

Part of the Justice Puzzle: Community-based Paralegal Programs and Sierra Leone's Legal Aid Act

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1. Introduction

Within conflict-affected states, rule of law reforms have typically centered on building the capacity and legitimacy of state and formal institutions, and only address citizens' justice needs at a cursory level.¹ Recently, there has been recognition by the state, and key justice sector actors, of the need to consider individuals in the reform process, and this awareness has led to a transition from primarily top-down institutional reforms towards those which include bottom-up interventions. This increased focus on bottom-up interventions is accompanied by an emphasis on legal empowerment and a strategy of access to justice.² Legal empowerment, the use of law and rights to specifically benefit the marginalized,³ is focused on strengthening the capacity of individuals to exercise their rights and access the law and views marginalized groups as partners.⁴

One mechanism that contributes to legal empowerment and promotes citizens' access to justice is community-based paralegal programs. Paralegals, non-lawyers with specialized legal knowledge, aim to educate and assist marginalized persons concerning law-oriented issues. Growing in number, paralegal programs play a significant role in improving the quality and delivery of legal services, and stimulate the legal literacy of communities.⁵ Strong proponents of these programs credit paralegals

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¹ Stephen Golub, "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative," Carnegie Endowment for International Peace (2003).

² Ineke Van De Meene & Benjamin Van Rooij, *Access to Justice and Legal Empowerment* (Amsterdam University Press, 2008).

³ Stephen Golub, "Legal Empowerment Evaluation: An initial guide to issues, methods, and impact," draft paper (2012).

⁴ Open Society Justice Initiative, "Legal empowerment: An integrated approach to justice and development" (2012).

⁵ Margaret Schuler & Sakuntala Kadirgamar-Rajasingham, *Legal Literacy: A Tool for Women's Empowerment* (1992).

with catalyzing processes of socio-political change, particularly a shift from clientelism to citizenship among service users, and for contributing positively to governance.⁶

However, concerns and critiques of these programs have also emerged including of low service quality and unsustainability. Particularly within conflict-affected settings, there are concerns that donor funding, as opposed to government regulation, is the foremost consideration for such programs, which can lead to a lack of proper oversight. Additionally, there are concerns around the type of justice promoted by the programs, principally for women, and that they may reduce the responsibility of the state to make formal justice systems more accessible to citizens.

Within the context of Sierra Leone, rule of law and justice programming began with a primarily institutional and formal approach, and these interventions were found to overlook many of citizens' most immediate legal needs. As a result, new forms of programming were developed which took those needs as their starting point, with community-based paralegal programs as one strategy. Despite the significant development and rapid growth of these programs, the connections between such programs and citizens' access to justice has received scant attention within the literature, and insufficient research exists on the linkages between these programs and women's access to justice.

This paper specifically examines community-based paralegal programs in order to understand the connection between such programs, legal empowerment and access to justice. This case study is particularly well-timed as the government has recently enacted the Legal Aid Act (2012), and as donor support to user-based approaches to justice continues to increase. The paper emerges from field work conducted in Sierra Leone, during January and February 2012, which specifically explored gendered barriers to justice, the country's formal and customary legal systems, the Gender Acts, and community-based paralegal programs. This research was qualitative in nature, and included interviews with paralegal clients and non-clients, observations of paralegal offices, and interviews with knowledgeable third parties.

2. Concepts and Working Definitions

Despite the important efforts of experts and development institutions, a lack of clarity and cohesion in definition surround the concepts of rule of law, legal empowerment, and access to justice. By considering key literature sources, the following sections address these concepts and discuss the perceived benefits and risks surrounding them. This

⁶ Idoh Duni, Robert Fon, Sam Hickey & Nuhu Salihu, "NGOs, Social movements and Paralegal Extension in North West Cameroon: From Clientelism to Citizenship at the Margins?" (2005).

review does not attempt to be exhaustive, but rather aims to provide the context in which paralegal programs operate.

A. Rule of Law

The rule of law is a complex and often unstructured, all-encompassing concept,⁷ which is almost universally supported at the national and international level and across the political spectrum.⁸ While there have been a number of attempts to consolidate its diverse meanings and interpretations, it has been argued that the overwhelming support for rule of law is only possible because of the “widely divergent views of what it means in practice.”⁹

Conceptions of the rule of law vary, from being synonymous with law or legality, to incorporating broader notions of justice.¹⁰ Generally, the rule of law is recognized as a cornerstone of good governance and democracy,¹¹ and its promotion is viewed as an essential component of sustainable development and post-conflict recovery. Definitions of the rule of law fall into two categories: those that emphasize the ends that the rule of law is intended to serve within society (such as upholding law and order, or providing predictable and efficient judgments), and those that highlight the institutional attributes believed necessary to actuate the rule of law (such as comprehensive laws, well-functioning courts, and trained law enforcement agencies).¹²

In an effort to promote uniformity in usage and understanding, the 2004 UN Secretary-General’s report, *Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, provides a detailed definition of the rule of law:

For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law,

⁷ Jeremy Waldron, “Is the Rule of Law an Essentially Contested Concept (in Florida)?” (2002) *Law and Philosophy* 137, 154.

⁸ Simon Chesterman, “An International Rule of Law?” (2008) *American Journal of Comparative Law*, Volume 36.

⁹ *Ibid.* at 1.

¹⁰ *Ibid.*

¹¹ United Nations Women, “Progress of the World’s Women: In Pursuit of Justice” (2011).

¹² Carnegie Endowment for International Peace, “Competing Definitions of the Rule of Law: Implications for Practitioners” (2005).

accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.¹³

Within conflict-affected contexts, there is a growing emphasis on rule of law reforms in aid and development packages, and the World Bank's 2004 report, *Rule of Law Reform in Post-Conflict Countries*, highlights four rationales that have been promoted by different agencies as justifications for rule of law reform in fragile, conflict-affected, or underdeveloped states.¹⁴ These justifications are: economic development: the rule of law is essential to economic development, and therefore there is a need for predictable and enforceable laws for contract enforcement and foreign investment; democratization: the protection of human rights and mechanisms holding governments accountable are essential in liberal democracy, and inherent in the rule of law; poverty reduction: rule of law reform is considered essential to poverty reduction as the poor suffer more from crime, the impact of crime on their livelihood is greater, and they are less able to access justice systems; and peace building: transitional justice, the creation of courts to resolve conflict, and writing constitutions and legislation to remove sources of conflict and injustice are increasingly considered essential aspects of peace building in fragile and post-conflict states.¹⁵

Rule of law reform also covers a range of initiatives, activities, and strategies aimed at promoting the rule of law, economic growth, good governance, and poverty alleviation.¹⁶ A variety of social goals are associated with rule of law reform, and scholars have argued that the rule of law is not a single unified good but is composed of five separate socially desirable goods or ends: a government bound by law, equality before the law, law and order, predictable and efficient rulings, and human rights.¹⁷ However, scholars have contended that this combination of goals is ill-defined and varies widely,¹⁸ and that the rule of law has become an elixir for all of the challenges facing the developing world, which promises to deliver results ranging from sustainable development, peace, justice, and security, to equality and democracy.¹⁹

¹³ United Nations Security Council, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" (2004).

¹⁴ World Bank, "Rule of Law Reform in Post-Conflict Countries" (2006).

¹⁵ United Nations Security Council, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" (2004).

¹⁶ *Supra* note 1.

¹⁷ Rachel Belton, "Competing definitions of the rule of law: Implications for practitioners" *Carnegie Papers* 55 (2005).

