legal Aid Bill. Both are before Cabinet and civil society has, at the 2014 conference, called for further consultations on the two documents.<sup>173</sup> Both documents have been through numerous inclusive review processes and one cannot assess at this stage whether the current drafts will be adopted by Cabinet or whether they will undergo substantive amendments before adoption.

The relevant provisions of the Draft Legal Aid Bill (and those of the Draft National Legal Aid Policy where they substantively deviate from the Draft Bill) are examined hereunder. Both documents are well-thought and progressive, to a large extent adequately addressing the novel approach to legal aid which has been seen in other countries under review, and drawing extensively from regional and international instruments outlined in section 3.

165 Danish Institute for Human Rights and East Africa Law Society, Access to Justice and Legal Aid in East Africa, 2011, DIHR research report, p. 49.

166 Constitution of the Republic of Uganda, s. 28(2)(d) and (e).

167 Advocates (Legal Aid to Indigent Persons) Regulations, 2007, s. 4.

168 Uganda Draft Legal Aid Policy, 2011, pp. 13-16.

169 Uganda Draft Legal Aid Policy, 2011, pp. 20 and 26; Interview with Richard Nsumba Muganzi, Executive Director of LASPNET.

170 Uganda Draft Legal Aid Policy, 2011, pp. 20 and 26.

171 JLOS is a government-funded body with representatives from all state institutions playing a role in law enforcement and the justice sector. More information can be found here: <http://www.jlos.go.ug/old/index.php/2012-09-25-13-11-16/our-history> (accessed 19 February 2015).

172 JOLS Ag. Senior Technical Advisor, "The provision of legal aid services by state-funded mechanisms in Uganda: challenges and opportunities", Presentation made at the 2nd National Legal Aid Conference, 26-27 June 2014, available at <http://www.jlos.go.ug/old/index.php/2012-09-25-11-09-41/legal-aid/overview> (accessed 19 February 2015); Uganda Draft Legal Aid Policy, 2011, pp. 15-18.

173 D Odota, "Undertakings from the 1st National Legal Aid Conference" Presentation made at the 2nd National Legal Aid Conference, 26-27 June 2014, available at <http://www.jlos.go.ug/old/index.php/2012-09-25-11-09-41/legal-aid/overview> (accessed 19 February 2015).

The Draft National Legal Aid Policy is a comprehensive document examining the current state of legal aid in Uganda, and makes recommendations for the adoption of a mixed model of legal aid delivery, based on a partnership between a state-funded Legal Aid Board and CSOs/NGOs. It also recommends the adoption of consolidated legislation regulating all aspects of legal aid. Many provisions of the Draft Legal Aid Bill are directly taken from the Draft Policy.

Recognising that legal aid cannot be limited to legal representation, the Legal Aid Bill provides a broad definition of legal aid, based on the definition contained in the Lilongwe Declaration, and reads as 'the provision of free legal advice and assistance or legal representation to indigent persons who are eligible for legal aid under this Act'<sup>174</sup> Legal advice and assistance are then defined as:

In respect of both criminal and civil cases: receiving information about the relevant law and legal processes; providing assistance through alternative dispute resolution such as negotiation, mediation and conciliation; advising on legal issues; providing assistance with the drafting of documents other than instruments prohibited in terms of the Advocates Act; referring persons to advocates, relevant non-governmental or faith-based organizations and institutions for assistance; diverting people from the formal justice system to traditional and other dispute resolution mechanisms; conducting research, advocacy, lobbying, legal awareness and training; and doing such other things that do not constitute legal representation in contravention of the Advocates Act.<sup>175</sup>

The Draft Bill identifies legal aid providers as accredited persons or bodies who have entered into cooperation agreements with the (newly created) Legal Aid Council and include advocates, bar course students, law graduates awaiting enrolment, accredited non-governmental organisations, law clinics, and paralegals employed by accredited non-governmental organisations.<sup>176</sup>

Finally, the Draft Bill defines paralegals as:

A person employed by the Council, a government department, accredited civil society organization, an accredited non-governmental organization or a law clinic who has completed a training course approved by the Council, or a training course conducted by the Law Development Centre, a university, an accredited civil society organization, or accredited non-governmental organization, and who provides free legal advice and assistance and legal awareness education under the general supervision of an advocate but is not licensed to practice as an advocate.<sup>177</sup>

Therefore, paralegals are trained individuals working for a State institution or an accredited non-governmental organisation, who can provide legal information, advice and assistance at no charge, but cannot represent an accused in court.

