

Malawi

Community Paralegals: Recognition & Financing



Community paralegals are trained in basic law and in skills like mediation, organizing, education, and advocacy.

They are called different names in different places – including "community legal worker," "barefoot lawyer," "grassroots legal advocate," or a host of other titles. All share a common purpose: to help people to understand, use, and shape the law.

Introduction

Community paralegals are dedicated to legal empowerment: they help people to understand, use, and shape the law. These advocates are called different names in different places – including "community legal worker," "barefoot lawyer," "grassroots legal advocate," or a host of other titles. They are trained in law and policy and in skills like mediation, organizing, and advocacy. Some are generalist – they engage whatever justice issues community members bring to them. Others specialize – they may focus on supporting survivors of sexual violence, or protecting community land rights, or in addressing failures in the delivery of public services.

Community paralegals are client-facing. Although they are called "community paralegals," they are not the kind of paralegals who primarily serve as lawyers' assistants. Community paralegals work with clients to seek concrete solutions to instances of injustice, often at the community or administrative levels. They form a dynamic, creative frontline that can engage formal and traditional institutions alike. Moreover, just as primary health workers are connected to doctors, community paralegals are often connected to lawyers who may help to pursue litigation or high-level advocacy if frontline methods fail.

This research brief is part of a series that reviews the nature of the work undertaken by community paralegals, and the extent to which that work is recognized or funded by government. Please note that the first briefs published for this series focus on the types of community paralegals who have been formally recognized either in law or policy. We acknowledge that this is just a small part of a much larger picture. Beyond the government-recognized paralegals discussed in these briefs, a broader, dynamic ecosystem of community paralegals operates effectively without state recognition in many countries. We aim to one day expand our research to offer a more comprehensive analysis of this larger universe. For now, however, our research briefs are limited to offering summary information and illustrative examples of the community paralegals who have been formally recognized by law or policy.

Each of these briefs is a living document-- if you have an update, addition or a correction, please contact us at community@namati.org.

Acknowledgements

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Notes		
NATURE OF WORK		
Recognition*		
Are community paralegals formally recognized?	Yes	In the Legal Aid Act (2010).
What are community paralegals called?	-	Formally, “legal aid assistants”. Community paralegals operating outside the legal aid assistant scheme are commonly known as “paralegals” or “village mediators.”
Recognized Functions		
Educating community and clients about the law?	Yes	
Mediating disputes?	N/S	Not specified, but occurs in practice.
Organizing community members for collective action?	N/S	Not specified, but occurs in practice.
Advocating to authorities?	N/S	Not specified, but occurs in practice.
Monitoring for violations of rights?	N/S	Not specified, but occurs in practice.
Litigating (with or without the help of lawyers)?		
- Criminal	N/S	
- Civil	N/S	
Navigating administrative processes?	Yes	
Recognized Places of Work		
Government-run offices or legal aid centers?	Yes	
Non Governmental Organizations?	No	Paralegals outside the formal legal aid scheme work with NGOs.
Independent practice?	No	
INDEPENDENCE AND ACCOUNTABILITY		
Is the independence of community paralegals explicitly protected?	Yes	In relation to legal assistants only.
Are there boards or bodies that monitor community paralegals?	Yes	In relation to legal assistants only.
If so, are these boards or bodies separate from the government (e.g. Ministry of Justice)?	Yes	In relation to legal assistants only.
If so, do these boards or bodies include civil society representatives?	No	In relation to legal assistants only.
QUALITY AND STANDARDS		
Must community paralegals meet certain criteria in order to practice?	No	There are general qualifications for advocates to consider when hiring legal aid assistants.
Is there a board, body, or certification scheme to recognize qualified community paralegals?	No	There are no specific criteria outlined in the Legal Aid Act besides the general qualifications.

Notes

SCALE AND FINANCING

Does any public revenue fund community paralegals?	Yes	There are concerns regarding chronic underfunding of legal aid programs in Malawi despite the Government committing to do so in the Legal Aid Act.
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Do Community Paralegals Work on this Issue?	Is Community Paralegal Work on this Issue Formally Recognized?	Does the Government Fund Community Paralegals who Work on this Issue?
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Note: The Government of Malawi funds the Legal Aid Bureau which employs Legal Aid Assistants, although this funding has not materialized to date. Paralegals are authorized to perform basic legal services, but this is not well defined.

Issues

Criminal Justice	Yes	?	?
Civil and Political Rights	Yes	Yes	Yes
Education	Yes	?	?
Environmental Justice	Yes	?	?
Family Law	Yes	?	?
Health	Yes	?	?
Housing	Yes	?	?
Labor & Employment	Yes	?	?
Land & Natural Resources	Yes	?	?
Migrants, Refugees, & Citizenship	Yes	?	?
Peace-building	No	?	?
Transparency	Yes	?	?
Water & Sanitation	Yes	?	?