¹⁸ *Supra* note 1.

¹⁹ Thomas Carothers, "The Many Agendas of Rule of Law Reform in Latin America" *Rule of Law in Latin America: The International Promotion of Judicial Reform* (2000).

Critiqued for its top-down and state-centered approach, rule of law is often seen as paying “insufficient attention to the legal needs of the disadvantaged,”²⁰ and women, in particular, have been largely excluded from the rule of law agenda, at both the conceptual and practical levels, and virtually no rule of law approaches specifically target women’s lives.²¹ The rule of law requires a functional and fair justice system, which is free of discrimination, bias, and corruption.²² However, for marginalized groups and women, rule of law rhetoric typically means little in practice. Law is often shaped by and beholden to the interests of the most powerful segments of society, and justice systems also reflect these power imbalances. Further, the rule of law has traditionally only applied to the public sphere, and consequently what happens within the private domain (including within the family), has been “hidden and beyond the scope of law.”²³

Recognizing the critiques of rule of law, the concept of legal empowerment focuses on directly assisting ordinary people, especially the poor, and strengthening the roles, capacities, and power of the disadvantaged and civil society. This concept is discussed in-depth in the following section.

B. Legal Empowerment

Legal empowerment is recognized as being located at the nexus of law and development, and for using law as a tool to promote change and agency.²⁴ It is extolled for offering practical legal solutions to people and communities, and for seeking strategies that flow from the “evolving needs and preferences” of disadvantaged and marginalized groups.²⁵

Although legal empowerment is critiqued for being ill-defined and lacking conceptual rigour,²⁶ it differentiates from what is perceived as the predetermined, top-down focus of the rule of law orthodoxy. Proponents of legal empowerment highlight that legal empowerment differs from the rule of law orthodoxy, as it views the poor as partners and encourages them to influence public policy, and emphasises non-judicial

²⁰ *Supra* note 1.

²¹ Celestine Nyamu-Musembi. “For or Against Gender Equality? Evaluating the Post-Cold War Rule of Law’ Reforms in Sub-Saharan Africa” UNRISD (2005).

²² *Supra* note 11.

²³ *Ibid.*

²⁴ HAKI, “The Legal Empowerment Approach to International Development: a White Paper” (2011).

²⁵ International Development Law Organization, “Legal Empowerment Working Papers: the Mystery of Legal Empowerment: Livelihood and Community Justice in Bolivia” (2010).

²⁶ Marlese von Broembsen, “Legal Empowerment of the Poor: The Re-emergence of a Lost Strand of Human Rights?” Rapoport Center Human Rights Working Paper Series (2012).

strategies.²⁷ Further, in contrast to the rule of law approach, the legal empowerment alternative is more balanced and is a “manifestation of community-driven and rights-based development.”²⁸

Legal empowerment work is being carried out across the global, and initiatives often overlap with, and “go under the rubrics of,” legal services for the poor, public interest law, alternative lawyering and developmental lawyering, social justice, social accountability, women’s empowerment, and strengthening the poor’s land tenure security.²⁹

Regarding women and gender equality, legal empowerment approaches aim to support social integration, and seek to promote gender equality and the empowerment of women,³⁰ by providing women and other marginalized groups with information, training and assistance. It is then anticipated that these groups will apply these skills to protect and claim their legal rights.³¹

Various organizations and scholars have presented frameworks and methodologies in an attempt to promote a common understanding and standardization of legal empowerment initiatives. The Asian Development Bank presents a comprehensive spectrum of interventions, and classifies activities and methodologies into a scale of three orders:³²

- First-order interventions include basic legal awareness-raising and legal literacy work, which educates the public about its legal rights and obligations, institutional structures of the legal system, and specific mechanisms that marginalized groups can use to advance their interests.
- Second-order interventions focus on resolving legal problems and administrative challenges that are faced by marginalized groups. These interventions are community-driven and provide both formal and informal legal services, including mediation. Paralegals are a key mechanism for implementation at this level, as they

²⁷ Lucy Earle, Zoe Scott & Peter Owen “The Impact of Justice and Rule of Law Interventions on Development Outcomes and Poverty Reduction” *Assessing the Evidence of the Impact of Governance on Development Outcomes and Poverty Reduction* (2010).

²⁸ *Supra* note 1.

²⁹ Stephen Golub, “Legal Empowerment: Practitioners’ Perspectives” *International Development Law Organization* (2010) at 10.

³⁰ Asian Development Bank, “Legal Empowerment for Women and Disadvantaged Groups” (2009).

³¹ *Ibid.*

³² *Ibid.*

are able to address informal and formal divides, understand local contexts, are cost-effective, and help to ensure that programs are in sync with communities.

- Third-order interventions are designed to have an impact on the highest-level policy constraints and systemic factors that shape the circumstances in which legal problems arise. These interventions target persistent inequitable power relations that continually marginalize the poor.

The Asian Development Bank classifies legal empowerment activities as: basic awareness-raising, formal and informal support activities (to benefit individuals), and activities aimed at improving entire communities' relationships with the law and broader structures of administrative governance.³³

The Commission on Legal Empowerment of the Poor

The Commission on Legal Empowerment of the Poor, an independent organization, hosted by the United Nations Development Programme, has sought to reposition law and justice concerns at the centre of poverty alleviation, and has generated greater interest in the nexus between poverty, injustice, and legal exclusion.³⁴ The Commission's 2008 report, *Making the Law Work for Everyone*, established that approximately four billion people are excluded from the rule of law, and argued that strategies that expand legal empowerment positively impact broader issues of stability, peace and democratic governance.³⁵ Although the report is commended for garnering public attention and a degree of legitimacy to legal empowerment,³⁶ it is critiqued for failing to properly address the political economy of reform, for having a limited impact on policymakers, for being conceptually weak, and for making unsubstantiated claims.³⁷

To note, the Commission provided the following definition of legal empowerment:

A process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.... It involves states delivering on their duty to respect, protect, and fulfill human rights, and the poor

³³ *Ibid.*

³⁴ Matthew Stephens, "The Commission on Legal Empowerment of the Poor: An Opportunity Missed" *Hague Journal on the Rule of Law* (2009).

³⁵ Commission on Legal Empowerment of the Poor, "Making the Law Work for Everyone" (2008) Volume I and II.

³⁶ *Supra* note 29.

³⁷ Dan Banik, "Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication" *The Hague Journal on the Rule of Law* (2009) at 127.

realising more and more of their rights, and reaping the opportunities that flow from them, through their own efforts as networks, and governments.³⁸

The Secretary-General's Report

The 2009 UN Secretary-General's report, *Legal Empowerment of the Poor and Eradication of Poverty*, is the guiding document on legal empowerment for the UN system, and is significant as it is the most important resource for UN member governments, their aid agencies, and the international development community.³⁹

Ostensibly, the report provides a similar definition of legal empowerment as that of the Commission of Legal Empowerment of the Poor, defining it as a "process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors."⁴⁰ Looking more in-depth however, the UN report goes beyond the framework provided by the Commission and offers a more expansive view of access to justice, and a focus on community-level awareness and access to legal services, including paralegal programs.

The UN report also draws explicit attention to women and highlights the importance of gender equality. Noting that "the vast majority of the adult poor are women," the report argues that legal empowerment initiatives should specifically target women, including rural women, and include awareness-raising campaigns focused on gender equality. The report takes the position that providing legal aid⁴¹ services to women and reducing women's barriers to justice should be mainstreamed in all development interventions, and ascertains that "concerted efforts" are required to address discriminatory legislation.⁴²

UN Millennium Development Goals

Although the UN Millennium Development Goals (MDGs) do not specifically address rule of law or legal empowerment, there is recognition that the achievement of the MDGs is dependent on improving rule of law and access to justice.⁴³ The 2011 UN General Assembly Interactive Thematic Debate on the Rule of Law and Global

³⁸ Commission on Legal Empowerment of the Poor, "Making the Law Work for Everyone" (2008) at 3-4.