The Draft Bill then provides broad guidelines on who can access what type of legal aid. Firstly, the Draft Bill provides that legal advice and assistance (but not representation) be provided to all persons who are 'arrested, detained or charged with a crime'. Furthermore, indigent persons accused of a crime should be provided with free legal representation if it is in the interests of justice. Indigence will be determined through Regulations.<sup>178</sup> In civil matters, indigent persons are automatically entitled to free legal advice and assistance, and anyone can apply for free legal representation, which will be granted if it is in the interests of justice (the Draft Policy recommended stricter criteria on access to legal representation in civil cases).<sup>179</sup> The Draft Bill sets a number of broad criteria to assess the interests of justice (both in civil and criminal cases), including a vulnerable person being unable to understand proceedings or the risk that the accused suffer socio-economic consequences from imprisonment.<sup>180</sup> The graduation of the type of legal aid provided and the profile of the person being granted legal aid is an interesting and logical one, and a model that could be followed in other countries. The Draft Legal Aid Bill insists that legal advice, legal assistance and legal representation under the Bill must be provided free of charge.<sup>181</sup> Charging a fee for the provision of legal aid incurs a penalty of a fine and/or six months' imprisonment.<sup>182</sup>

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<sup>174</sup> Uganda Draft Legal Aid Bill (Draft 6), s. 1; Uganda Draft Legal Aid Policy, 2011, pp. 9-11.

<sup>175</sup> Uganda Draft Legal Aid Bill (Draft 6), s. 1.

<sup>176</sup> Uganda Draft Legal Aid Bill (Draft 6), ss. 1 and 10.

<sup>177</sup> Uganda Draft Legal Aid Bill (Draft 6), s. 1; Uganda Draft Legal Aid Policy, 2011, p. 30 and 32.

<sup>178</sup> Uganda Draft Legal Aid Bill (Draft 6), ss. 1, 3(1) and (2) and 4.

<sup>179</sup> Uganda Draft Legal Aid Bill (Draft 6), s. 3(3). The Draft Policy recommended that indigent persons be granted legal representation in 'serious, complex' civil cases 'involving land, inheritance and family matters' with a 'reasonable prospect of success': Uganda Draft Legal Aid Policy, 2011, p. 23.

<sup>180</sup> Uganda Draft Legal Aid Bill (Draft 6), s. 3 (4).

<sup>181</sup> Uganda Draft Legal Aid Bill (Draft 6), ss. 13(2); 14(3) and 19(2).

<sup>182</sup> Uganda Draft Legal Aid Bill (Draft 6), s. 52(1).

The Draft Bill contains extensive provisions on what legal advice and assistance, as well as legal representation, entail as well as who is entitled to provide these forms of legal aid.<sup>183</sup> Paralegals are expressly identified as one category of legal aid providers mandated to provide legal advice and assistance in criminal cases, which may include interventions at police stations, prisons and courts through for example the provision of legal information, tracing families to secure bail, or notifying witnesses.<sup>184</sup> Most of these functions will in all likelihood be performed by paralegals, law students or young law graduates. All legal aid providers and magistrates are also encouraged to divert alleged minor offenders to traditional courts or other informal dispute resolution mechanisms ‘that resolve such disputes in accordance with fundamental rights and freedoms’.<sup>185</sup> This very interesting provision speaks to the important role that paralegals (and, in theory, other legal aid providers) can play in linking up the formal and informal justice systems, on condition that the latter comply with basic human rights standards.

