

NAVIGATING COMPLEX PATHWAYS TO JUSTICE: COMMUNITY PARALEGALS AND CUSTOMARY AND INFORMAL JUSTICE



Creating a Culture
of Justice

International Development
Law Organization

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4. CREATING AN ENABLING ENVIRONMENT FOR SUSTAINABLE COMMUNITY PARALEGAL ENGAGEMENT WITH CUSTOMARY AND INFORMAL JUSTICE SYSTEMS: CHALLENGES AND PATHWAYS

FACILITATING PARALEGAL ACTIVITIES THROUGH ADEQUATE LEGAL AND INSTITUTIONAL FRAMEWORKS

Despite consistent evidence of the important role that paralegals can play in promoting access to justice, many countries still lack comprehensive or adequate legal and policy frameworks regulating legal aid and paralegals, including community-based paralegals navigating both informal and formal justice systems.¹³⁴ In conflict-affected contexts in particular, the lack of legal aid legislation has been identified as an obstacle to effective paralegal services.¹³⁵ Indeed, paralegals may not be formally recognized by the legal system or the government as legal aid service providers, and the concept and role of paralegals may be new for communities, causing negative attitudes and inaccurate perceptions, both by community members and CIJ actors.¹³⁶ The lack of legal recognition and standards often results in a general lack of trust in paralegals, which can

negatively impact their work.¹³⁷ For example, community paralegals may be denied access to courts and court records, prisons and detention centers because they are unaccompanied by a lawyer.¹³⁸ Further, even in contexts where paralegals are formally embedded in a legal and regulatory framework, CIJ providers may not acknowledge their relevance to CIJ systems or perceive them as threats to the established status quo, thus making collaboration challenging.¹³⁹

The international community has repeatedly called upon States to establish effective nationwide legal aid systems by undertaking all necessary measures aimed at ensuring and promoting “the full realization of the right to legal aid for any individual within its territory and subject to its jurisdiction who does not have sufficient financial

means to pay for legal aid or to meet the costs associated with judicial proceedings”.¹⁴⁰

States are urged to formally recognize the role of paralegals in providing legal aid services, especially where access to lawyers is limited.¹⁴¹ Measures enacted should therefore enable paralegals to provide legal aid services “to persons detained, arrested, suspected of, or charged with a criminal offence”, including in detention centers and police stations,¹⁴² as well as regulate the relationships between paralegals and CIJ actors to ensure access to legal aid and justice services for the most vulnerable and marginalized. Specifically, measures are recommended to:

- » Develop, where appropriate, a nationwide scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting.
- » Ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers.
- » Ensure the availability of monitoring and evaluation mechanisms to guarantee the quality of the services provided by paralegals.¹⁴³

The UN Principles and Guidelines also recommend binding codes of conduct for paralegals, the specification of the types of legal services that paralegals can provide as compared to those that must be provided by lawyers exclusively,¹⁴⁴ as well as the establishment of national independent institutions to coordinate and manage the delivery of legal aid services.¹⁴⁵ Indeed, States are encouraged to put in place mechanisms and processes to ensure meaningful collaboration between key stakeholders in the justice

sector, including the judiciary, legal professionals, national human rights institutions, prosecution, police and CIJ systems, and to adequately fund legal aid. A legal and regulatory framework is needed to preserve the independence of paralegals and ensure coordination of their activities through governance and accountability mechanisms.¹⁴⁶

Generally, legal aid laws should provide clear guidance on qualification requirements for paralegals, as well as accreditation processes, including the

responsible body or organ for certification and regulation of conduct. Legal aid boards or legal service commissions are often-used mechanisms. Normally, they are established by law, funded at least in part by government, independent and accountable to parliament. They have an administrative role over national legal aid systems and exercise their functions on the basis of assessment of legal aid needs and stakeholder mapping. In particular, these bodies:¹⁴⁷

- » **Coordinate service providers:** match competencies of legal aid providers to specific legal needs and ensure effective legal aid support at relevant stages.
- » **Ensure minimum quality standards:** elaborate codes of conduct, training, supervision and monitoring mechanisms, and establish complaint mechanisms and disciplinary procedures.
- » **Delineate responsibilities:** clarify the role of lawyers, paralegals and law students in particular.
- » **Establish referral mechanisms:** ensure referrals to lawyers as well as CIJ mechanisms and complementary services such as women's shelters, child protection counseling and health services.
- » **Adapt approaches:** engage with stakeholders to obtain information and update assessments allowing the fine-tuning of approaches to remain responsive to local legal aid needs.