³⁹ *Supra* note 29.

⁴⁰ UN Secretary-General, "Legal Empowerment of the Poor and Eradication of Poverty" A/64/133 (2009) at 2.

⁴¹ Generally, legal aid is understood as free or inexpensive legal services provided to those who cannot afford to pay the full cost.

⁴² *Ibid.* at 18.

⁴³ Open Society Justice Initiative, "Legal Empowerment: An integrated approach to justice and development" (2012) at 4.

Challenges stressed that these two elements are “critical to creating an overall enabling environment in countries for social and economic progress and achievement of the MDGs.”⁴⁴ Legal empowerment, in particular, has the potential to bolster the MDGs by improving the provision of public services and social accountability of the state.⁴⁵

C. Access to Justice

The concept of access to justice is closely tied to legal empowerment, as legal empowerment programming aims to assist the poor to “better use the law, the legal systems, and legal services to protect and advance their rights and interests.”⁴⁶ Further, the Commission on Legal Empowerment of the Poor recognizes access to justice as a key pillar of legal empowerment.

Access to justice has gained prominence in development discourses, and is linked to other human rights including those related to human development, health, and poverty reduction.⁴⁷ The concept is also associated with issues of governance, and the UN Development Programme (UNDP) recognizes that democratic governance is “undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent.”⁴⁸

Definitions of access to justice vary widely within the literature,⁴⁹ and recently, there has been a shift from a one-dimensional focus on the procedural aspects of access to justice, to a more inclusive assessment of the legal system.⁵⁰ For the purposes of this paper, the following definition is adopted:

Access by people, in particular from poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to

⁴⁴ United Nations, “General Assembly Interactive Thematic Debate on the Rule of Law and Global Challenges: Promoting universal adherence to and implementation of the rule of law at the national and international levels.” Panel 2: Rule of law and development (2011).

⁴⁵ Open Society Justice Initiative, “Legal Empowerment: An integrated approach to justice and development” (2012).

⁴⁶ *Supra* note 3.

⁴⁷ National Network on Environments and Women’s Health, “Women’s Poverty, Women’s Health: the Role of Access to Justice” (2001).

⁴⁸ United Nations Development Programme, “Access to Justice: A practice note” (2004).

⁴⁹ See for example: Global Rights, “Promoting Access to Justice and Human Rights: Paralegal Training Manual, Bundibugyo District, Uganda” (2011), and World Bank, “Access to Justice in Sierra Leone: a review of the literature” (2008).

⁵⁰ Reem Bahdi, “Background Paper on Women’s Access to Justice in the MENA Region” International Development Research Centre (2007).

seek and obtain a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law implementing processes and institutions.⁵¹

Implicit in this definition are challenges and substantive prerequisites which can be broken into three main headings:

- Substantive Legal and Rights Framework: The establishment and/or existence of an adequate and appropriate national legal framework which guarantees citizens certain rights, as represented by both domestic and international legal documents;
- Institutions, Human Resources and Infrastructure: Ensuring the necessary physical „supply“ and existence of justice institutions, including human resources, infrastructure and the practical functioning of such institutions, to effectively uphold guaranteed rights; and
- Knowledge and Attitudes: Socializing laws and increasing knowledge and understanding of existing legal rights and relevant justice institutions, and building the concomitant cultural attitude underpinning demand for them.⁵²

Barriers to Justice

In regards to barriers that can limit an individual's ability to access justice, the literature identifies three central categories: inadequate legal protection, including gaps in the legal framework, and institutional barriers; lack of capacity to provide justice remedies, barriers within court systems and informal justice systems, and lack of enforcement; and lack of capacity to demand justice remedies, which includes external obstacles, internal obstacles, and lack of legal awareness.⁵³

The lack of knowledge and capacity to demand justice is a barrier for a number of reasons. First, although people may have an inherent sense of justice, a lack of legal awareness makes it difficult for citizens to regulate their own behavior according to the law, and to know the expected judicial responses. Second, when citizens are unaware of legal procedures, they might choose inappropriate mechanism for pursuing justice,

⁵¹ This definition is taken from the World Bank paper, "A Framework for Strengthening Access to Justice in Indonesia", 2007; and is based on UNDP, "Access to Justice: Practice Note," 9/3/2004 (2004).

⁵² UNDP Justice System Programme, "Access to Justice Concept Note" (2011).

⁵³ World Bank, "Barriers to Access to Justice" (2008).

and further, a lack of legal knowledge means that individuals are more vulnerable to abuse or exploitation in the judicial system, and are less likely to receive a fair trial.⁵⁴

Further to the aforementioned barriers, women face discrimination based on their sex, gender, ethnicity, and class, which further hinders their access to justice. The presence of these added barriers contribute to the continued violence and violations committed against women. Specific barriers include gender-based discrimination in society and in the justice system, lack of legal protection, lack of institutional technical capacity and services, fear of reprisal or social ostracism, inadequate public services or outreach by non-governmental organizations, and also lack of economic independence.⁵⁵ In addition to the presence of discriminatory customary and social practices,⁵⁶ women's limited participation in judicial systems and decision-making forums can also severely limit their access to justice.⁵⁷ Well-functioning and accessible justice systems are critical for women to access their rights, and these systems have the ability to shape societies by providing accountability, preventing impunity, and creating new social norms.⁵⁸

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

In 2012, the UN Office on Drugs and Crime (UNODC) developed and adopted the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the first international instrument on legal aid.⁵⁹ These Principles and Guidelines are aimed at ensuring that suspects, detainees, and accused and imprisoned persons have access to legal aid, and the first principle outlines that legal aid is an “essential element of a fair, humane and efficient criminal justice system that is based on the rule of law [and] it is a foundation for the enjoyment of other rights.”⁶⁰ The guidelines are a significant step forward for the legal empowerment agenda, and establish that States should consider the provision of legal aid as their responsibility and should put in place a comprehensive legal aid system that is accessible and effective, has a nationwide reach and is available to all without discrimination. Further, Guideline 16 focuses on a diversity of legal service providers, including paralegals.⁶¹

⁵⁴ *Ibid.*

⁵⁵ *Supra* note 53.

⁵⁶ Global Justice Center, “Unequal Access to Justice in the Middle East” (n.d.).

⁵⁷ Chr. Michelsen Institute, “Indigenous Women's Access to Justice in Latin America” (2010).

⁵⁸ *Supra* note 11.

⁵⁹ United Nations Social and Economic Council. “Expert Group: Strengthening access to legal aid in criminal justice systems.” E/CN.15/2012/17 (2012)

⁶⁰ United Nations Office on Drugs and Crime. “Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems” (2012).