Key

N/S = Not specified	? = Unknown. To share data on this point, contact community@namati.org
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*Note that we consider the following as sources of formal recognition: legislation, regulations, policies, court judgments, memorandums of understanding, etc.

The Law In Practice

Defining Community Paralegals

Are community paralegals recognized? How are they defined?

Malawi's Legal Aid Act recognizes "Legal Aid Assistants," who are not qualified as legal practitioners, but are authorized to work full-time as a service provider with the Legal Aid Bureau or any clinical law studies program.

Outside the legal aid assistant scheme, civil society organizations widely deploy community paralegals.¹ While these community paralegals are not explicitly mentioned in the Legal Aid Act, the law does permit the Legal Aid Bureau to enter into co-operation agreements with civil society groups to provide legal aid as it sees fit.

In addition to paralegals, organizations like PASI train "village mediators," who help to adjudicate both civil and petty criminal disputes. Among these organizations, there is no standardization of what the term "mediator" means. However, village mediators are trained in human rights law so that as they mediate disputes, rights of disputants are not violated.

In this brief, we refer to community paralegals working within the government legal aid scheme as "legal aid assistants." We refer to community paralegals deployed outside the legal aid assistant scheme as "paralegals."

What do community paralegals do? What issues do they focus on?

Because the legal aid assistant scheme remains to be implemented, civil society oversees most community paralegals in Malawi. Below are two examples of non-governmental organizations employing community paralegals and the issues they focus on.

PASI is a well-established organization that assists persons with criminal justice processes, from arrests to appeals. PASI paralegals hold regular legal clinics for pre-trial detainees, explain the process of criminal prosecution to them, meet with prosecutors to review cases, facilitate release of detainees, and assist with sentence appeals.²

¹ According to the civil society organization Paralegal Advisory Service Institute (PASI), the definition of paralegal requires further elaboration and standardization. In PASI's experience, the deployment of paralegals with varying levels of training causes confusion among both paralegals and the public. There exists a need to differentiate between paralegals with relatively limited training and paralegals with a wider range of capabilities.

² *Index of Paralegal Services in Africa*, PENAL REFORM INTERNATIONAL, 16, (July 2012), <http://www.penalreform.org/resource/index-paralegal-services-africa/>.

The Centre for Human Rights and Rehabilitation operates a paralegal clinic, providing advice in cases involving wide-ranging issues including human rights violations, labor, immigration issues, land disputes and gender-based and political violence.³

Recognized Places of Work

Legal aid assistants are supposed to work at the Bureau's Regional and District Legal Aid Centers (see Sections 35, 36, 28), alongside qualified legal practitioners (known as "Legal Aid Advocates"). However, funding so far has not allowed for this.

The majority of paralegals work through civil society organizations in a number of locations. Paralegals work at police stations, in prisons, in the courts, and in the community.⁴

Independence and Accountability

Is the independence of community paralegals explicitly protected?

Yes, legal aid assistants operate under the Legal Aid Bureau, which by law is explicitly "independent of the interference or direction of any person or authority."

Paralegals presently working for civil society function independently of government influence.

Are there boards or bodies that monitor community paralegals? If so, are these boards or bodies separate from the government (e.g. Ministry of Justice)? Do these boards or bodies include civil society representatives?

A Legal Aid Bureau is established by Section 3 of the Legal Aid Act. The Bureau is tasked with determining priorities and guidelines for the provision of legal aid, including Regional and District Legal Aid Centres where Legal Aid Assistants work. The Bureau has since been removed from the Ministry of Justice and is an autonomous institution from the government, except for receiving funding from the government. There is no civil society representation involved in the administration of the Bureau.

³ *Paralegal Clinic*, CENTRE FOR HUMAN RIGHTS AND REHABILITATION, <http://www.chrrmw.org/paralegal-clinic>.

⁴ Paralegal Advisory Service Institute, *Access to Legal Aid in Criminal Justice Systems in Africa*, UNITED NATIONS, 24, (April 2011).

Quality and Standards

Must community paralegals meet certain criteria in order to practice? Is there a board, body, or certification scheme to recognize qualified community paralegals?

The Council of Legal Education is responsible for determining the minimum level of legal education required of legal aid assistants.

Section 14 of the Act further provides:

In recruiting legal aid assistants, the Bureau shall take into account academic qualifications, course work, training, and the experiential acquisition of knowledge and skills and shall have due regard to the need for Legal Aid Assistants to be able to:

- (a) communicate effectively, orally and in writing;
- (b) assist legally aided persons to comply with procedural or administrative requirements;
- (c) have basic understanding of common legal concepts;
- (d) provide basic legal advice and legal assistance;
- (e) understand the circumstances in which it is appropriate to refer matters to a Legal Aid Advocate or to a legal practitioner;
- (f) advise and educate members of communities on legal issues.