To ensure these standards are met, enacting legislation and policy is key as well as delineating the roles and responsibilities of all actors. While many countries in the African continent have enacted general legal provisions aimed at ensuring access to legal aid services in criminal matters only, there is also momentum for comprehensive legal aid legislation to regulate all facets of nationwide legal aid, including coordination bodies and monitoring mechanisms. Importantly, some national legal frameworks provide for measures that directly or indirectly regulate interactions of paralegals with CIJ systems.¹⁵²

CASE STUDY: THE SIERRA LEONE LEGAL AID BOARD

The **Sierra Leone** Legal Aid Act of 2012 establishes a comprehensive national legal aid system drawing on the Lilongwe Declaration and Plan of Action, which "enshrines the role of paralegals as a basic element of the system"¹⁴⁸ and explicitly provides for the deployment of paralegals in each of Sierra Leone's 149 chiefdoms.¹⁴⁹ The Legal Aid Act designates a Legal Aid Board as responsible for accrediting legal aid providers, including paralegals, and identifying the accredited educational institutions that can provide training for paralegals.¹⁵⁰ The Board is also tasked with determining the nature of cases and persons who may receive legal aid services, monitoring the performance of legal aid actors and conducting legal aid-related research.¹⁵¹

REGULATING PARALEGAL FUNCTIONS IN PLURAL LEGAL SYSTEMS

Importantly, several countries in Africa have adopted legislations detailing a paralegal's role in relation to CIJ systems, including the jurisdiction of CIJ actors, and referrals and appeal pathways and processes to be followed by paralegals in directing cases to the competent justice actors. The above-mentioned **Sierra Leone** Legal Aid Act explicitly regulates the relationship between paralegals and CIJ actors, establishing that paralegals are tasked with providing "advice, legal assistance and legal education to the Paramount Chief and the inhabitants of the Chiefdom" and "where appropriate to assist in diverting certain cases to the formal justice system".¹⁵³ For this purpose, relevant local authorities shall be consulted in the appointment of each chiefdom's paralegal by the Legal Aid Board, thus making the selection process more participatory and reflective of community interests.¹⁵⁴ As a result, in Sierra Leone, community-



based paralegals have to apply their knowledge of the formal legal system of courts and, at the same time, be familiar with customary or traditional law.¹⁵⁵

In **Uganda**, the draft National Legal Aid Policy explicitly provides for a responsibility of the national legal aid body to ensure legal aid actors refer

"minor criminal, small claims and civil cases from the formal justice system to Local Council Courts and other subordinate Courts and traditional mechanisms or other dispute resolution bodies in line with international standards and best practice".¹⁵⁶

NAVIGATING JURISDICTIONAL ASPECTS

In **Uganda**, local council courts operate at village, parish, town, division and sub-county level¹⁵⁷ and have jurisdiction over civil disputes of restricted monetary value,¹⁵⁸ civil disputes governed by customary law, as well as "(c) causes and matters arising out of infringement of bye-laws and Ordinances duly made under the Local Governments Act; (d) matters specified under the Children Act; (e) matters relating to land".¹⁵⁹ With the exception of cases related to the infringement of bye-laws, representation by lawyers is not permitted at the local council courts level, leaving a central role to paralegals in the provision of legal services to parties.¹⁶⁰

Importantly, the Local Council Court Act provides for several rights to be exercised by parties to a case, which could benefit from paralegal support, including the right to object to the jurisdiction of a local council court, and "if the objection is upheld, be referred to a court having jurisdiction to hear and determine the case",¹⁶¹ and the right to appeal against a decision made by a local council court.¹⁶²

Specifically, Section 32 of the Local Council Court Act establishes that appeals may be lodged "(a) from the judgment and orders of a village local council court to a parish local council court; (b) from the judgment and orders of a parish local council court, to a town, division or sub-county council court; (c) from the judgment and orders of a town, division or sub-county local council court to a court presided over by a Chief Magistrate; (d) from decrees and orders made on appeal by a Chief Magistrate, with the leave of the Chief Magistrate or of the High Court, to the High Court".¹⁶³ The Act also details the process to be followed in lodging an appeal against local council courts' decisions, establishing a fourteen-day term from the date of the decision and requiring that every appeal "be presented in a memorandum signed by the appellant, setting forth the grounds of appeal".¹⁶⁴

Similarly, in **Somalia**, ADR national policy and regulation clearly define the scope of jurisdiction of informal and formal justice mechanisms by explicitly excluding several crimes and civil matters from the jurisdiction of ADR Centers, thus attributing to paralegals the role of referring such matters to the competent formal authorities.¹⁶⁵ Further, the ADR Centers' standard operating procedures detail a range of functions that paralegals working at ADR Centers must perform in support of both CIJ actors adjudicating cases and justice seekers, with a focus on assisting the most vulnerable, facilitating identification of cases for referral and linking ADR Centers with formal authorities or support service providers as appropriate. In particular, paralegals should:

- » **A.** Provid[e] legal assistance and advice to ADR Center users, particularly to vulnerable categories, to help them to navigate pathways in the formal and informal justice system.
- » **B.** Provide legal advice to the adjudicators so that the deliberations are taken in line with the Human Rights standards, Sharia Law, National Law, and the provisions of the standard operating procedures.
- » **C.** Identify and report cases out of the ADR jurisdiction or not respecting the standard operating procedures.
- » **D.** Support ADR clerks in the correct classification of the cases and data entry.
- » **E.** Support the registration and referral of cases at court districts.
- » **F.** Prepare and draft legal documents required for the centres.¹⁶⁶