⁶¹ *Ibid.*

3. Community-based Paralegal Programs

Increasingly, it is recognized that within fragile and conflict-affected States people often rely on non-state actors to provide justice and security. These actors include chiefs, secret societies, religious leaders, gangs, community militias, paralegals, and other community actors,⁶² and recent studies have demonstrated that such non-State actors resolve approximately 80 per cent of disputes.⁶³

As one such mechanism, the community-based paralegal movement, arose in response to the need to “promote and protect human rights and to provide greater access to justice in grassroots communities, particularly for marginalized, less privileged, and poor residents.”⁶⁴ These programs work on a variety of justice issues, and target both the individual and community. The Asian Development Bank explains how paralegal organizations seek to establish “relationships of trust” with the communities they serve, and therefore paralegals are ideally drawn from those communities.⁶⁵ Further, working within their own communities enables paralegal organizations to better understand the “local dynamics of power, conflict and decision-making.”⁶⁶

Paralegal programs can play a significant role in increasing access to justice, particularly for communities underserved by the formal system.⁶⁷ These programs are recognized for improving the quality, accessibility, and delivery of legal services and stimulating the empowerment as well as legal literacy of communities by supporting individuals to make informed legal choices.⁶⁸ In particular, paralegal programs have been successful in reaching the poor, particularly women, and those living in rural areas.⁶⁹ Paralegal programs are recognized for providing cost-effective, relevant, and proximate justice solutions.⁷⁰ Strong proponents credit paralegal programs with catalyzing processes of socio-political change, particularly in terms of shifts from

⁶² ODI, “Non-State Security and Justice in Fragile States” Briefing paper 73 (2012).

⁶³ P. Albrecht & H.M. Kyed, “Introduction: Non-state and customary actors in development programs,” in P. Albrecht, H. M. Kyed, D. Isser & E. Harper (eds), *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform*. (Rome: DII, 2011).

⁶⁴ Global Rights, “Paralegal Training Manual on Improving Women’s Access to Justice in Northern Nigeria” (2010).

⁶⁵ Asian Development Bank, “Legal Empowerment for Women and Disadvantaged Groups” (2009).

⁶⁶ *Ibid.*

⁶⁷ World Bank, “World Development Report: Conflict, Security and Development” (2011).

⁶⁸ *Supra* note 5.

⁶⁹ Global Rights “Paralegal Training Manual on Improving Women’s Access to Justice in Northern Nigeria” (2010).

⁷⁰ Sendugwa & Havugiyaremye, “Building the Foundation for Access to Justice in Rwanda: A report of the legal aid baseline and needs analysis survey” (2007).

“clientelism to citizenship” among service users, and for contributing positively to governance.⁷¹

The advantages of paralegal programs over other justice systems including lawyers, is that they are often closer to the communities which they serve (culturally, geographically, and economically),⁷² and can have highly specialized knowledge of particular areas with which lawyers may be unfamiliar, such as alternative justice dispute mechanisms and cultural practices. Utilizing the definition provided by the German development agency, GIZ, paralegals bridge the “gap between law and the people.”⁷³

Although there is a limited body of research regarding paralegal programs, concerns and critiques of these programs have emerged. These concerns include the limited length of training programs, that paralegals do not fully know or comprehend the law, and that they often provide substandard services.⁷⁴ Further, paralegals are often utilized in cases deemed less serious, particularly those involving juveniles, which can compromise the effectiveness of the defense provided.⁷⁵ Particularly within conflict-affected settings, there are concerns that donor funding, as opposed to government regulation, is the central consideration for such programs, which can lead to a lack of proper oversight. Lastly, although paralegal programs may promote women’s access to justice, and alleviate some of the burden from the State to provide accessible justice, attention also needs to be paid to addressing the required longer-term gender-sensitive reforms of the formal security and justice sector.⁷⁶

Generally there are two broad categories of paralegals: first, those who are “trained and employed as paralegals, either in various government offices, private law firms, trade unions or in legal service non-governmental organizations,” and second, community-based paralegals that are generally unpaid or are paid little, but play a critical role in providing advice to members of their communities.⁷⁷ Typically, the paralegal organization will compensate the unpaid paralegals for transportation costs and other

⁷¹ Duni, Fon, Hickey, et al, “NGOs, Social movements and Paralegal Extension in North West Cameroon: From Clientelism to Citizenship at the Margins?” (2005).

⁷² Namati, “How Does Legal Empowerment Work?” (2011).

⁷³ GIZ, “Facilitating Justice: the Work of Paralegals” (2004).

⁷⁴ Sonkita Conteh, “10 Misconceptions about Paralegals in Sierra Leone” (2010).

⁷⁵ Expert Working Group Report, “International Perspectives on Indigent Defense,” United States Department of Justice (2011).

⁷⁶ Initiative for Peacebuilding, “Breaking Patterns of Sexual and Gender-based Violence Security and Justice Provision in Post-conflict Nepal” (2010).

⁷⁷ Netherlands Institute for Southern Africa, “Making Human Rights Real for All: Baseline Survey Information of Paralegal Work and Training in Southern Africa” (2005).

direct expenses.⁷⁸ Due to the nature of community-based paralegals' work, they are often viewed as human rights activists.⁷⁹

Paralegals provide legal advice to communities and individuals about their legal rights, issues of human rights, administrative matters, as well as constitutional and community development problems. Further, paralegals also assist in community organization.⁸⁰ Paralegals address intra-communal disputes, as well as problems and abuses that arise between "citizens and traditional authorities, between citizens and State institutions, and between citizens and private firms."⁸¹ Regarding target clientele, paralegals often focus on disempowered communities in particular, in order to remedy breaches of fundamental rights and freedoms.⁸²

Although mandates vary depending on the political economies of the specific context, the activities of paralegals can be broadly classified as legal training, legal information dissemination, and legal aid, and paralegals apply a combination of legal and non-legal tools to meet clients' justice needs, including: mediation, advocacy, education, organizing, and litigation.⁸³ In some contexts, paralegals may represent clients in local courts or in the formal justice system.⁸⁴ In addition, a key function of paralegals is to support the work of lawyers, for example through statement-taking, tracking witnesses, and filing and serving documents.

4. Sierra Leonean Justice Context

A. Justice System

Sierra Leone has a democratically elected president and unicameral parliament, and operates under three layers of government: formal national government, formal local government, and customary chiefdom structures. The country has a pluralistic legal structure that incorporates customary law and formal law and, theoretically, these

⁷⁸ Open Society Foundations, "Community-based Paralegals: A Practitioner's Guide," (2010).

⁷⁹ *Ibid.*

⁸⁰ Columbia University, "Law and Development Association of the Southern Province of Zambia: an Assessment of the Adult Paralegal Program" (2006).

⁸¹ World Bank, "Community-based Paralegals" (2011).

⁸² Vivek Maru, "Between Law and Society: Paralegals and the Provision of Primary Justice Services in Sierra Leone and World Wide" Namati (2012).

⁸³ World Bank, "Delivering Justice to Sierra Leone's Poor" (2009).

⁸⁴ Expert Working Group Report, "International Perspectives on Indigent Defense," United States Department of Justice (2011).

systems operate in tandem, rather than in conflict,⁸⁵ and this dualism is recognised in the 1965 Local Courts Act, Section.

Derived from English common law, the formal law system is administered through the judiciary, the police, and prison systems. Formal law dominates in the capital, Freetown, and has additional courts operating in Bo, Kenema, Port Loko, and Makeni.⁸⁶ Crimes punishable by more than six months' imprisonment must be dealt with by the formal system and the national police force. However, such jurisdictional boundaries are not always adhered to. For instance, customary courts often adjudicate cases beyond their jurisdiction, including cases of rape that are to be sent to the formal courts.⁸⁷

The majority of the country's population is subject to customary law, as approximately eighty-five percent of Sierra Leoneans fall under its jurisdiction,⁸⁸ and the local courts remain the primary mechanism through which citizens seek redress.⁸⁹ Within the customary system, laws are based on by-laws set at the chiefdom level and vary widely.⁹⁰ These laws also differ by ethnic group, and are typically unwritten and evolve with changing circumstances.⁹¹ Advantages of the customary system include that laws can respond to shifting community needs, and are flexible to address individual circumstance.⁹² The Local Courts are the cornerstone of customary law, and were formalized in 1963 by the Local Courts Act. These Courts operate independently of the judiciary and lawyers cannot participate in their proceedings.