Beyond the general provisions outlined in the previous paragraph, the Draft Bill contains specific provisions on the mandate of paralegals. Firstly, the Draft Bill imposes on the Legal Aid Council to appoint at least one paralegal (which may be employed by CSOs) ‘in every sub-county to provide legal advice and assistance and legal education’.<sup>186</sup> However, this requires extensive financial and human resources, and one can expect that it will take time before the provision is fully implemented, if ever. Secondly, the Draft Bill clearly sets out the powers of paralegals in providing assistance to an indigent person in court (in civil or criminal matters) ‘where no legal practitioner is available to represent the accused person’. Therefore, the Bill, in its current version, sees paralegals as complementing legal representatives, although not providing them with the right to represent an accused in court. Indeed, the said powers are outlined as follows:

- a. Before the trial, advise and assist accused persons and litigants in civil claims on all preliminary matters including bail applications, pleading to charges and such other matters.
- b. During the trial, not speak on behalf of an accused person, but may –
  - iii. Take notes and quietly advise and assist the accused person or litigant in such a manner as not to disturb the proceedings;
  - iv. Suggest questions that the accused person or litigant might ask in examination in chief, cross-examination or re-examination; and
  - v. Assist the accused person or litigant to make opening or closing statements and in the case of an accused person who is convicted a plea in mitigation.<sup>187</sup>

The Draft Bill sets up National Legal Aid Council, consisting of nine government-appointed members, two being from civil society organisations (but there is no obligation that either employ paralegals).<sup>188</sup> Its mandate includes the granting of legal aid, entering into cooperation agreements with independent legal aid providers, accrediting legal aid providers (but not paralegals), hiring its own legal aid providers (including paralegals), monitoring and evaluating legal aid providers, determining who can access legal aid, coordinating training of legal aid providers (including paralegals) and disseminating information on access to legal aid.<sup>189</sup> The Draft Policy recommended that paralegals be accredited by the Uganda Law Council, but the Draft Bill provides that paralegals not be individually accredited but be employed by an accredited organisation.

The Draft Bill then outlines the procedure to access legal aid. In effect, the Council approves every request for legal aid (including legal advice or assistance) but only if it provides it directly or funds an independent legal aid provider providing these services.<sup>190</sup> Independent, accredited, legal aid providers are free to provide legal aid on their own terms if not funded by the Council, but it is a criminal offence to provide legal aid without a cooperation agreement with the Council in place.<sup>191</sup> This distinction is similar to the one applicable in Sierra Leone, and is a distinction missing from the Kenyan draft. However, the Sierra Leonean Act provides that its Board must only approve individual applications for legal representation, whereas the Ugandan Council would have to approve all applications for legal aid, including advice and assistance. Such requirement may be too cumbersome to be effective in practice, and it may be that the Ugandan drafters amend this provision before the Bill is adopted.

183 Uganda Draft Legal Aid Bill (Draft 6), ss.13 to 20.

184 Uganda Draft Legal Aid Bill (Draft 6), s. 13(4).

185 Uganda Draft Legal Aid Bill (Draft 6), s. 13(3) and 15(2).

186 Uganda Draft Legal Aid Bill (Draft 6), s. 16.

187 Uganda Draft Legal Aid Bill (Draft 6), s. 17.

188 Uganda Draft Legal Aid Bill (Draft 6), s. 25.

189 Uganda Draft Legal Aid Bill (Draft 6), ss. 18, 20 to 22, 32 and 33; Uganda Draft Legal Aid Policy, 2011, p. 29 and 31-34.

190 Uganda Draft Legal Aid Bill (Draft 6), ss. 5 to 12.

191 Uganda Draft Legal Aid Bill (Draft 6), s. 14(2) and 52(2).

The Draft Bill puts a number of obligations on all legal aid providers and criminal justice actors in order to ensure that people legally entitled to legal aid effectively receive it, essentially by putting an obligation on all relevant institutions (the Council, legal representatives, CSOs, police, prosecutors and magistrates) to provide adequate and comprehensive information on legal aid and either direct indigent persons to a legal aid provider or provide quality legal aid themselves.<sup>192</sup> The comprehensiveness of these provisions is to be acknowledged, and has not been seen in any other legislation of draft legislation examined in this report. An earlier version of the Sierra Leonean Bill also contained extensive provisions aimed at ensuring effective access to legal aid, some of which were removed in the final stages of examination. It cannot be excluded that the Ugandan Bill will be subject to the same faith, and that these novel provisions will be weakened after examination by Cabinet.