The standard operating procedures also identify a central role for paralegals in conducting awareness-raising and legal empowerment to increase legal literacy and community knowledge of ADR Centers, especially among women, victims of gender-based violence, internally displaced persons, minorities and other vulnerable groups, to ensure legal problems find appropriate justice avenues. Further, paralegals are central to implementing procedural safeguards in the ADR process, as they are explicitly tasked with liaising "with the

community-based organizations to promote an integrated support and counseling to ADR Center users",¹⁶⁷ thus ensuring victims of gender-based violence, children and other vulnerable groups receive timely health, social and other services available at the community level. Finally, the standard operating procedures envision a role for paralegals in contributing to accountability of ADR Centers towards the community, although specific measures or mechanisms enacting this provision are lacking.¹⁶⁸

Finally, perspectives collected from paralegals have shown the importance of localizing national-level structures to support them in operating safely and effectively at the community level. As will be further explored in the following section, concerns have emerged related to the risk of working as a paralegal at the community level and interacting with CIJ mechanisms, pointing to the need for dedicated policy and oversight measures. A paralegal from **Kenya** summarized this gap as follows:

*We face risks at the community level that national networks or the legal aid board cannot prevent, there is a risk of backlash in our work that can even escalate to violence. We need a local structure at the community level to protect us and enable us to carry out our work independently.*¹⁶⁹

INTERLINKAGES, POWER DYNAMICS AND COOPERATION BETWEEN PARALEGALS AND OTHER LEGAL AND JUSTICE ACTORS

Due to their ability to engage a wide range of actors and institutions, community-based paralegals play a crucial role in networking with local authorities as well as other organizations operating locally on similar issues to advance equal rights and access to justice for all.¹⁷⁰

Relevant stakeholders may include both state actors such as public defenders, and non-state actors, ranging from private and contract lawyers to bar associations, law faculties, legal aid clinics and CIJ actors. By engaging with a variety of different stakeholders, paralegal programs can provide tailored

solutions to legal problems through creative strategies, using a range of skills and tools and deep knowledge of local context and power dynamics.¹⁷¹ In fact, legal aid services are maximized when different actors cooperate effectively through a structured network.¹⁷²

IDENTIFYING POTENTIAL TENSIONS AND UNDERSTANDING LOCAL POWER DYNAMICS

Despite growing support for legal aid and community paralegals, fieldwork experiences highlight concerns regarding relationships with other justice actors, particularly CIJ providers. As paralegal services offer communities

new and additional justice options, there can be “shifting power dynamics”.¹⁷³ Community-based paralegals will intersect with lawyers and traditional local leaders, sometimes generating reluctance to collaborate and

complement each other effectively.¹⁷⁴ An account by a Kenyan paralegal illustrates some of the complexities of operating in cooperation with multiple actors at the community levels:

We have trust from the community because we maintain our integrity and legitimacy... Women victims often go to the traditional elders first, then they realize these have been corrupted by the perpetrator and they then take the case to us. We are seen as competitors by elders because they get a fee from the parties for their service... It is a delicate relationship.

We also talk to the police a lot. Sometimes it is challenging to ensure they understand and cooperate because they have been bribed as well. But other police officers trust us and cooperate.¹⁷⁵

Challenges have been observed in particular in obtaining the support of CIJ actors for paralegal activities. As highlighted by research findings, to “have an impact, paralegals must represent a source of competition and threaten leaders’ monopoly on judicial power”, yet, where traditional authorities feel sidelined, they may refuse any type of collaboration.¹⁷⁶

In a paralegal program in **Uganda**, for example, frictions with customary leaders emerged as the latter felt threatened by the mediation services provided by community paralegals.¹⁷⁷

Indeed, while paralegals were trained on basic laws and offered free services, customary leaders charged fees for resolving disputes, and had “vested interests in land issues or transactions that could be undermined by [paralegals’] knowledge of the law”.¹⁷⁸ In **Sierra Leone**, the above-mentioned Legal Aid Act of 2012 coupled with a justice sector reform strategy and investment plan recognizing the role of paralegals in providing legal aid services resulted in rapid growth of paralegal programs. As a result, several concerns emerged linked to the perceived lack of technical capacity of paralegals in

addition to perceptions of a threat to the established role of chiefs as the main justice providers at the community level. Thus, efforts by paralegal organizations focused on raising awareness of the complementarity of paralegal activities to the functions of paramount chiefs, section chiefs and religious leaders and engaging with them through joint meetings with paralegals to address initial reluctance to collaborate. This enabled different stakeholders to find ways of working together and some paralegals reported instances where chiefs requested advice and support.¹⁷⁹

Local power relations impact community norms and structures and may constitute barriers to access to justice.¹⁸⁰ In plural environments, the social, political and economic contexts are important, perpetuating discrimination or locating opportunities to change attitudes.¹⁸¹ Thus it becomes essential for paralegals to understand and navigate power imbalances and acquire legitimacy and authority in their role. As highlighted by a paralegal from **Somalia**:

We can create a role for paralegals to support behavior change of elders if we choose paralegals carefully: they must be authoritative with elders and able to influence them. You need someone with enough authority and ability in order to speak out with elders. Elders have very high authority in the community. They see themselves as above any other type of authority including the formal government – and have many disputes to handle daily. They would not see paralegals as equals or competitors.¹⁸²