In addition to the State-recognized formal and customary systems, citizens often engage with additional community-based justice systems, where decisions are made by traditional rulers, including Section Chiefs, Town Chiefs, and Paramount Chiefs. These processes are deemed to be less transparent and often charge arbitrary fines.⁹³

⁸⁵ Commonwealth Human Rights Initiative and the Sierra Leone Bar Association, "In Pursuit of Justice," (2002).

⁸⁶ Baker, "Who Do People Turn to for Policing in Sierra Leone?" *Journal of Contemporary African Studies* (2005) 23.3.

⁸⁷ Claire Castillejo, "Building Accountable Justice in Sierra Leone," FRIDE (2009).

⁸⁸ *Supra* note 53.

⁸⁹ World Bank, "Sierra Leone: Legal and Judicial Sector Assessment" (2004).

⁹⁰ Claire Castillejo, "Strengthening Women's Citizenship in the Context of State-building: the Experience of Sierra Leone." FRIDE (2008).

⁹¹ *Supra* note 89.

⁹² *Supra* note 87.

⁹³ BRAC, "Sierra Leone: Annual Report 2010" (2010).

B. Barriers to Justice

Within conflict-affected and fragile States, citizens face significant barriers in accessing justice, and such settings are doubly impacted due to the fragility of the State and the need to prioritize stabilization and the establishment of legitimacy.⁹⁴ Further, within these setting, formal justice systems are inaccessible to the vast majority of the population, owing to a range of economic, political, social, and geographic factors.

The existence of legal pluralism can also present challenges to justice and rule of law, and within Sierra Leone the dual legal system is critiqued for creating disunity and injustice.⁹⁵ Legal pluralism is particularly challenging for women, as this structure can entail multiple stands of law, based on customs and identity, and a plethora of non-State justice systems that operate outside the purview of the State system.⁹⁶ The inequities of the customary justice system are recognized for contributing to the eleven year civil war.⁹⁷

The 1991 Constitution of Sierra Leone (Act 6) has an effect on citizens' access to justice, and although it provides some degree of equality and protection for women, it makes exceptions in the areas of personal law (Subsection 4). Specifically the Constitution's anti-discrimination clause does not apply to any law with respect to "adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law" (Subsection 4, 1, d). To note, in 2010 there was an active constitutional review process underway, which was expected to amend the controversial sub-section, and the intention was to launch a revised constitution at the 50th anniversary of independence; however this has yet to happen.⁹⁸

Sierra Leoneans face key barriers in accessing the country's formal and customary justice systems and the following section provide an overview of these barriers, with particular attention to women's experiences.

Gender-based Discrimination

Sierra Leone is characterized as a patriarchal society, where institutionalized gender inequalities are exacerbated by discriminatory customs, particularly in regards to property rights, marriage, and sexual offences. Further, social, cultural, economic, and

⁹⁴ United Nations, "Handbook on Improving Access to Legal Aid in Africa" (2011).

⁹⁵ African Human Security Initiative, "Sierra Leone: A country review of crime and criminal justice" (2009).

⁹⁶ Bastick, Grimm & Kunz, "Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector," Geneva Centre for the Democratic Control of Armed Forces (2007).

⁹⁷ *Supra* note 62.

⁹⁸ As of 1 September 2012 a revised constitution had not been released.

legal inequalities have entrenched women's subordination and dependence on men, and this further obstructs women's access to justice. For example, there is often an ingrained culture of silence surrounding sexual and domestic violence, which results in low reporting of sexual violence.⁹⁹ Additionally, shame and stigma also deter women from reporting incidents of sexual violence, and when women do report such crimes, they are often pushed towards reconciliation and mediation, as opposed to judicial legal processes. Moreover, relatives often interfere with the justice process and push for out-of-court settlements, which further compromise women's ability to seek justice.

The potential of retaliatory violence and post-traumatic stress also impede women's access, as women have reported incidences of threats, harassment, and physical violence for having sought justice.¹⁰⁰ These gender-based barriers are particularly problematic, as the reluctance to pursue justice for women, combined with a lack of women's economic independence,¹⁰¹ has perpetuated a cycle of violence and a culture of impunity for violence against women.¹⁰²

Cost and Corruption

High costs related to the justice system, including for services, fines, and transportation, make the formal justice system inaccessible for the majority of Sierra Leoneans. These high costs are exacerbated by corruption, particularly within the judicial branch and police service. Further, the poor (and particularly women) do not have the means to pay bribes, and therefore cannot gain access to the justice system.¹⁰³ Human Rights Watch has highlighted the existence of corruption with Sierra Leone's justice system, including extortion and bribe-taking by officials.¹⁰⁴

The Sierra Leonean Government acknowledges that corruption is rampant and endemic, and is a "principle factor for the socio-economic decay, poverty and instability" in the country.¹⁰⁵ Public perception of the Sierra Leonean police service is particularly negative, and the force is perceived to be corrupt and ineffective and, as a result, public confidence is lacking.¹⁰⁶ To note, the police ranked highest on the 2011 National Public

⁹⁹ Chikwanha, "The Criminal Justice System in Sierra Leone: Issue Paper" (2008).

¹⁰⁰ Robb-Jackson, "Strengthening Women's Access to Justice in Sierra Leone," report prepared for the International Development Research Centre (2010).

¹⁰¹ African Human Security Initiative, "Sierra Leone: A country review of crime and criminal justice" (2009).

¹⁰² United States Department of State, "Human Rights Report: Sierra Leone" (2009).

¹⁰³ International Council on Human Rights Policy, "Corruption and Human Rights: Making the Connection" (2009).

¹⁰⁴ Human Rights Watch, "World Report 2011: Sierra Leone" (2011).

¹⁰⁵ Anti-Corruption Commission, "What is the Meaning of Corruption in Sierra Leone" (2011).

¹⁰⁶ African Human Security Initiative, "Sierra Leone: A country review of crime and criminal justice" (2009).

Perception of Corruption Survey report, launched by the Anti-Corruption Commission, and contributing factors to corruption within the force include low remuneration, inadequate incentives, and poor conditions of services.¹⁰⁷ Corruption is also present within the customary legal system, and research has identified incidents of excess fines and arbitrary decisions.¹⁰⁸

Structure of the Justice System

Barriers related to the structure of the justice system also hinder citizens' access to justice. Within the country, the demand for legal representation is significant and the vast majority of citizens appearing in court lack legal representation.¹⁰⁹ There is a significant shortage of trained justice personnel, as there are approximately only 10 judges and about 100 lawyers to address the justice needs of the country's five million-plus population.¹¹⁰ Further, it is uncommon for lawyers to provide pro-bono services. In addition, judicial presence is very limited outside of Freetown, which results in local chieftaincy courts administering customary law and lay judges.¹¹¹ Related to this, there is limited legal rights education, especially in rural areas, which results in citizens, and particularly women, being not fully aware of their legal rights, under both domestic and international law.¹¹²

Within the formal legal system, barriers arise related to a lack of consistent procedures, lengthy prosecution times, backlogs of cases, persistent adjournments, and the disappearance of case files.¹¹³ The lack of capacity in evidence gathering techniques, particularly regarding forensic evidence and sexual violence cases, results in the loss of evidence and further hinders justice. Lastly, witness protection mechanisms are poor or non-existent in the country,¹¹⁴ which deters individuals from providing statements or testifying. Within the customary system, a primary barrier is that the laws are unwritten and not codified, which makes the system subject to potential biases and discrimination.¹¹⁵

¹⁰⁷ *Ibid.*

¹⁰⁸ Transparency International, "Global Corruption Report: Part One- Comparative analysis of judicial corruption" (2007).