Despite the Ugandan Draft Legal Aid Bill being a very promising document to ensure effective access to a comprehensive range of legal aid services provided by a wide spectrum of legal aid providers, one cannot assess to what extent these provisions will be reflected in the Legal Aid Act, when adopted. Certain provisions, especially the ones putting an important workload on the Council or other formal justice actors, may be weakened. However, Ugandan CSOs will advocate for the adoption of the most comprehensive Bill possible.

## 4.12 Zambia

The Zambian Constitution enshrines the right to counsel of one's choice, as well as a right to legal aid 'in accordance with the law enacted by Parliament for such purpose'.<sup>193</sup> The Zambian Legal Aid Board is regulated by the Legal Aid Act 30 of 1967 (last amended in 2005). It has limited capacity to provide legal aid, only in the form of legal representation before the courts as well as legal assistance if connected to a dispute. It does not engage directly with paralegals as such – although some instances of collaboration and cooperation between paralegal NGOs and the Legal Aid Board have been established since 2011.<sup>194</sup> There are numerous organisations employing paralegals in Zambia, with some coordination in place between them, but they remain unregulated and the quality of their interventions has, as a result of the lack of regulation, been uneven. Some paralegals work on criminal justice related matters, by providing general information and legal education as well as individual legal advice and some level of legal assistance to those in police custody, to prisoners, and other criminal parties (for example, victims). Paralegals also track lengthy cases and bring them to the attention of judicial authorities in order to speed up trial. Finally, paralegals refer complex cases requiring further legal assistance and/or legal representation in court to the Legal Aid Board – provided that the CSOs to which these paralegals are affiliated and the Legal Aid Board have set up a collaboration framework in this regard. Generally, paralegals working in the criminal justice system in Zambia are well experienced and reasonably qualified, hence enjoying a high level of trust and cooperation from the formal justice sector.<sup>195</sup>

In cooperation with the Judiciary, the Legal Aid Board and a paralegal CSO, the Danish Institute for Human rights (DIHR) has funded a Legal Services Unit "one-stop shop" pilot project at the Lusaka Subordinate Court, through which three legal aid assistants (from the Legal Aid Board)<sup>196</sup>, a full-time paralegal (affiliated to a CSO) and a supervising lawyer (from the Legal Aid Board) provide legal information, education, advice, assistance and representation (the latter being provided by the legal aid assistants lawyer only) to indigent accused and other vulnerable persons, a mechanism expected to ensure greater respect of the right of the accused as well as more efficient processing of the cases in which these legal aid providers are involved.<sup>197</sup> Strong and effective cooperation between lawyers and other legal aid providers is an important aspect of successful provision of legal aid, something not all Zambian paralegals currently benefit from.<sup>198</sup>

<sup>192</sup> Uganda Draft Legal Aid Bill (Draft 6), ss. 34 and 45 to 49.

<sup>193</sup> Constitution of Zambia, s. 18(2)(d).

<sup>194</sup> Zambia Ministry of Justice and Danish Institute for Human Rights, *Access to Justice in the Republic of Zambia, A situational analysis*, 2012, p. 89; Interview with Karol Limondin, Legal Advisor, National Human Rights Systems Department, Danish Institute for Human Rights.

<sup>195</sup> Interview with Karol Limondin, Legal Advisor, National Human Rights Systems Department, Danish Institute for Human Rights; Zambia Ministry of Justice and Danish Institute for Human Rights, *Access to Justice in the Republic of Zambia, A situational analysis*, 2012, pp. 104-105; N Kahn-Fogel, "The Troubling Shortage of African Lawyers: Examination of a Continental Crisis using Zambia as a Case Study", 33 *U. Pa. J. Int'l L.* 2011-2012, 719 at 774-779.

<sup>196</sup> Legal aid assistants are law graduates who are in the process of completing professional education at the Zambia Institute of Advanced Legal Education (ZIALE). They are granted right of audience – essentially at Subordinate Courts level – as per the Legal Aid Act

<sup>197</sup> DIHR, *Project Document, Legal Services Unit Pilot – Lusaka Subordinate Court*, 2012; Interview with Karol Limondin, Legal Advisor, National Human Rights Systems Department, Danish Institute for Human Rights.