Research on paralegals in **Tanzania** indicates that community-based paralegals must be able, on the one hand, to provide timely and effective legal aid services, and on the other, “to act as community leaders who can negotiate the various forms of power and violence that obstruct pathways to justice”.¹⁸³ As explained by a paralegal, in Tanzania, building public trust in paralegals and increasing recognition of their role through multiple awareness-raising strategies have been instrumental in facilitating their work at the community level:

We only face slight challenges in our work: some people don't agree with our decisions, they don't care about what the law says, or they are suspicious about us and what we do, but these are few. Most of the community recognizes us as paralegals: we were formally introduced to the community after the training, we have certificates of accreditation, we were formally introduced to the state council as well. We also make many public speeches so people know us and recognize us. We conduct community dialogues in every ward, we provide legal awareness and conduct mobile clinics providing legal advice at the ward level. We use different strategies, sometimes we sponsor sport games and get a chance to talk, and people know paralegals sponsored that event [which fosters a positive image of paralegals]. Everyone knows us, they even call us on the phone. In our country ward chiefs are not so strong, influential, they are just like common people. We have a strong recognition as paralegals.¹⁸⁴

Indeed, experience shows that it is not sufficient to be trained as a paralegal to gain legitimacy in the eyes of the community and competing legal and justice actors. In order to be most effective, paralegals must be trusted individuals, have knowledge of both formal and informal justice systems, and must be perceived as skilled at resolving disputes and articulate and confident enough to address different local authorities on an equal footing.¹⁸⁵ Research conducted on a paralegal program in **Indonesia** found that the paralegals who received the most cases were often those who were already known in the community for having “had

some success in taking up community-problems before becoming a paralegal, often through the involvement in organizing events or protests” or had acquired an image as a “local problem-solver” before becoming a paralegal. Importantly, paralegals selected from among village heads were the most trusted by justice seekers and had received the highest number of cases.¹⁸⁶

Therefore, paralegal programs are most successful when paralegals can build on pre-existing relationships with community members, hold a certain authority, and have in-depth knowledge of local power dynamics. Additionally,

practice shows that in contexts where paralegals are not perceived as competitors or threats to the status quo of customary authority and are viewed as a support or complementary service, paralegal programs have been more successful in obtaining the collaboration of CIJ actors. Indeed, while CIJ actors are often “among those who benefit from discriminatory norms and maintenance of the status quo, they also have incentives to be responsive to changing community expectations” as their legitimacy greatly depends on “their ability to maintain order and social harmony”.¹⁸⁷

BUILDING ON COMPLEMENTARITY AND STRENGTHENING COOPERATION

Paralegals and customary and informal justice providers

As reported by a Tanzanian paralegal, community awareness-raising, capacity-building and coordination activities involving traditional chiefs show promising results in communities:

Previously, when a schoolgirl became pregnant, families used to avoid going to the police and preferred resolving the matter privately, but nowadays, after sensitizations, things have improved, victims report more to the police or to us gender-based violence cases. Even chiefs, when they come across serious criminal cases, they refer them to us now.¹⁸⁸

Indeed, evidence shows that when traditional leaders are directly engaged in relevant paralegal activities, regularly informed by paralegals about their work and consulted on important issues, paralegals are more likely to be treated as colleagues by traditional leaders. In turn, traditional leaders are more willing to accept paralegal support in resolving disputes¹⁸⁹ and may voluntarily seek their services to help parties save costs in settling disputes.¹⁹⁰ Further, accounts from the field and programmatic evidence point to an increase in synergies between paralegals and CIJ systems in some pluralist jurisdictions in Africa through the introduction of targeted training and curricula for both traditional leaders and paralegals, including with support by universities;¹⁹¹ joint workshops or dialogues bringing together paralegals and CIJ actors; or through the direct involvement of the latter in the selection of community paralegals to be trained or in their supervision.¹⁹²

Under a paralegal program in **Mali**, paralegals are trained with a national curriculum and located in villages where there is an expressed need.¹⁹³ The selection for training is done by community members based on qualifications and character, facilitating acceptance of paralegals by traditional chiefs and the broader community. In turn, traditional leaders in each village are trained on the function of paralegals to avoid confusion or conflict. Trained paralegals conduct legal awareness and

education campaigns, provide legal counseling and mediation services, and refer relevant cases to licensed attorneys. For instance, in cases of domestic violence that are not considered severe and can be dealt with through mediation, paralegals attempt to mediate the dispute themselves first, by hearing both parties separately and then facilitating an agreement and guarantees for the woman's safety. Where mediation fails, paralegals refer the case to the relevant traditional chief, informing him of the facts and inviting him to resolve the dispute through customary law. This type of collaborative effort has contributed to the local perception that paralegals support the work of traditional chiefs, rather than threatening the status quo.

Likewise, in **Malawi**, as part of a Village Mediation Program, paralegals from the Paralegal Advisory Service Institute trained 450 village mediators in 2008 across 150 villages in three pilot districts, with good results in terms of direct collaboration with traditional justice actors, relevance to community justice needs, simplicity and potential for replicability in other contexts.¹⁹⁴ Specifically, mediators are selected from the community itself and traditional chiefs are directly engaged in their capacity-building. Mediators are trained to adopt a flexible approach allowing "people to decide how they would like to settle their problem" and facilitating reconciliation of parties to disputes.