The law does not specify or require a certification process for Legal Aid Assistants.

Moreover, the law does not provide criteria for paralegals working outside the Legal Aid Assistant scheme.

The civil society organization Paralegal Advisory Service Institute (PASI) requires their paralegals to sign a Code of Conduct when working in the prisons or police stations.⁵

Is community paralegal training available? What does it look like?

The training for legal aid assistants does not exist because they have yet to be deployed.

Training and deployment of paralegals is undertaken by civil society. For example, PASI provides intensive training to all of their paralegals, who focus on pretrial detention and prisoners' rights. Training usually takes about 18 months and is done in small stages and on a part-time basis. Paralegals are trained on topics including the criminal justice system, human rights, and information management.

⁵ *In Practice – a manual for non-lawyers working in the Criminal Justice system*, PARALEGAL ADVISORY SERVICE, 20, (June 2005), <http://www.governancejustice.org/manuals/>.

It is an intensive process, but interest remains high. In previous years, PASI would receive up to 3,000 applications for 10 advertised paralegal positions. Despite being an unpaid and lengthy program, training is considered desirable because it can help paralegals obtain qualifications valuable to the eventual pursuit of a law degree.

Although they are not under their direct supervision, paralegals work with a lawyer's guidance when taking statement for pre-trial detainees.

Public Financing

Does any public revenue fund community paralegals?

As per Section 28 of the Legal Aid Act, the Legal Aid Bureau is authorized to enter into co-operation agreements with civil society organizations interested in the provision of legal aid. Under these co-operation agreements, civil society organizations are responsible for funding activities carried out in partnership with the Bureau.

The Bureau is intended to be fully funded by the government, although it can accept donations that do not compromise the Bureau's independence and impartiality. However, the government has yet to secure funding for the Bureau. Bilateral donors have offered to establish a legal aid basket fund combining both donor and government support. However, the stance of the Malawian government is that it will not hire staff on salary provided by donors, because they cannot ensure that the position can be funded sustainably. Despite advocacy on the part of civil society, it has been difficult to convince the government to take on responsibility for funding the legal aid scheme. Evidence does not show that the government funds any paralegal work in any issues or sectors.

Practitioner Perspectives on Community Paralegals

General observations about the law in practice

The Legal Aid Act was created to respond to the lack of access to justice, particularly in rural areas, as a result of high legal fees and the lack of lawyers outside of urban areas. The government appointed a group of special law commissioners, including civil society representatives, to review the Legal Aid Act of 1964. The group decided to throw out the entire Act and draft a new version. It took about a year and a half to produce their report, after which they convened regional meetings and accepted comments from the general public. The group's proposal was received well by lawmakers, who were convinced of the need and effectiveness of paralegals. Getting support for the Act's passage was a relatively smooth process.

There is public dissatisfaction with the implementation of the Act. The Act made very clear that the Legal Aid Bureau would establish district offices manned by legal aid advocates, assisted by community paralegals (under the "Legal Aid Assistant" scheme). However, due to a lack of funding, this has not fully been realized.

As of March 2015, the Legal Aid Bureau has been formed. Although it is still under the control of the Ministry of Justice, it has its own director, Masauko Chamkakala.⁶

Officially, the government is implementing the law in phases. With the support of the EU Democratic Governance Program, the national government has commissioned a team to come up with a strategy for implementation.

The civil society organizations that deploy community paralegals remain active. For example, PASI reports the following achievements achieved between December 2007 and December 2011:

- Paralegal Aid Clinics at police stations, courts and prisons benefitted 7,761 suspects, 25,622 accused, and 122,000 prisoners
- Legal advice and assistance was provided to 25,622 accused in courts
- PASI paralegals facilitated the release of 4,054 arrestees, 2,986 accused, and 2,288 prisoners⁷

As of 2012, PASI has also trained 1100 village mediators, who assist in resolving local disputes, seeking to ensure equality in the delivery of local justice, and operating in accordance with a Code of Conduct.⁸ In its first 48 months, the Village Mediation Project facilitated the successful mediation of 33,960 cases representing 92.4% of cases registered in fourteen Traditional Authorities in seven districts. The cases mostly involving family disputes, small debts, maintenance of children, common theft and assault, and labor disputes.⁹

⁶ Irish Rule of Law International, *IRLI 12 Month Report*, IRLI, 4, (August 17th, 2015), <https://www.lawlibrary.ie/media/lawlibrary/media/Legal%20Services/IRLI-Malawi-Annual-Report-July2014-June2015.pdf>.