<sup>198</sup> N Kahn-Fogel, "The Troubling Shortage of African Lawyers: Examination of a Continental Crisis using Zambia as a Case Study", 33 *U. Pa. J. Int'l L.* 2011-2012, 719 at 741.

Against this background, a National Legal Aid Policy, currently under review at Ministry of Justice, will substantially change the Zambian legal aid framework, including formalising the role of paralegals. The Drafting Committee of the National Legal Aid Policy included a wide variety of stakeholders, comprising of both government and non-government representatives. The drafting process has been very open and inclusive, the primary aim being that access to legal aid services be made more accessible (and hence a very open attitude from the drafting committee towards the inclusion of paralegals).<sup>199</sup> Furthermore, the Legal Aid Act will most probably be redrafted following the adoption of the National Legal Aid Policy.<sup>200</sup> The Policy is not public and it is uncertain when adoption can be expected, but highlights of the draft Policy include:

- A broad definition of legal aid, from legal information, education, advice, alternative dispute resolution to legal assistance and representation in court;
- The setting up of a mixed legal aid delivery system, including the Legal Aid Board, the legal profession, CSOs, paralegal coordinating bodies and university law clinics;
- A diversification of legal aid providers, including legal practitioners, legal aid assistants, law students and paralegals at various levels of qualification and experience;
- The strengthening of coordination and cooperation mechanisms between the different legal aid providers;
- Accreditation schemes for organisations providing legal aid, and registration schemes for individual legal aid providers;
- Eligibility criteria for legal aid beneficiaries, including guidance on the target groups to which, and areas of law in which, legal aid can be provided;
- A regulatory and governance system to ensure quality in the delivery of legal aid, through accountability mechanisms, minimum qualifications, quality standards and professional ethics, continuous training system, and a disciplinary process;
- A funding model to ensure sustainability;
- Specifically on paralegals:
  - A registration scheme based on clear criteria in terms of qualification and other requirements;
  - A formalised work status;
  - A training curriculum;
  - The types of legal aid services that paralegals can provide;
  - Coordination and collaboration mechanisms with the other legal aid providers;
  - An accountability mechanism.<sup>201</sup>

Therefore, in continuing with the current important role that paralegals play in civil and criminal cases in Zambia, the draft policy and the bill will hopefully formalise the role in order to provide paralegals with more credibility and high professional standards.

### 4.13 Conclusion

This section has examined policy documents, draft legislation and legislation on legal aid from Burundi, Kenya, Liberia, Mali, Nigeria, Sierra Leone, South Africa, South Sudan, Tanzania, Uganda and Zambia. Nigeria and Sierra Leone have adopted legal aid legislation formalising the role of paralegals, although the Nigerian Act contains very weak provisions on paralegals. Sierra Leone represents model legislation for other countries wishing to advocate for comprehensive legal aid legislation inclusive of paralegals. Kenya, Uganda and Zambia all have advanced draft Legal Aid Bills, the Ugandan draft being the most logical and comprehensive one. All are sitting with the countries' respective cabinets and adoption can therefore be expected relatively soon, although one cannot assess at this stage whether the final version submitted to Parliament for adoption will differ from the Draft Bills examined in this paper. South Africa appears to have many concurrent priorities, and despite the country's paralegal movement being a pioneer, its formalisation appears to drag on and there is no indication that this will materialise in the coming months. Burundi has a draft Legal Aid Bill, but the government does not intend on submitting it soon to Parliament, and it does not formalise the role of paralegals. Finally, Liberia, South Sudan and Tanzania may, in the coming years, develop comprehensive legal aid legislation formalising the role of paralegals, as discussions on the matter between government and CSOs are under way. There is

199 Interview with Karol Limondin, Legal Advisor, National Human Rights Systems Department, Danish Institute for Human Rights.

200 Interview with Karol Limondin, Legal Advisor, National Human Rights Systems Department, Danish Institute for Human Rights.