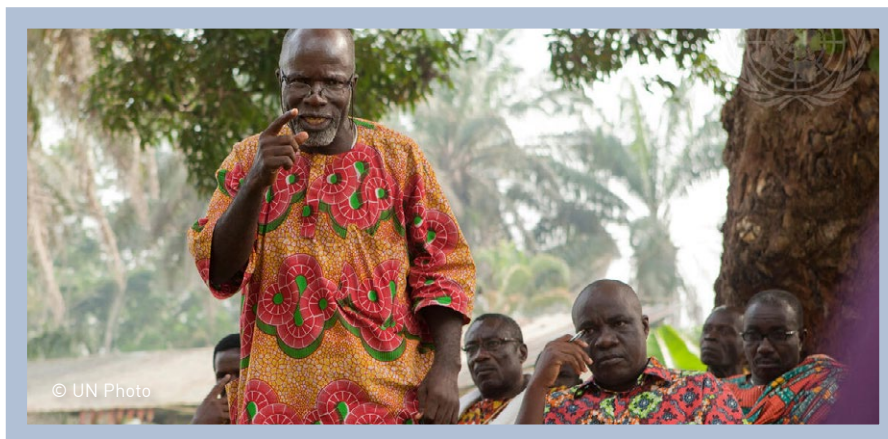
Importantly, 60 percent of village mediators are women, enabling increased accessibility by women complainants who feel more comfortable addressing their peers. Thereby, mediators complement the traditional dispute resolution role of chiefs by providing a quick, free of charge, alternative accessible to anyone at the community level, while "still retaining the option of a public forum with their Chief if [disputants] prefer or if they are unable to resolve their problem through mediation".¹⁹⁵

Overall, only where the respective functions were clearly defined and understood, was successful collaboration between community paralegals and traditional leaders documented. Strategies to prevent tensions may include:¹⁹⁶ a) "marketing" paralegals as providers of information on legal and administrative issues of practical relevance to community members; b) assigning them as technical support to CIJ actors, advising on applicable law, assisting in gathering background information on cases or in case documentation, scheduling ADR processes, etc.; and c) in instances "where customary law leaders are open to paralegals working independently", having paralegals provide mediation or legal advice to community members. In parallel, CIJ actors may be actively involved in training paralegals and monitoring their activities, for example through community oversight boards.¹⁹⁷

Paralegals and other legal and justice actors

Another crucial factor impacting the effectiveness of community paralegals is the network in which they are inserted. Contacts with key local actors and authorities such as lawyers, politicians, police officers, local labor unions, agrarian and other professional associations are essential to facilitate the resolution of legal or administrative problems and to increase the legitimacy of community paralegals.¹⁹⁸ In particular, developing a relationship with local legal aid associations is crucial, as “support from city-based lawyers signals to possible clients that a paralegal might actually succeed in bringing a case to court”.¹⁹⁹

The following account by a stakeholder in **South Sudan** illustrates the benefits of cooperating with other law and justice actors, such as lawyers, to ensure coordinated legal aid services, which is especially important in contexts where an overarching regulatory framework is absent:



We are licensed (lawyers) but we practice free legal aid through funding by partner organizations. The reason is we don't have a Legal Aid Act in South Sudan, but several organizations collaborate in providing legal aid. Some coalitions have been established such as a human rights defender network. Mostly it is the Law Society (an organization) that coordinates all these programs. But we also have a Bar Association in accordance with the Advocates Act, which is a body that regulates lawyers. The Law Society and other organizations are training chiefs on harmful practices. Meanwhile we train police officers, including the police gender-based violence desk.²⁰⁰

Importantly, lawyers are often a central component to legal aid programs, as they have “a professional responsibility to lead” in legal aid.²⁰¹ They are generally involved in the training, supervision, mentoring and advising of paralegals and law students. Lawyers may dedicate some time on a pro bono ad hoc or part-time basis to working closely with the community and supporting and supervising programs involving paralegals and law students, and may be called upon in the trial phases to represent more serious cases in court.²⁰² Increasing understanding among lawyers and paralegals of each other’s roles and fostering complementarity and coordination

between these actors are valuable strategies to increase legitimacy of paralegals and ensure effectiveness of legal aid interventions.²⁰³

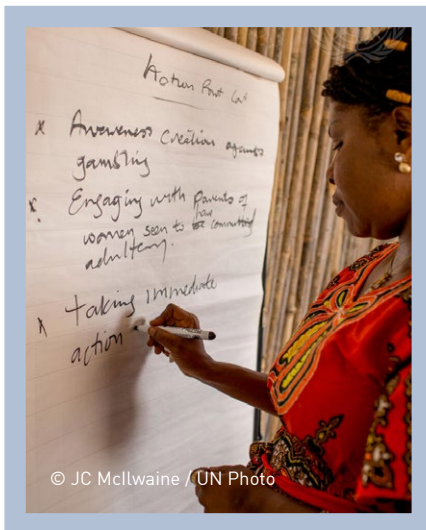
In recent years, law students are also increasingly recognized as a resource for legal aid, and programs have been established in academic institutions where law students are trained either by the university or through collaboration with community-based organizations to act as community paralegals. University legal clinics are a particularly valuable resource where funding is limited as students gain experience while providing supervised legal aid services. In **Uganda**, students are involved in

assisting lawyers with case preparation as well as in training activities with community paralegals and awareness-raising campaigns.²⁰⁴