¹⁰⁹ *Supra* note 87.

¹¹⁰ Open Society Foundations, "Community-based Paralegals: A Practitioner's Guide" (2010).

¹¹¹ G. Fominyen, "Legal Aid Poised to Bring Justice to Sierra Leone's Poor," *Trustlaw* (2012).

¹¹² *Ibid.*

¹¹³ *Supra* note 110.

¹¹⁴ *Supra* note 106.

¹¹⁵ *Supra* note 100.

C. Recent Justice Initiatives

The Government of Sierra Leone has ratified international conventions related to justice and equality, including the International Covenant on Civil and Political Rights (on 23 August 1996), the African Charter on Human and Peoples' Rights (on 21 September 1983), and the International Convention on the Elimination of All Forms of Racial Discrimination (on 2 August 1967), and has made recent and concrete steps towards gender equality and the improvement of women's rights. The following sections summarize these initiatives.

Gender Acts

In 2007, the three revolutionary Gender Acts were passed into law, under a certificate of urgency from past President Ahmad Tejan Kabbah. The Acts are: the Domestic Violence Act, the Registration of Customary Marriage and Divorce Act, and the Devolution of Estates Act, and collectively the Acts seek to improve the legal rights of women in Sierra Leone. In brief, the Domestic Violence Act (2007) is the first formal law to address domestic violence in the country, labeling it as a criminal offence. The Act states the domestic violence can include: economic abuse; harassment; emotional, verbal or psychological abuse; intimidation; physical abuse; and sexual abuse. The Act provides the following definition:

Conduct that in any way harms or may harm another person, including any omission that results in harm and either (i) endangers the safety, health or wellbeing of another person, (ii) undermines another person's privacy, integrity or security, or (iii) detracts or is likely to detract from another person's dignity or worth as a human being.¹¹⁶

By addressing issues of inheritance, the Devolution of Estates Act positively affects women's economic position in the country. The majority of property in Sierra Leone is obtained through inheritance, and this Act requires that property be equally distributed between the deceased's spouse and children (regardless of sex), and criminalises the expulsion of widows from their homes after the death of their husband.¹¹⁷ The Registration of Customary Marriage and Divorce Act reinforces similar provisions made in the Child Rights Act (2007), and requires that all marriages be registered, sets the legal age for marriage at 18 years, requires the consent of both parties to marriage, and provides that gifts, payments, or dowries are non-refundable.¹¹⁸

¹¹⁶ Government of Sierra Leone, *The Gender Acts* (2007).

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

Family Support Police Units

Since the late 1990s, there have been substantial attempts to reform Sierra Leone's justice sector and police forces. These reforms have predominantly focused on building a stronger central State, with attention to security as the foundation for managing and protecting State sovereignty.¹¹⁹ Despite this sector reform however, the Sierra Leone police and armed forces are criticized for high instances of corruption and for creating barriers to accessing justice.¹²⁰

As a response to the high levels of violence against women, Domestic Violence Units were established in the country's police stations. In 2001, the Units' mandate was expanded and their name changed to the Family Support Units. These Units are staffed by police officers and social workers, and are located within the main police stations across the country. It is intended that each community is to have either a Unit or focal person who is trained to handle and report incidents of domestic violence to the appropriate authorities.¹²¹ Currently, there are a total of 30 Units, with approximately 229 personnel.¹²²

As highlighted in the Child Rights Act (2007), the Units are responsible for handling the following matters: sexual assault, physical assault (domestic violence), cruelty to children, offences committed by children, and anti-human trafficking relating to children.¹²³ Research has found that the Units have been a relatively successful strategy to address sexual and gender-based violence; particularly with respect to organizing community outreach campaigns that inform the population about the implications of sexual and gender-based violence, and raising awareness about the need to press charges against perpetrators.¹²⁴

¹¹⁹ Albrecht & Buur, "An Uneasy Marriage: Non-State Actors and Police Reform" *Policing and Society* 19, 4 (2009).

¹²⁰ Irish Aid and International Alert "Addressing Gender-based Violence in Sierra Leone: Mapping Challenges, Responses, and Future Entry Points" (2007).

¹²¹ Sierra Leone Action Network on Small Arms, "Report on Two Day Seminar with Members of the Defense and Presidential Affairs Committee on Disarming Domestic Violence and the Bill on Arms and Ammunition" (2009).

¹²² *Supra* note 94.

¹²³ Government of Sierra Leone, Child Rights Act (2007).

¹²⁴ *Supra* note 96.

D. Legal Aid Act and Pilot National Legal Aid Scheme

Recognizing the significant barriers to justice, and building on the momentum of recent justice initiatives, Sierra Leone has enacted the Legal Aid Act (2012).¹²⁵ This Act, for which consultations began in 2008, outlines the architecture for the country's legal aid system, provides for a mixed model of criminal and civil legal aid, which includes the provision of legal information and mediation services, as well as representation in court, and enshrines the role of paralegals as a basic element of the system.¹²⁶ The law explicitly states that paralegals are to be deployed in each of Sierra Leone's 149 chiefdoms, thereby ensuring a flexible and cost effective method of delivering justice services across the entire country.¹²⁷ Further, the Act provides for these services to be supplied through a public-private partnership of government, private sector, and civil society.

The Act draws heavily on the language of the Lilongwe Declaration and Plan of Action, and refers to the relevant provisions of the Dakar Declaration (1999), the African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001),¹²⁸ and the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012).

Ahead of this Act, the Sierra Leone Government developed the Pilot National Legal Aid Scheme, which commenced operation in January 2010. The mandate of the scheme is to develop parameters for a sustainable and accessible national legal aid program, and to provide free legal assistance. This program's scope is currently limited to Freetown, and targets indigents and marginalized groups (including: women in conflict with the law, children and youth, and unemployed adults between the ages of 18-28 years).¹²⁹ The program addresses a range of cases, such as debt issues and loitering charges. Highlights of the program include the provision of legal education for prisoners and a focus on bail hearings. Regarding awareness of the program, there have been reported cases where Magistrates have referred individuals lacking legal representation to the program's office for support. In addition to lawyers, paralegals are a key aspect of this program, as they are provided with legal training and focus on mediating minor matters,

¹²⁵ The Sierra Leone Parliament enacted the Legal Aid Act on 10 May 2012.

¹²⁶ In addition to paralegals, the Act also endorses university law clinics, civil society organisations and non-governmental organisations, alongside legal practitioners, as providers of legal aid services.

¹²⁷ Sonkita Conteh & Lotta Teale, "Sierra Leone Parliament Passes Landmark Legal Aid Law" (2012).

¹²⁸ *Supra* note 94.