201 Interview with Karol Limondin, Legal Advisor, National Human Rights Systems Department, Danish Institute for Human Rights.

therefore clear indication that new legal aid legislation, providing a broad understanding of the concept in line with relevant international and regional soft law instruments, is increasingly being adopted in African States, and may drive other countries to follow these progressive steps.

## 5. Conclusion

Numerous African countries have, in recent years, attempted to develop regulatory frameworks to formalise the role of paralegals. Until now, paralegals in many African countries represented a fractured profession, with no uniform practice and understanding of their definition, mandate and powers. The purpose of these new regulatory frameworks is to provide more consistency in the work of paralegals. This report has outlined legislation formalising the role of paralegals adopted in Nigeria (2011) and in Sierra Leone (2012), which seem to constitute the only two African countries that have adopted such legislation. The Draft Bills from Kenya, Uganda and Zambia will, in the near future, reinforce this formal recognition. But these various (draft) legislative frameworks are all new and it is difficult to assess the extent of implementation in the future, in particular in relation to the setting up of required institutions, ensuring training courses are developed, monitoring and evaluation actually takes place, and sustainable funding is provided.

Returning to the recommendations on formalising paralegals that are found in international soft law instruments, one can see that many of them are complied with. This indicates that these international instruments were key in setting the necessary frameworks for the adoption of domestic legislation, although national constraints have always resulted in weaker domestic provisions than international prescripts:

- With the exception of Tanzania and South Africa (to a certain extent), discussions to regulate paralegals have systematically located them within the legal aid framework. Interestingly, none of the countries surveyed has followed the recommendation of the Kampala Declaration to locate paralegal services with the ombudsman or national human rights institution;
- With the exception of Burundi, all documents contain a broad definition of legal aid;
- All legislation and draft legislation formally recognising paralegals prescribe some form of mandatory accredited training;
- With the exception of Nigeria and Burundi, all legislation and draft legislation determine the types of legal services that paralegals can provide;
- Most countries set up independent Legal Aid institutions, thereby guaranteeing the independence of all legal aid providers including paralegals;
- None of the countries authorise paralegals to represent individuals in courts, whether at bail or other hearings (contrary to the recommendation of the UN Principles and Guidelines) but all see paralegals as working alongside lawyers to provide some form of legal education, advice and assistance in criminal justice-related matters, whether at police stations, courts and/or prisons;
- Sierra Leone and Uganda clearly require that all legal aid providers, including paralegals, be accredited or work for an accredited organisation in order to offer legal aid services;
- Sierra Leone and Uganda have comprehensive monitoring and evaluation systems.

All the countries examined in this report, with the exception of Burundi, have opted for a mixed legal aid delivery system, in which government institutions, law clinics and CSOs are formally recognised as legal aid providers and where lawyers, paralegals, law students, young graduates, legal assistants and possibly other individual legal aid providers can provide a wide range of legal aid services, including legal information, legal advice, legal assistance, and legal representation in court. Some countries also expressly include alternative dispute resolution mechanisms in their broad understanding of legal aid.

The broad understanding of both of legal aid services and legal aid providers is in line with international advocacy efforts. It underlines the importance of going beyond the strict understanding of legal aid as equating legal representation in court, and how these other forms of legal aid allow many more individuals to have access to formal and informal justice mechanisms.

Also, this model underlines the importance of a strong collaboration between all legal aid providers, and to assess the specific legal aid needs of each conflict, and the determination of the most suitable legal aid provider to resolve each conflict.

It will be worth assessing, in a few years' time, whether legal aid mechanisms will have successfully managed to optimise human and financial resources which the different legal aid providers will make available. A key element of success of these new legal aid mechanisms will be their feasibility, practicability and sustainability. All legal aid providers, including paralegals, will need to be under sufficient control and oversight to ensure that adequately trained individuals provide legal aid services of high standard to the widest "client-base" possible. But legal aid providers also need to be provided with certain operational freedom and independence, in order to set their own priorities and be able to complement the work of other legal aid providers, whether government- or non-government affiliated. It is when a national legal aid mechanism has found this balance that it will be able to thrive.

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