Overall, for lasting collaboration and sustainability, there is a need to include customary law in the training of lawyers, law students and paralegals to enhance justice paths. Similarly, the importance of working with CIJ and traditional leaders has been stressed for training programs aimed at building capacity of community paralegals.²⁰⁵

RESOURCES AND TRAINING

ENSURING ADEQUATE RESOURCES FOR SUSTAINING COMMUNITY PARALEGAL ACTIVITIES



While the right to legal aid has been established in almost all constitutions in Africa and often through national laws, implementation still remains a challenge in many contexts. In particular, limited capacity, stringent eligibility requirements and inadequate resources are among the factors hindering the quality of legal aid services in practice.²⁰⁶

While paralegals are often volunteer community members who do not receive a salary, ancillary costs of providing

legal aid at the community level may range from transportation to remote locations to hiring of interpreters to overcome language barriers. A lack of resources for paralegals limits their geographical reach and means limited time commitments from paralegals who need to earn their income from other sources.²⁰⁷

To sustain their activities, some paralegal organizations have started to identify innovative financing mechanisms and sources, alternative to donor or central government funding. These may range from collaborating with universities or private sector actors to providing paying consultancy services to other organizations on legal issues, in parallel with free legal aid provision for the indigent.²⁰⁸ In some countries, examples of local-level government actors funding operational costs or providing free office space and equipment for paralegals in exchange for their legal aid services at the community level are also emerging.²⁰⁹

In the **Philippines**, paralegals have acquired recognition by selected sectors of the government, such as the Department of Agrarian Reform, which

has allowed them to represent clients in agrarian disputes and provided funding for the training of sector-specialized paralegals.²¹⁰ Similarly, in **Sierra Leone**, the 2016 National Land Policy²¹¹ provides for the establishment of “a legal assistance fund for legal and paralegal assistance to communities, land owners and land users in negotiation with potential large-scale land investors”, aimed at protecting land rights of communities from irresponsible or illegal land grab by investors.

A lack of sufficient training can also impede the ability to effectively carry out paralegal services. Paralegals have identified the importance of legal knowledge and technical skills to complete court documents or support clients.²¹² In the absence of certification programs or sufficient funding for capacity development, paralegal organizations rely on “continuous mentorship of untrained persons” thus making the learning process lengthier and less efficient.²¹³

BUILDING AN ADEQUATE SKILL SET FOR COMPREHENSIVE LEGAL AID SERVICE DELIVERY

It is important that paralegals receive both adequate initial training as well as continuing education and capacity development with tangible resources. These can range from fact sheets and infographics on case filing processes and referral pathways, to practice guides and handbooks, codes of conduct and peer-to-peer learning activities.²¹⁴ Several resources have been developed to provide training for paralegals, including step-by-step guides.²¹⁵

Essential skills that paralegals are trained on include statutory legal principles and procedural law as well as customary law, legal advice provision, case filing, case preparation and referral to lawyers, community education and empowerment, ADR methods, networking with relevant stakeholders, professional ethics, and monitoring and reporting skills.²¹⁶ Good practices include tailoring training to the specific target group, taking into

account their age, gender, level of pre-existing knowledge and academic and socioeconomic background. Further, course content should include capacity-building methodologies and training tools designed for training future trainers and ensure a multiplier effect of imparted skills among larger community sections.²¹⁷

BUILDING MEDIATION SKILLS FOR PARALEGALS

Some manuals for paralegals focus specifically on skills for conflict resolution and mediation, with the aim to “help resolve disputes in the community in a fast and cost-effective way, sensitive to local cultural realities, but which is also rigorous and complies with accepted international best practices for mediation”.²¹⁸ Mediation manuals may focus on theoretical knowledge of dispute resolution methods and processes and how to select the most appropriate ones, as well as practical aspects, such as interviewing parties, facilitating debate and negotiation, and drafting agreements.

Essential skills that paralegals should acquire to act as mediators include human relations, communications skills, a good understanding of “the way people think” in their community, and the ability to respond to their interests and needs beyond culturally rooted attitudes and fears to achieve a truly satisfactory outcome for both parties to the dispute.²¹⁹ Other mediation skills that have been emphasized relate to working in challenging contexts, or with vulnerable groups, or managing escalation of conflict, lack of collaboration or aggressive behaviors and other difficulties that may arise during mediation.²²⁰

Importantly, to make appropriate referrals of cases, it is crucial that community paralegals receive targeted training on referral pathways to and from formal justice authorities, and become familiar with relevant services and the procedures for accessing them.²²¹ Indeed, paralegals operate as the first point of contact for justice seekers at the community level, particularly for women and vulnerable groups such as children, and often acquire a central role in linking CIJ and formal authorities.