¹²⁹ Pilot National Legal Aid and Justice Sector Development Program, "An Overview of the Work of Pilot National Legal Aid Scheme" (2011).

in order to reduce the strain on the court. The pilot program is seen to have played an essential driving role in the passage of the Act.¹³⁰

5. Overview of Sierra Leone's Paralegal Programs

A. Overview of Programs

Within Sierra Leone, community-based paralegal programs have rapidly grown in size and representation, and the role of these programs has been increasingly recognized within the country's justice sector. As noted, the Legal Aid Act (2012) provides a space for paralegals as primary justice providers, and the country's Justice Sector Reform Strategy and Investment Plan II, 2011-2014 acknowledges the role of paralegals in "providing free services appropriate to the needs of ordinary people" as well as in "reducing remand populations."¹³¹

Despite the growing support of community-based paralegal programs, concerns have been raised. In addition to a general concern that paralegals do not fully know the law, and as a result will provide substandard services, concerns around shifting power dynamics have also emerged, particularly in regards to Paramount Chiefs. In the country, paralegals are providing communities with new and additional justice options, and thereby changing the traditional role of Paramount Chiefs as the main justice focal point. Attempting to stem any conflict, the paralegal organizations have stressed that they play a complementary role to Paramount Chiefs, and have focused on engaging them in their work. For example, the organizations have held community meetings, which engaged Paramount Chiefs, Section Chiefs, Village Headmen, and religious leaders. Although some resistance remains, there are examples of community leaders supporting these programs. For instance, one organization cited an example of a Paramount Chief coming to the office to answer to a complaint, while another organization noted an occasion where a Paramount Chief sought out their services for a justice issue.

The most prominent paralegal organization, Timap for Justice, has been active in the country since 2004, and has spearheaded the movement to bring justice and conflict-resolution services to the country's poor and marginalized communities. The organization uses a network of local paralegals, supervised by lawyers, and provides legal literacy, legal advice and consultation, while also addressing higher-level legal and

¹³⁰ Namati, "Sierra Leone Passes Landmark Legal Aid Act." Authors: Sonkita Conteh & Lotta Teale (2012).

¹³¹ Sonkita Conteh, "Exploring the community level impact of paralegals in rural Sierra Leone" Sierra Express Media (2011).

policy issues via strategic litigation and advocacy.¹³² This organization has been recognized for establishing a creative, flexible, and effective approach to provide justice services, within the country's challenging and complex context.¹³³ Further, studies have demonstrated that Timap paralegals fill an important gap in settling disputes, which would otherwise go unresolved.¹³⁴

Building on the work of Timap for Justice, in 2009 the Sierra Leonean Government, and a range of donors (including the World Bank, GIZ, and the Open Society Justice Initiative) and non-governmental organizations collaboratively developed a national approach to paralegal programs. This approach is focused on the scaling up of legal aid, and includes a "front line of community paralegals and a smaller core of supporting lawyers."¹³⁵ Under this initiative, there is a network of six paralegal organizations: Access to Justice Law Center, Justice and Peace Commission, AdvocAid, BRAC, Methodist Church Sierra Leone Development and Relief Agency, and Timap for Justice. This network is coordinated by the Namati Organization, which provides oversight and training, and is currently developing monitoring and evaluation tools for paralegal organizations.

In addition to this network, other national and international organizations are providing community-based paralegal services in Sierra Leone. For example, the Center for Accountability and Rule of Law has a Community Monitors program, and these trained volunteers focus on issues of gender-based violence, monitor local courts and community justice issues, and report back to the Center. Additionally, World Hope International has a paralegal program that is focused on human trafficking, and provides individuals and communities with support and facilitates engagement with the police. To note, this is not an exhaustive list of paralegal organizations operating in the country.

B. Structure and Operation of Programs

Geographic Reach

Expanding beyond the Pilot National Aid Scheme, which is centered in Freetown, community-based paralegal programs operate throughout Sierra Leone's four regions (Northern, Southern, Western, and Eastern areas). Often through mobile clinics, these programs are able to reach remote, rural communities and empower them to engage

¹³² Open Society Justice Initiative, "Legal Empowerment: An integrated approach to justice and development" (2012).

¹³³ *Supra* note 110.

¹³⁴ World Bank, "Delivering Justice to Sierra Leone's Poor" (2009)

¹³⁵ World Bank, "World Development Report: Conflict, Security and Development" (2011).

with authorities, and contribute to finding solutions to social problems and promoting governance at local levels.¹³⁶ As a result, mobile clinics are recognized as an important tool for supporting access to justice.¹³⁷ The types of services provided by paralegals can differ based on location; for example paralegals operating outside of Freetown utilize mediation as a main methodology, as there is a lack of lawyers to whom cases can be referred.

Thematic Focus

Owing to their rights-based training, paralegals are often oriented toward broader goals of community empowerment and development,¹³⁸ and the majority of the organizations focus on complainants who are from marginalized and vulnerable communities.

Although some paralegals define themselves as “generalists,” other organizations have clear target groups and clientele. For instance, AdvocAid specifically targets women in conflict with the law, and supports justice, education and reintegration for female detainees, including post-prison support. Within the country, the organizations work predominantly on issues of gender-based violence, divorce, child maintenance, debts and contracts, as well as issues of theft, assault, witchcraft, and labour disputes. The national legal framework is the predominant focus, although some of the organizations also engage with international legal standards, for example the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

Methods

Paralegal organizations in Sierra Leone employ a wide and flexible set of tools and strategies in their work, and are typically backstopped by lawyers to whom they refer serious or complex cases. Although the effectiveness of these programs is partly due to their connection to lawyers and the threat of litigation, the structure and operation of the programs is actively increasing the provision and quality of justice service delivery.

As a front-line strategy, paralegals focus on the mediation of disputes as opposed to litigation. This approach is recognized for maintaining peaceful co-existence among disputing parties who often reside in the same community.¹³⁹ The dispute resolution role

¹³⁶ Sonkita Conteh, “Exploring the Community Level Impact of Paralegals in Rural Sierra Leone” Sierra Express Media (2011).

¹³⁷ United Nations Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” (2011).

¹³⁸ Open Society Foundations, “Kampala Declaration Calls for Support for Community Paralegals.” (2012). Author: Abigail Moy.

¹³⁹ *Supra* note 136.

of paralegals is stressed as being at least as important as their linkages to the legal system, particularly as paralegals are able to identify alternatives for resolution that are relevant to the local population.

The main services provided by paralegal programs include legal advice, strategic campaigning, visits to police stations, the courts, and prisons, and public education through information dissemination and sensitization (including public dramas, television shows, and radio programs). In addition to service provision, paralegal organizations are promoting a pro-bono legal culture. For instance, AdvocAid has an internship program that draws students from Fourah Bay College Law Department, and provides them with human rights work experience.

6. Analysis and Conclusions

A. Effects on Citizens' Access to Justice

Building on the field research, this paper confirms that community-based paralegal programs are significantly contributing to legal empowerment and improving citizens' access to justice in Sierra Leone, in particular:

- The programs are effectively promoting legal awareness and knowledge, with a focus on national laws, predominantly the Gender Acts, and, although to a lesser extent, international standards;
- Through rights-focused community outreach and training, the programs are supporting women's empowerment, by advocating on women's rights and gender equality issues;
- The programs specifically target marginalized populations and women in particular, which is a key strategy of legal empowerment.
- As evidenced by their growing clientele, these programs play a key role in the community, and are seen as a legitimate justice focal point;
- Through the provision of free services and mobile clinics, the programs are ensuring that justice is more accessible, particularly for remote, rural communities;
- Owing to the methodology of longer term engagement with cases and an ongoing (physical) presence in the community, the programs have the potential to reduce retaliatory violence against women who seek justice services; and

- Interviews with female and male clients established that paralegals are highly accessible, understand and can work within the local context, and help to level power dynamics (particularly in regards to cases dealing with institutions).