⁷ Paralegal Advisory Service Institute, *Editorial*, No. 15 PASI NEWSLETTER, 2 (January 2012).

⁸ *Id.* at 4.

⁹ *Id.* at 5.

ANNEX: The Law (Excerpts)

Legal Aid Act (2010)

...

2. In this Act, unless the context otherwise requires-

“Legal Aid Assistant” means a person who is not qualified as a legal practitioner but has attained the requisite minimum level of legal education as may be prescribed by the Council of Legal Education under the Legal Education and Legal Practitioners Act to enable such person in full time employment with the Bureau or to provide services under any clinical law studies programme in partial compliance of the certification requirements for a legal practitioner under the Legal Education and Legal Practitioners Act.

3. There is hereby established the Legal Aid Bureau (in this Act otherwise referred to as the “Bureau”) which shall be a Department of the Government.

4. The duties and functions of the Bureau shall be to-

(a) provide legal aid in accordance with this Act; [...]

...

(g) liaise and cooperate with civil society organizations or any other persons or bodies engaged or interested in the provision of legal aid;

6. (1) The Bureau shall exercise its powers and perform its duties and functions independent of the interference or direction of any person or authority

(2) All organs of the Government shall accord the Bureau such assistance as may be reasonably required for the exercise of its powers and performance of its duties and functions and for the protection of the independence and impartiality of the Bureau

...

14. Recruiting Legal Aid Assistants

In recruiting Legal Aid Assistants, the Bureau shall take into account academic qualifications, course work, training, and the experiential acquisition of knowledge and skills and shall have due regard to the need for Legal Aid Assistants to be able to-

(a) communicate effectively, orally and in writing;

(b) assist legally aided persons to comply with procedural or administrative requirements;

(c) have basic understanding of common legal concepts;

(d) provide basic legal advice and legal assistance;

(e) understand the circumstances in which it is appropriate to refer matters to a Legal Aid Advocate or to a legal practitioner;

(f) advise and educate members of communities on legal issues.

...

28. Co-operation Agreements

(1) The Bureau may enter into co-operation agreements with civil society organizations interested in the provision of legal aid.

(2) A co-operation agreement shall stipulate the conditions applicable and shall place on the cooperating partner the responsibility of funding any activities carried out in partnership with the Bureau.

...

35. Regional Legal Aid Centers

(1) There may be established in every regional court administration centre, a Regional Legal Aid Centre.

(2) The Director may appoint a Legal Aid Advocate to a Regional Legal Aid Centre to -

(a) provide legal aid under this Act in that region;

(b) supervise the operations of Legal Aid Assistants providing legal aid in the District Legal Aid Centres of that region;

(c) provide technical support and assistance to the District Legal Aid Centres especially in matters that require legal representation or are beyond the competence of the Legal Aid Assistants.

36. District Legal Aid Centers

(1) There may be established in every district, a District Legal Aid Centre.

(2) The Director may appoint Legal Aid Advocates or Legal Aid Assistants to a District Legal Aid Centre who shall be responsible for the provision of legal aid in accordance with this Act, for such matters as are within their competence.

37. Competence of Legal Aid Advocates and Legal Aid Assistants

The placement or posting of a Legal Aid Advocate or Legal Aid Assistant in a regional or district centre shall not preclude that Legal Aid Advocate or Legal Aid Assistant from performing legal aid duties in any other regional or district centre.

38. Financial Provisions

(1) The Government shall adequately fund the Bureau to enable it to perform its duties and functions and exercise its powers so as to ensure its independence and impartiality.

(2) The Bureau may receive donations of funds, materials and any other forms of assistance for the purposes of performing its duties and functions: Provided that no such donation shall jeopardise or compromise the independence and partiality of the bureau.

...

39. Legal Aid Fund

- (1) There is hereby established a fund to be known as the Legal Aid Fund (in this Act otherwise referred to as the "Fund").
- (2) The Fund shall consist of -
 - (a) sums appropriated by Parliament for the purposes of the Fund;
 - (b) any contributions made by legally aided persons;
 - (c) any deductions from awards to legally aided persons; costs awarded to legally aided persons;
 - (e) [sic] any sums accruing from contingency fee agreements entered into pursuant to this Act;
 - (f) any other sums that may vest or accrue to the Fund, whether through the provision of legal aid or otherwise or by way of donation, grant, gift or bequest.
- (3) The Fund shall be administered by the Bureau in accordance with the purposes of this Act.
- (4) The Fund shall be applied to the following -
 - (a) costs and expenses necessarily incurred in the provision of legal aid in accordance with this Act; and
 - (b) any other purpose which the Bureau considers to be in the interests of the provision of legal aid in accordance with this Act.