Training should focus on record-keeping of case information, drafting referral letters and following up on cases with the relevant focal person or service

provider, as well as on appeal processes, including documentation required and competent authorities with appellate jurisdiction for CIJ decisions.²²² Specifically, an accurate record of clients’ cases should provide succinct but clear information on “who the party is, parties’ issues, dates and times of meetings, advice given, steps taken, referral (if any)” as well as a documentation of any evidence in support of a claim and of “the entire process of the case for future reference”.²²³ This may be done through record-keeping of statements, written communication, and any other documental evidence, as well as by taking pictures of victim’s injuries, for example.²²⁴

Further, training should include building paralegals’ capacity on a survivor-centered approach, “psychosocial first aid – including assessment of further risk of violence – and safe identification of services and referrals”.²²⁵ In particular, paralegals should “keep the contact details of the relevant organizations and when possible, maintain some form of relationship with these persons/organizations to facilitate ease of approach when a referral is deemed necessary”.²²⁶

BUILDING A COMPREHENSIVE SKILL SET FOR PARALEGALS WORKING WITH CUSTOMARY AND INFORMAL JUSTICE SYSTEMS

In **Somalia**, paralegals and clerks working in IDLO-supported ADR Centers are trained on human rights, national law, jurisdictional aspects and case recording, to build their capacity to make appropriate referrals to competent authorities and support services. Research findings show that following targeted training, ADR Centers’ paralegals made and received “referrals to and from courts and the police and [referred] victims/survivors and vulnerable parties to local support organizations. They also reported using a specific form for referrals, summarizing details of the case for the receiving authority”.²²⁷

Importantly, research participants indicated that in accordance with the training received, ADR Centers’ paralegals provide “explanation to parties about respective rights and legal provisions applicable to the matter at hand at both the stage of a jurisdiction check and during the process at the ADR Center” in alignment with applicable law and international human rights standards. In some instances, they also actively follow up on referred cases by accompanying parties to court or contacting formal justice institutions or support service providers to check on victims, the status of proceedings or the enforcement of decisions.²²⁸

In jurisdictions where training resources have been standardized, consistency has been identified as a positive step and a valuable contribution to upgrading the quality of services, building trust and synergy among justice actors, and enabling the evaluation of a paralegal's performance.²²⁹ However, while formal requirements for training of community paralegals must be considered to ensure that quality standards for legal aid services are met, a one-size-fits-all approach may not always be beneficial. In many cases, long-standing community-based paralegals effectively work to facilitate access to justice without prior formal training but based on deep contextual knowledge and experience. In **Kenya**, it has been noted that:

The qualifications set for paralegals within the Legal Aid Act in Kenya are very stringent and shut out some paralegals who have long-standing practice despite their lack of qualifications.²³⁰

To ensure that paralegal services are effective, it is important to balance the need to preserve minimum quality standards of service delivery, with contextual specificities and the needs of different target groups.

ENSURING ACCOUNTABILITY AND MINIMUM QUALITY STANDARDS OF PARALEGAL SERVICES

As widely documented by practice, regular monitoring of paralegal programs is essential to keep track of progress and ensure success, as monitoring is closely linked with the quality and effectiveness of legal aid delivery.²³¹ Clear instruments and procedures may be developed to evaluate aspects such as the functioning of referral or filing systems or the types

of cases that paralegals are handling well or poorly. Support may be provided through user feedback questionnaires for clients or a code of conduct detailing work ethics and professionalism standards. The latter may set qualification standards and training requirements as well as criteria for integrity and ethics, including respect for confidentiality of client and case file

information.²³² As noted, community stakeholders, including CIJ actors, may also be involved in overseeing paralegals' work to help build mutual understanding of respective functions and prevent tensions.²³³

Oversight of paralegal program performance typically involves verifying the following criteria:²³⁴

- » **Correct procedures:** are procedures followed correctly for handling cases and recording casework?
- » **Exercise of judgment:** is good judgment applied in carrying out responsibilities and are appropriate strategies pursued for case resolution (whether directly or through referrals)?
- » **Volume of matters and activities:** are the minimum number of cases required being handled? Are community development activities carried out?

Monitoring can be done by supervisors, lawyers, paralegal advisory committees, as well as boards including community stakeholders and CIJ actors. It is also important to establish a pattern of communication early, either through phone or email, written reports, supervisory visits, or ongoing training and meetings.²³⁵ Where regular communication is difficult, alternatives such as quarterly visits may be useful. Site visits are an effective way to diagnose any problems and discuss issues in a participatory manner.²³⁶

For instance, the Khmer Institute for Democracy in **Cambodia** sends supervisors to hold local forums to offer trainings and hear feedback on the work of paralegals as well as to help raise awareness about the paralegal program. Commune councilors, village chiefs and residents attend these local forums.²³⁷ Through in-person assessments, supervisors in Cambodia learned from the Khmer Institute paralegals that they wanted to receive more legal training on criminal law, land law, marital law and contract law. Paralegals also raised the need for identification cards marking them as "citizen advisors" (particularly female paralegals) to increase legitimacy. They also identified the need for further training on conflict diffusion and resolution tactics.²³⁸

In **Tanzania**, the Legal Aid Act provides the legal basis for “monitoring and coordination of paralegals, as well as oversight through the Office of the Registrar of Legal Aid”.²³⁹ In **Sierra Leone**, a Community Oversight Board was created in the Timap for Justice project in an effort to foster program accountability.²⁴⁰ Members included traditional elders and leaders of women and youth groups with functions including tracking respect for working time requisites, professionalism, effectiveness and work ethic, as well as efforts put into finding best-fit solutions to community problems.²⁴¹