B. Potential Risks

The main risks surrounding community-based paralegal programs are tied to their specific mission of supporting women. There is a risk that through strategically supporting women's access to justice that this may reduce the primary responsibility of the State to make formal justice processes more accessible. To minimize this possibility, it is critical that paralegal programs are recognized as but one initiative to strengthen women's access to justice, and that paralegal organizations continually collaborate with formal justice actors. The Legal Aid Act (2012) is a mechanism to address this potential risk, and does demonstrate the State's responsibility to make justice accessible. Further, there is a need to combine the recent legislation with initiatives to strengthen the gender training and capacity of lawyers, the judiciary, and government officials that are responsible for legal policy and law reform.

As highlighted in the access to justice section, women are often pushed towards reconciliation and mediation, as opposed to judicial legal processes. By limiting their justice options women's ability to seek justice is also hindered. Similarly, a further barrier is that women's relatives often interfere with justice processes and push for out of court settlements. Given that paralegals utilize mediation as their main methodology, particularly in rural areas, this issue needs to be considered further and there is a need for paralegals to have clear guidelines on when and how to refer a matter to the Magistrate and police. Further, the majority of paralegal organizations in Sierra Leone explained that they do not mediate cases of sexual violence; however, further research is required on how paralegals respond to sexual violence cases, particularly in remote areas.

Although these programs are producing tangible results for women's access to justice, the impact of these programs on women's rights and broader gender equality should be strengthened. For instance, very few of the paralegal organizations have clear strategies in regards to gender issues or women's rights, and the majority of the organizations do not provide gender-specific training for paralegals, which is required given the organizations' aim of supporting women's access to justice and that their primary clientele is women. Lastly, in response to the high number of organizations, there is a need for clear clientele strategies, in order to ensure that vulnerable segments

of women are not excluded from programming, and that efforts are not simply being duplicated, but rather are built upon.

B. Sustainability

The rapid expansion of community-based paralegal programs has triggered questions of the sustainability of this method of justice delivery. The commitment to providing accessible legal solutions must be a joint endeavor between the government and civil society. Thus far the Sierra Leonean Government has shown promising signs that it recognizes the critical role of primary justice, and now that the Legal Aid Act (2012) has been passed, commitment will be judged on how quickly legal aid institutions are established and the amount of State resources provided for legal aid provision. Further, there must be a sustained commitment on behalf of the government and justice actors to enforce the Act. The Act does however represent an attempt by the government to link top-down approaches to access to justice with a bottom-up focus on citizen's justice needs, and is critical not only for the continuation of community-based paralegal programs, but also for improving the quality and standardization of services.

Prior to the passage of the Legal Aid Act (2012), a select number of paralegals formed the Sierra Leone Association of Paralegals. This Association has drafted a constitution, which contains minimum education and remuneration standards, and a code of ethics. The aim of the Association is to increase coordination and learning between paralegals, and to also provide a space for internal monitoring and evaluation. The Association has the long-term objective of becoming unionized in Sierra Leone, and gaining such an official and public status may benefit the organization. Although this unified body presents potential benefits, there are emerging concerns surrounding this movement, including that unionization may lead to paralegals becoming similar to other elite justice providers which could lead to internal corruption and affect power dynamics between paralegal and clients. Additionally, if the organization becomes formally registered, there is a risk that this could hamstring its independence.¹⁴⁰ However, at this stage the benefits appear to outweigh the risks, as the Association will provide a mechanism to identify and share best practices and, ideally, to deliver training to paralegals.

Within the country, paralegal programs are expanding their thematic areas of expertise and practice, which will contribute to their sustainability. For example, as Sierra Leone's maternal and under-five mortality rates are among the highest in the world, the Government has made significant investments in the health sector (including the Free Health Care Initiative), and paralegals are now helping to improve this sector and the delivery of health care services by holding the Government accountable for breakdowns

¹⁴⁰ *Supra* note 3.

in the system that lead to absent nurses, improper use fees and leakage of drugs. The World Bank is currently supporting this work, and explains that once paralegals understand health policy and regulations, they can better respond to breakdowns in the system and improve accessibility.¹⁴¹ While the expansion of thematic areas is positive, it must be matched with an improved capacity of the organization. For example, paralegal organizations face standard challenges concerning, among other issues, administration, budgeting, financial management, and accountability, and these challenges must be addressed in order to improve their effectiveness and sustainability.¹⁴² Similarly, paralegal organizations are at risk of experiencing challenges related to externally-oriented capacities, which can include the inability to relate to outside bodies, donors, and government.

C. Overall Trends

The passage of Sierra Leone's Legal Aid Act (2012) is part of a larger legal empowerment movement, which is calling for stronger national legal aid policies, and sets a positive tone by recognizing paralegals as justice practitioners. Sierra Leone's legislation is similar to that being developed (or rolled out) in other countries, including Malawi, Nigeria, and Tanzania.¹⁴³

Building on this momentum, over fifty organizations from twenty African countries are urging governments to strengthen access to justice and accountability across the continent by embracing the potential of community paralegals.¹⁴⁴ These organizations have created the Kampala Declaration on Community Paralegals,¹⁴⁵ which reflects a new push to seek wider government recognition of the role of paralegals in resolving conflict, supporting access to State services, and fighting corruption. The Declaration calls on governments to: (i) recognize the role that community paralegals play in providing primary justice services, (ii) invest in the scale-up of paralegal efforts, and (iii) protect the independence of paralegals.¹⁴⁶ Further, the signatories commit to strengthening the quality and consistency of community paralegal efforts, and participating in the development of policy and legislation regarding paralegals. The Declaration is a promising initiative, which will contribute to the effective scaling up of community paralegal efforts, and thereby increasing citizens' access to justice.

¹⁴¹ World Bank, "Justice in Health Care Delivery: A role for Sierra Leone's paralegals." (2012). Author: Margaux Hall.

¹⁴² *Supra* note 3.

¹⁴³ *Supra* note 138.

¹⁴⁴ For a list of signatories, see: www.namati.org/kampala-declaration.

¹⁴⁵ The Declaration follows a meeting held in Kampala, Uganda July 9-11 2012.

¹⁴⁶ The Kampala Declaration on Community Paralegals (2012).

Given the growing focus on legal empowerment and community-based paralegal organizations, there is a need for more systematic methods to evaluate and ascertain the related impacts. Recently, efforts have been made in this regard; for example, to categorize types of legal empowerment impacts and to design evaluation mechanisms and methodologies.¹⁴⁷

D. Conclusions

Community-based paralegal programs occupy an important space in Sierra Leone's justice sector, and provide concrete, proximate, and relevant solutions to the most widely experienced justice problems. Within the country, the central barriers that limit access to justice include institutional barriers, the lack of capacity to provide justice remedies, as well as the lack of capacity to demand justice remedies.¹⁴⁸ Paralegal programs are responding to these barriers, and are a promising mechanism that contributes to legal empowerment and access to justice. Specifically, these programs contribute to the strengthening of justice in three ways: (i) increasing the quality, speed and accessibility of legal services for citizens in a meaningful and effective way, (ii) strengthening and complementing the formal and State justice processes, while promoting transparency (including lessening the presence and extent of corruption and alleviating pressure on the country's detention centers), and (iii) through the provision of legal and human rights education.



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¹⁴⁷ See for example: *supra* note 1; Adam Masser, "Measurement Methodologies for Legal Empowerment of the Poor," Discussion Paper 6 (Oslo: UNDP) (2009).

¹⁴⁸ *Supra* note 53.