Questionnaires to gather community feedback on paralegal services, monthly and quarterly reports, as well as other data collection and case-tracking tools that community-based paralegals use in their daily activities may also be a source of valuable evidence to identify strengths, gaps and challenges in paralegal services and CIJ systems, thus informing policy debate and legal reform debate.²⁴²

STRENGTHENING DATA COLLECTION SKILLS FOR EVIDENCE-BASED POLICY AND LEGAL REFORM

As noted, capacity-building for paralegals should include record keeping, reporting and documentation of cases. Accurate record keeping of cases by paralegals is particularly important when interacting with CIJ systems, which are often based on oral processes. This facilitates referrals or appeals to competent authorities, and allows the monitoring of paralegals’ performance as well as the progress of cases through the justice chain. Moreover, systematic case information collection and recording by paralegals can contribute to a more accurate reporting on target 16.3 of Goal 16 of the Sustainable Development Agenda, by filling an information gap on cases handled at the community level and by CIJ actors, thus capturing “an important dimension of unmet legal need and access to justice” and adopting a people-centered approach to measuring legal problems “that occur inside and outside of formal institutions” and disproportionately affect the vulnerable and marginalized.²⁴³

Indeed, experiences on the ground have demonstrated the crucial role played by paralegals in gathering information at every step of case handling through multiple methods, including compiling case file forms, observing CIJ processes, collecting evidence and interviewing parties and community members, and systematically taking



record of procedural steps and case-related actions.²⁴⁴ In some instances, case file databases are kept, which allow for the identification of trends, patterns or structural gaps in justice services. Diligent data collection by paralegals can contribute to identifying cases that often fail to be settled and for which reasons, structural discriminations against parties belonging to marginalized or minority groups, lack of cooperation between formal and informal justice actors and other context-specific challenges and complexities, and the duration of different types of cases when handled by different formal and informal justice systems/actors.²⁴⁵

Enhancing paralegals’ participation in CIJ processes can contribute to “downward accountability” of CIJ actors²⁴⁶ by exposing the perpetration of harmful traditional norms and violations of human rights or fair trial standards. Further, reporting of patterns or common experience may unveil unforeseen areas of concern or improvement, help identify tailored solutions to gaps and problems, and guide legal and regulatory reform aimed at upgrading current systems.²⁴⁷

INFORMING DECISION-MAKING THROUGH CASE TRACKING

In 2016–2018, IDLO and its partners implemented a project aimed at reducing HIV incidence among adolescent girls and young women in four pilot districts of **Uganda** and **Tanzania** through a blend of legal empowerment and social accountability strategies.²⁴⁸ As part of the legal empowerment approaches, several capacity development activities were conducted, including the training of 200 adolescent girls and young women community advocates. Training content focused on skills for providing basic legal aid and awareness-raising among their peers on HIV prevention and legal and health services available, including how to seek assistance for sexual and gender-based violence cases, and case recording skills.

For this purpose, case documentation tools were developed to allow adolescent girls and young women community advocates to document all legal matters received by their peers and report them to implementing organizations who recorded relevant information into case trackers including “law violated, action taken, court appearances and court decisions”.²⁴⁹

Case trackers allowed the monitoring of the progression of sensitive cases through the justice chain and the identification of common issues and trends. For instance, it was found that there was a tendency for adolescent girls and young women victims to drop charges prior to the conclusion of court proceedings due to family pressure, lack of trust in formal justice or lengthy proceedings. Moreover, as a result of the joint documentation effort by community paralegals and the implementing organizations they referred cases to, aggregated data was available, which fed into the project’s monitoring plan, allowing the quantification of gender-based violence cases reported and the assessment of the overall performance of justice and health service providers in the targeted districts. Finally, relevant gaps and issues in the handling of gender-based violence cases by justice and health actors identified through case trackers were brought to the attention of local and national government representatives through evidence-based advocacy dialogues aimed at securing commitments on service delivery improvements.²⁵⁰

Research on legal aid best practices suggests data collected should be disaggregated by gender, age, socioeconomic status and geographical distribution of legal aid recipients. In fact, adequate disaggregation allows for better identification of “culturally appropriate, gender-sensitive and age-appropriate solutions to improve the provision of legal aid in a given country context”.²⁵¹ Promising practices for potential replication emerge from the **Kenyan** experience, as reported by a paralegal working in the country:

*We have a system to keep track of case files. We store case data in a database, disaggregate by case type/matter, gender, age, outcome... It is important to keep documentation of our work and being able to show data that speaks to partners to be able to raise funds for our work [...] We also provide data to service providers for victims such as child cases data to the child support integrated system.*²⁵²

In many African countries, paralegals are also actively engaged in documenting and reporting human rights violations to “international and regional human rights bodies, such as the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination Against Women and the African Committee of Experts on the Rights and Welfare of the Child”.²⁵³ Support from local community-based organizations, lawyers’ associations and legal aid boards or equivalent coordination bodies is crucial to ensure that information gathered by paralegals through case investigation and documentation is leveraged and used effectively to advocate for reform and positive change.

Summary of community paralegals' activities in plural legal systems

